AMENDED IN SENATE APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 383

Introduced by Assembly Member Wagner

February 14, 2013

An act to amend Sections 1202, 4836.1, 4999.32, 5096.10, 21609.1, 23958.4, 25502.2, and 25600.2 of the Business and Professions Code, to amend Sections 55.56, 56.16, 1195, 1950.5, 2877, 2923.55, 2924.8, 2924.19, 2950, and 3509 of the Civil Code, to amend Sections 116.940, 425.50, 684.115, and 1282.4 of the Code of Civil Procedure, to amend Section 7237 of, and to amend and renumber the heading of Chapter 5.5 (commencing with Section 15900) of Title 2 of, the Corporations Code, to amend Sections 15282, 17193.5, 17250.25, 18720, 22138.5, 33195, 35583, 38000, 41320.1, 41326, 47660, 48853, 48853.5, 48900, 48902, 48911, 49076, 49548, 52052, 60200.8, 60209, 60605.87, 60852.1, 66407, 81378.1, and 88620 of the Education Code, to amend Sections 2162, 2224, 2225, 3111, 13115, and 21000 of the Elections Code, to amend Sections 3047, 3200.5, and 4055 of the Family Code, to amend Sections 1587 and 15100 of the Fish and Game Code, to amend Sections 4101.3, 4106, 14611, 19447, 55527.6, and 64101 of the Food and Agricultural Code, to amend Sections 3513, 3527, 7522.20, 7522.56, 7522.57, 7522.72, 8164.1, 11019, 11020, 11435.15, 11552, 12460, 12838.14, 12926, 14837, 15820.922, 19815, 20391, 20410, 20516, 20677.7, 25060, 25062, 65040.7, 65302.5, and 65915 of, to amend the heading of Chapter 3.1 (commencing with Section 8240) of Division 1 of Title 2 of, to amend and renumber Sections 15606.5, 15814.25, and 15819.30 of, to repeal Section 7480 of, and to repeal the heading of Chapter 3 (commencing with Section 15570) of Part 8.5 of Division 3 of Title 2 of, the Government Code, to amend Sections 80.2 and 82 of, and to amend the heading of Chapter 3 (commencing with

Section 80) of Division 1 of, the Harbors and Navigation Code, to amend Sections 1339.40, 1339.41, 1367.65, 1531.15, 11378, 11755, 25110.11, 34177, 34183.5, 39053, 39510, 39710, 39712, 39716, 39718, 106985, 114365.5, 114380, 116565, 120365, 123327, 123940, 123955, 125286.20, 128570, 129725, and 136000 of the Health and Safety Code, to amend Sections *395*, 676.75, 922.41, 1063.1, 1754, 10113.71, 10124, 10271, 11665, and 12694.1 of the Insurance Code, to amend Sections 980, 4709, and 5502 of the Labor Code, to amend Sections 136.2, *166*, *171c*, *273.6*, 289.6, 496a, *626.95*, *626.10*, 781, 830.41, 830.55, 1001.20, 1170, 1203.097, *1203.4a*, 1230, 1370.1, 2602, 3000.08, 3060.7, 4024.2, 4115.55, 5072, 6030, 11165.7, 11166, 12022, and 12022.1 of, and to repeal the heading of Title 4.5 (commencing with Section 13600) of Part 4 of, the Penal Code, to amend Sections 10295.6 and 20651.7 of the Public Contracts Code, to amend Sections 4629.5, 4629.9, 6224.5, 21080.37, 21080.5, 21084, and 72410 of the Public Resources Code, to amend Sections 2827.10, 2862, 5142, 5143, 9506, and 185035 of the Public Utilities Code, to amend Sections 2188.6, 7285.3, 17276.20, 18152.5, 18738, 23685, 24416.20 of, and to amend and renumber Section 24900 of, the Revenue and Taxation Code, to amend Sections 1755 and 14211 of the Unemployment Insurance Code, to amend Sections 11205, 12804.11, 16028, 23612, 34510.5, and 40000.20 of the Vehicle Code, to amend Section 85057.5 of the Water Code, to amend Sections 366.21, 366.22, 366.25, 4141, 4427.5, 4648, 4684.53, 5008, 5328.03, 6254, 7295, 12306, 14005.27, 14043.25, 14043.7, 14132.275, 14132.276, 14169.32, 14182, 14182.16, 15630, 15650, and 18969 of, and to repeal Section 4792.1 of, the Welfare and Institutions Code, to amend Section 1 of Chapter 357 of the Statutes of 2012, to amend Section 1 of Chapter 513 of the Statutes of 2012, to amend Section 1 of Chapter 541 of the Statutes of 2012, and to amend Section 2 of Chapter 719 of the Statutes of 2012, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 383, as amended, Wagner. Maintenance of the codes.

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

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

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

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

SECTION 1. Section 1202 of the Business and Professions Code is amended to read:

1202. As used in this chapter, "department" means the State Department of Public Health.

SEC. 2. Section 4836.1 of the Business and Professions Code is amended to read:

4836.1. (a) Notwithstanding any other law, a registered veterinary technician or a veterinary assistant may administer a drug, including, but not limited to, a drug that is a controlled substance, under the direct or indirect supervision of a licensed veterinarian when done pursuant to the order, control, and full professional responsibility of a licensed veterinarian. However, no person, other than a licensed veterinarian, may induce anesthesia unless authorized by regulation of the board.

(b) Access to controlled substances by veterinary assistants under this section is limited to persons who have undergone a background check and who, to the best of the licensee manager's knowledge, do not have any drug- or alcohol-related felony convictions.

(c) Notwithstanding subdivision (b), if the Veterinary Medical Board, in consultation with the Board of Pharmacy, identifies a dangerous drug, as defined in Section 4022, as a drug which has an established pattern of being diverted, the Veterinary Medical Board may restrict access to that drug by veterinary assistants.

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

(1) "Controlled substance" has the same meaning as that term is defined in Section 11007 of the Health and Safety Code.

(2) "Direct supervision" has the same meaning as that term is defined in subdivision (e) of Section 2034 of Title 16 of the California Code of Regulations.

(3) "Drug" has the same meaning as that term is defined in Section 11014 of the Health and Safety Code.

(4) "Indirect supervision" has the same meaning as that term is defined in subdivision (f) of Section 2034 of Title 16 of the California Code of Regulations.

(e) 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. 3. Section 4999.32 of the Business and Professions Code is amended to read:

4999.32. (a) This section shall apply to applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4999.33.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (d), the coursework in the core content areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 48 graduate semester or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in each of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the

profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) In addition to the course requirements described in paragraph (1), a minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

(e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:

(1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A two semester unit or three quarter unit survey course in psychopharmacology.

(4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.

(5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.

(6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to clients, and state and federal laws related to confidentiality of patient health information. When coursework in a master's or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the

assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

SEC. 4. Section 5096.10 of the Business and Professions Code, as amended by Section 32 of Chapter 411 of the Statutes of 2012, is amended to read:

5096.10. (a) The provisions of this article shall only be operative if there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

(b) This section shall become inoperative on July 1, 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. 5. Section 21609.1 of the Business and Professions Code is amended to read:

21609.1. (a) No junk dealer or recycler shall possess any reasonably recognizable, disassembled, or inoperative fire hydrant or fire department connection, including, but not limited to, reasonably recognizable brass fittings and parts, or any manhole cover or lid or reasonably recognizable part of a manhole cover or lid, or any backflow device or connection to that device or reasonably recognizable part of that device, that was owned or previously owned by an agency, in the absence of a written certification on the letterhead of the agency owning or previously owning the material described in the certification that the agency has either sold the material described or is offering the material for sale, salvage, or recycling, and that the person possessing the certification and identified in the certification is authorized to negotiate the sale of that material.

(b) A junk dealer or recycler who unknowingly takes possession of one or more of the items listed in subdivision (a) as part of a load of otherwise nonprohibited materials without a written

certification has a duty to notify the appropriate law enforcement agency by the end of the next business day upon discovery of the prohibited material. Written certification shall relieve the junk dealer or recycler from any civil or criminal penalty for possession of the prohibited material. The prohibited material shall be set aside and not sold pending a determination made by a law enforcement agency pursuant to Section 21609.

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

(1) "Agency" means a public agency, city, county, city and county, special district, or private utility regulated by the Public Utilities Commission.

(2) "Appropriate law enforcement agency" means either of the following:

(A) The police chief of the city, or his or her designee, if the item or items listed in subdivision (a) are located within the territorial limits of an incorporated city.

(B) The sheriff of the county or his or her designee if the item or items listed are located within the county but outside the territorial limits of an incorporated city.

(3) "Written certification" means a certification in written form by the junk dealer or recycler to a law enforcement agency, including electronic mail, facsimile, or a letter delivered in person or by certified mail.

SEC. 6. Section 23958.4 of the Business and Professions Code is amended to read:

23958.4. (a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

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

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises-to-premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be established by the department on an annual basis.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued before April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.

SEC. 7. Section 25502.2 of the Business and Professions Code is amended to read:

25502.2. (a) A person employed or engaged by an authorized licensee may appear at a promotional event at the premises of an off-sale retail licensee for the purposes of providing autographs to consumers at the promotional event only under the following conditions:

(1) A purchase from the off-sale retail licensee is not required.

(2) A fee is not charged to attend the promotional event.

(3) Autographing may only be provided on consumer advertising specialities given by the authorized licensee to a consumer or on any item provided by the consumer.

(4) The promotional event does not exceed four hours in duration.

(5) There are no more than two promotional events per calendar year involving the same authorized licensee at a single premises of an off-sale retail licensee.

(6) The off-sale retail licensee may advertise the promotional event to be held at its licensed premises.

(7) An authorized licensee may advertise in advance of the promotional event only in publications of the authorized licensee, subject to the following conditions:

(A) The advertising only lists the name and address of the off-sale retail licensee, the name of the alcoholic beverage product being featured at the promotional event, and the time, date, and location of the off-sale retail licensee location where the promotional event is being held.

(B) The listing of the off-sale retail licensee's name and address is the only reference to the off-sale retail licensee in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and the advertisement does not contain any pictures or illustrations of the off-sale retail licensee's premises or laudatory references to the off-sale retail licensee.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the promotional event, except that a beer and wine wholesaler that holds at least six distilled spirits wholesaler licenses may directly or indirectly

underwrite, share in, or contribute to any costs related to a promotional event for which the wholesaler employs or engages the person providing autographs to consumers at the promotional event.

(9) The authorized licensee notifies the department in writing of the promotional event at least 30 days in advance of the promotional event.

(10) The authorized licensee maintains records necessary to establish its compliance with this section.

(b) For purposes of this section, "authorized licensee" means a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, importer, brandy manufacturer, brandy importer, or wholesaler.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 8. Section 25600.2 of the Business and Professions Code is amended to read:

25600.2. (a) An authorized licensee may conduct or sponsor consumer sweepstakes, subject to the following conditions:

(1) (A) No entry fee may be charged to participate in a sweepstakes authorized by this subdivision. Entry or extra chances in a sweepstakes shall not be made available via the purchase of an alcoholic beverage.

(B) Entry into or participation in a sweepstakes shall be limited to persons 21 years of age or older.

(C) No sweepstakes shall involve consumption of alcoholic beverages by a participant.

(D) Subject to subparagraph (B), any sweepstakes offered in California shall be open to all residents of California.

(E) A sweepstakes may not be conducted for the benefit of any permanent retail license.

(2) (A) Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a sweepstakes or as a means of determining the amount or size of the prize or the winner in a sweepstakes, except as provided in subparagraphs (D) and (F).

(B) The authorized licensee shall provide an alternative means of entry that does not require a visit to a licensed premises.

(C) Except as provided in subparagraph (D), removable entry forms shall not be used on alcoholic beverage labels, containers, packaging, cases, or cartons.

(D) Removable entry forms that are neck hangers shall be used only on bottles of wine or distilled spirits, and shall not require purchase of the product. Removable neck hangers shall be used only if other entry forms are available at the point of sale or if an alternative means of entry is also available.

(E) Entry forms may be provided through electronic or other media, including point of sale.

(F) Codes that may be scanned or electronically entered by a consumer where the authorized licensee has permanently affixed the codes as part of the original alcoholic beverage label, container, packaging, case, or carton~~,~~ and where the codes are not removable and not required to be removed are permitted as a form of entry.

(G) All permitted means of entry, including the use of electronic or scanner codes, shall clearly indicate that no purchase is required to enter.

(H) All sweepstakes entries shall provide the entrant with an equal odds of winning.

(3) A sweepstakes shall not provide for the instant or immediate awarding of a prize or prizes. Instant or immediate notification to the consumer that he or she is a winner is permissible.

(4) Except for providing a means of entry, a sweepstakes authorized by this section shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.

(5) Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a sweepstakes prize. This paragraph shall not prohibit a sweepstakes in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent.

(6) A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a sweepstakes winner. The matching of entries with numbers or pictures on the point-of-sale materials at retail licensed premises is permitted only if entrants are also offered the opportunity to use an alternative means to determine prize-winning status. An authorized licensee may furnish and

maintain a deposit box on a retail licensed premises for the collection and forwarding of sweepstakes entry forms.

(7) A licensee that is not an authorized licensee shall not directly or indirectly underwrite, share in, or contribute to, the costs of a sweepstakes authorized by this section or serve as the agent of an authorized licensee to collect or forward entries or to furnish any prize to a sweepstakes winner.

(8) (A) Advertising of a sweepstakes shall comply with the signage and advertising restrictions contained in this chapter, Chapter 15 (commencing with Section 25500), and any regulations issued by the department.

(B) Advertising or promotion of a sweepstakes shall not identify or refer to a retail licensee.

(C) A retail licensee shall only advertise or promote a sweepstakes authorized by this section in the manner specified in subparagraph (A).

(D) Advertising or promotion of a sweepstakes shall only be conducted on the premises of a retail licensee when such advertisement or promotion involves a minimum of three unaffiliated retail licensees. For purposes of this subparagraph, "unaffiliated retail licensees" shall not include a retail licensee owned or controlled in whole or in part by an authorized licensee or any officer, director, or agent of that licensee.

(E) Placement of signs or other advertising of a sweepstakes in a licensed retail premises shall not be conditioned upon the following:

(i) The placement of a product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.

(ii) The purchase or sale of a product produced, imported, distributed, represented, or promoted by an authorized licensee or its agent.

(F) An agreement, whether written or oral, entered into, by, and between a retail licensee and an authorized licensee that precludes the advertisement or promotion of a sweepstakes on the premises of the retail licensee by another authorized licensee or its agent is prohibited.

(9) Sweepstakes prizes shall not be awarded to an authorized licensee, retail licensee, or wholesale licensee or agent, officer, employee, or family member of an authorized licensee, retail licensee, or wholesale licensee. For the purposes of this paragraph, "family member" means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendants, including those by adoption. An authorized licensee shall maintain all records pertaining to a sweepstakes for three years following the completion of a sweepstakes.

(b) For purposes of this section:

(1) (A) "Authorized licensee" means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper's certificate holder, brandy manufacturer, and brandy importer. An authorized licensee may conduct, sponsor, or participate in a sweepstakes pursuant to this section regardless of whether the licensee holds an additional license not included in this paragraph.

(B) An "authorized licensee" shall not include a beer and wine wholesaler, a beer and wine importer general, or distilled spirits importer general that only holds a wholesaler's or retailer's license as an additional license.

(2) "Sweepstakes" means a procedure, activity, or event for the distribution of anything of value by lot, chance, or random selection where the odds for winning a prize are equal for each entry.

(c) Nothing in this section authorizes conducting sweepstakes where consumers are entitled to an allotment or accumulation of points based on purchases made over a period of time that can be redeemed for prizes, things of value, or additional sweepstakes entries.

(d) A prize awarded for a sweepstakes conducted pursuant to this section shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

(e) An authorized licensee that violates this section, in addition to any other penalty imposed by this division, may be prohibited by the department from offering a sweepstakes to California residents for a period of 12 months.

SEC. 9. Section 55.56 of the Civil Code is amended to read:

55.56. (a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

(b) A plaintiff is denied full and equal access only if the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.

(c) A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

(d) A plaintiff demonstrates that he or she was deterred from accessing a place of public accommodation on a particular occasion only if both of the following apply:

(1) The plaintiff had actual knowledge of a violation or violations that prevented or reasonably dissuaded the plaintiff from accessing a place of public accommodation that the plaintiff intended to use on a particular occasion.

(2) The violation or violations would have actually denied the plaintiff full and equal access if the plaintiff had accessed the place of public accommodation on that particular occasion.

(e) Statutory damages may be assessed pursuant to subdivision (a) based on each particular occasion that the plaintiff was denied full and equal access, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred. If the place of public accommodation consists of distinct facilities that offer distinct services, statutory damages may be assessed based on each denial of full and equal access to the distinct facility, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(f) (1) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum

of one thousand dollars ($1,000) for each offense if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and the defendant demonstrates any of the following:

(A) The structure or area of the alleged violation was determined to be "CASp-inspected" or "meets applicable standards" and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim that were completed or commenced between the date of that determination and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(B) The structure or area of the alleged violation was the subject of an inspection report indicating "CASp determination pending" or "Inspected by a CASp," and the defendant has either implemented reasonable measures to correct the alleged violation before the particular occasion on which the plaintiff was allegedly denied full and equal access, or the defendant was in the process of correcting the alleged violation within a reasonable time and manner before the particular occasion on which the plaintiff was allegedly denied full and equal access.

(C) For a claim alleging a construction-related accessibility violation filed before January 1, 2018, the structure or area of the alleged violation was a new construction or an improvement that was approved by, and passed inspection by, the local building department permit and inspection process on or after January 1, 2008, and before January 1, 2016, and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by, a local building department official who is a certified access specialist, and, to the best of the defendant's knowledge, there were no modifications or alterations that affected compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction

or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(2) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of two thousand dollars ($2,000) for each offense if the defendant demonstrates both of the following:

(A) The defendant has corrected all construction-related violations that are the basis of a claim within 30 days of being served with the complaint.

(B) The defendant is a small business that has employed 25 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Economic Development Department, and has average annual gross receipts of less than three million five hundred thousand dollars ($3,500,000) over the previous three years, or for the years it has been in existence if less than three years, as evidenced by federal or state income tax returns. The average annual gross receipts dollar amount shall be adjusted biannually by the Department of General Services for changes in the California Consumer Price Index for All Urban Consumers, as compiled by the Department of Industrial Relations. The Department of General Services shall post that adjusted amount on its Internet Web site.

(3) This subdivision shall not be applicable to intentional violations.

(4) Nothing in this subdivision affects the awarding of actual damages, or affects the awarding of treble actual damages.

(5) This subdivision shall apply only to claims filed on or after the effective date of Senate Bill 1186 of the 2011–12 Regular Session of the Legislature. Nothing in this subdivision is intended to affect a complaint filed before that date.

(g) This section does not alter the applicable law for the awarding of injunctive or other equitable relief for a violation or violations of one or more construction-related accessibility standards, nor alter any legal obligation of a party to mitigate damages.

(h) In assessing liability under subdivision (d), in an action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, the court

shall consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages.

SEC. 10. Section 56.16 of the Civil Code is amended to read:

56.16. For disclosures not addressed by Section 56.1007, unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information: the patient's name, address, age, and sex; a general description of the reason for treatment (whether an injury, a burn, poisoning, or some unrelated condition); the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information as defined in subdivision (g) of Section 56.05.

SEC. 11. Section 1195 of the Civil Code is amended to read:

1195. (a) Proof of the execution of an instrument, when not acknowledged, may be made by any of the following:

(1) By the party executing it, or either of them.

(2) By a subscribing witness.

(3) By other witnesses, in cases mentioned in Section 1198.

(b) (1) Proof of the execution of a power of attorney, grant deed, mortgage, deed of trust, quitclaim deed, security agreement, or any instrument affecting real property is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee's deed or deed of reconveyance is permitted.

(2) Proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public's journal is not permitted.

(c) Any certificate for proof of execution taken within this state may be in the following form, although the use of other, substantially similar forms is not precluded:

State of California
County of _____ } ss.

On ____ (date), before me, the undersigned, a notary public for the state, personally appeared ____ (name of subscribing witness), proved to me to be the person whose name is subscribed to the within instrument, as a witness thereto, on the oath of ____ (name of credible witness), a credible witness who

is known to me and provided a satisfactory identifying document. ____ (name of subscribing witness), being by me duly sworn, said that he/she was present and saw/heard ____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within or attached instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her name to the within or attached instrument as a witness at the request of ____ (name[s] of principal[s]).

WITNESS my hand and official seal.

Signature_____ (Notary public seal)

SEC. 12. Section 1950.5 of the Civil Code is amended to read:

1950.5. (a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, "security" means any payment, fee, deposit, or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. The requirements of this subdivision do not apply when the tenancy is terminated pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to

remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection. Written notice by the landlord shall contain, in substantially the same form, the following:

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out."

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleanings that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive, of subdivision (b). This statement shall also include the texts of paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) (1) No later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and shall return any remaining portion of the security to the tenant. After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and tenant may mutually agree to have the landlord deposit any remaining portion of the security deposit electronically to a bank account or other financial institution designated by the tenant. After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and the tenant may also agree to have the landlord provide a copy of the itemized statement along with the copies required by paragraph (2) to an email account provided by the tenant.

(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address,

and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following applies:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars ($125).

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated.

(h) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their addresses, and their telephone numbers. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision (h).

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

(j) (1) In the event of noncompliance with subdivision (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided

in subdivision (h), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

(2) This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

(3) Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (*l*), or any security not transferred pursuant to subdivision (h).

(k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(*l*) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision (j), may subject the landlord or the landlord's successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant that award, regardless of whether the injured party has specifically requested relief. In an action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain a provision characterizing any security as "nonrefundable."

(n) An action under this section may be maintained in small claims court if the damages claimed, whether actual, statutory, or both, are within the jurisdictional amount allowed by Section 116.220 or 116.221 of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not

limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(p) The amendments to this section made during the 1985 portion of the 1985–86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

(q) The amendments to this section made during the 2003 portion of the 2003–04 Regular Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of existing law.

SEC. 13. Section 2877 of the Civil Code is amended to read:

2877. Contracts of mortgage, pledge, bottomry, or respondentia are subject to all of the provisions of this chapter.

SEC. 14. Section 2923.55 of the Civil Code, as added by Section 6 of Chapter 86 of the Statutes of 2012, is amended to read:

2923.55. (a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until all of the following:

(1) The mortgage servicer has satisfied the requirements of paragraph (1) of subdivision (b).

(2) Either 30 days after initial contact is made as required by paragraph (2) of subdivision (b) or 30 days after satisfying the due diligence requirements as described in subdivision (f).

(3) The mortgage servicer complies with subdivision (c) of Section 2923.6, if the borrower has provided a complete application as defined in subdivision (h) of Section 2923.6.

(b) (1) As specified in subdivision (a), a mortgage servicer shall send the following information in writing to the borrower:

(A) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.

(B) A statement that the borrower may request the following:

(i) A copy of the borrower's promissory note or other evidence of indebtedness.

(ii) A copy of the borrower's deed of trust or mortgage.

(iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose.

(iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (b). Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(f) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required

by paragraph (2) of subdivision (b), provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(g) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 15. Section 2923.55 of the Civil Code, as added by Section 6 of Chapter 87 of the Statutes of 2012, is amended to read:

2923.55. (a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until all of the following:

(1) The mortgage servicer has satisfied the requirements of paragraph (1) of subdivision (b).

(2) Either 30 days after initial contact is made as required by paragraph (2) of subdivision (b) or 30 days after satisfying the due diligence requirements as described in subdivision (f).

(3) The mortgage servicer complies with subdivision (c) of Section 2923.6, if the borrower has provided a complete application as defined in subdivision (h) of Section 2923.6.

(b) (1) As specified in subdivision (a), a mortgage servicer shall send the following information in writing to the borrower:

(A) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.

(B) A statement that the borrower may request the following:

(i) A copy of the borrower's promissory note or other evidence of indebtedness.

(ii) A copy of the borrower's deed of trust or mortgage.

(iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose.

(iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (b). Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(f) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required

by paragraph (2) of subdivision (b), provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(g) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 16. Section 2924.8 of the Civil Code is amended to read:

2924.8. (a) (1) Upon posting a notice of sale pursuant to Section 2924f, a trustee or authorized agent shall also post the following notice, in the manner required for posting the notice of sale on the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent, concurrently with the mailing of the notice of sale pursuant to Section 2924b, shall send by first-class mail in an envelope addressed to the "Resident of property subject to foreclosure sale" the following notice in English and the languages described in Section 1632:

Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 90-day eviction notice. You may have a right to stay in your home for longer than 90 days. If you have a fixed-term lease, the new owner must honor the lease unless the new owner will occupy the property as a primary residence or in other limited circumstances. Also, in some cases and in some cities with a "just cause for eviction" law, you may not have to move at all. All rights and obligations under your lease or tenancy, including your obligation to pay rent, will continue after the foreclosure sale.

You may wish to contact a lawyer or your local legal aid office or housing counseling agency to discuss any rights you may have.

(2) The amendments to the notice in this subdivision made by the act that added this paragraph shall become operative on March 1, 2013, or 60 days following posting of a dated notice incorporating those amendments on the Department of Consumer Affairs Internet Web site, whichever date is later.

(b) It is an infraction to tear down the notice described in subdivision (a) within 72 hours of posting. Violators shall be subject to a fine of one hundred dollars ($100).

(c) The Department of Consumer Affairs shall make available translations of the notice described in subdivision (a) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.

(d) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

(e) This section shall remain in effect only until December 31, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2019, deletes or extends that date.

SEC. 17. Section 2924.19 of the Civil Code, as added by Section 22 of Chapter 86 of the Statutes of 2012, is amended to read:

2924.19. (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

(2) An injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee,

beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars ($50,000).

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2924.17, or 2924.18 by a person licensed by the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) A violation of this article shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2924.17, or 2924.18, committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 18. Section 2924.19 of the Civil Code, as added by Section 22 of Chapter 87 of the Statutes of 2012, is amended to read:

2924.19. (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

(2) An injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars ($50,000).

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2924.17, or 2924.18 by a person licensed by the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) A violation of this article shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2924.17, or 2924.18,

committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 19. Section 2950 of the Civil Code is amended to read:

2950. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his *or her* heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

SEC. 20. Section 3509 of the Civil Code is amended to read:

3509. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

SEC. 21. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county, or by the superior court in a county where the small claims advisory service is administered by the court, in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties, superior courts in adjacent counties, or any combination thereof, may provide advisory services jointly.

(c) In a county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county or the superior court may elect to exempt itself from the requirements set forth in subdivision (b). If the small claims advisory service is administered by the county, this exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If the small claims advisory service is administered by the superior court, this exemption shall be formally noticed through adoption of a local rule. If a county or court so exempts itself, the county or court shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims

court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers, have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

(g) This section does not preclude a court or county from contracting with a third party to provide small claims advisory services as described in this section.

SEC. 22. Section 425.50 of the Code of Civil Procedure is amended to read:

425.50. (a) An allegation of a construction-related accessibility claim in a complaint, as defined in subdivision (a) of Section 55.52 of the Civil Code, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred, with sufficient information about the location of the alleged barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier denied the individual full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the claimant encountered the specific access barrier, or on which he or she was deterred.

(b) A complaint alleging a construction-related accessibility claim, as those terms are defined in subdivision (a) of Section 55.3 of the Civil Code, shall be verified by the plaintiff. A complaint filed without verification shall be subject to a motion to strike.

(c) Nothing in this section shall limit the right of a plaintiff to amend a complaint under Section 472, or with leave of the court under Section 473. However, an amended pleading alleging a construction-related accessibility claim shall be pled as required by subdivision (a).

(d) This section shall become operative on January 1, 2013.

SEC. 23. Section 684.115 of the Code of Civil Procedure is amended to read:

684.115. (a) A financial institution may, and if it has more than nine branches or offices at which it conducts its business within this state, shall, designate one or more central locations for service of legal process within this state. Each designated location shall be referred to as a "central location." If a financial institution elects or is required to designate a central location for service of legal process, the financial institution shall file a notice of its designation with the Department of Financial Institutions, which filing shall be effective upon filing and shall contain all of the following:

(1) The physical address of the central location.

(2) The days and hours during which service will be accepted at the central location.

(3) If the central location will not accept service of legal process directed at deposit accounts maintained or property held at all of the financial institution's branches or offices within this state, or if the service accepted at the central location will not apply to safe-deposit boxes or other property of the judgment debtor held by or for the judgment debtor, the filing shall also contain sufficient information to permit a determination of the limitation or limitations, including, in the case of a limitation applicable to certain branches or offices, an identification of the branches or offices as to which service at the central location will not apply and the nature of the limitation applicable to those branches or offices. If the limitation will apply to all branches or offices of the financial institution within this state, the filing may indicate the nature of the limitation and that it applies to all branches or offices, in lieu of an identification of branches or offices as to which the limitation applies. To the extent that a financial institution's designation of a central location for service of legal process covers the process directed at deposit accounts, safe-deposit boxes, or other property of the judgment debtor held by or for the judgment debtor at a particular branch or office located within this state, the branch or office shall be a branch or office covered by central process.

(b) Should a financial institution required to designate a central location fail to do so, each branch of that institution located in this state shall be deemed to be a central location at which service of legal process may be made, and all of the institution's branches

or offices located within this state shall be deemed to be a branch or office covered by central process.

(c) Subject to any limitation noted pursuant to paragraph (3) of subdivision (a), service of legal process at a central location of a financial institution shall be effective against all deposit accounts and all property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box if the same is described in the legal process and held by the financial institution at any branch or office covered by central process and located within this state. However, while service of legal process at the central location will establish a lien on all property, if any property other than deposit accounts is physically held by the financial institution in a county other than that in which the designated central location is located, the financial institution shall include in its garnishee's memorandum the location or locations of the property, and the judgment creditor shall obtain a writ of execution covering the property and directed to the levying officer in that county to accomplish the turnover of the property and shall forward the writ and related required documentation to the levying officer in the county in which the property is held.

(d) A financial institution may modify or revoke any designation made pursuant to subdivision (a) by filing the modification or revocation with the Department of Financial Institutions. The modification or revocation shall be effective when the Department of Financial Institutions' records have been updated to reflect the modification or revocation, provided that the judgment creditor may rely upon the superseded designation during the 30-day period following the effective date of the revocation or modification.

(e) (1) The Department of Financial Institutions shall update its online records to reflect a filing by a financial institution pursuant to subdivision (a) or a modification or revocation filed by a financial institution pursuant to subdivision (d) within 10 business days following the filing by the financial institution. The Department of Financial Institutions' Internet Web site shall reflect the date its online records for each financial institution have most recently been updated.

(2) The Department of Financial Institutions shall provide any person requesting it with a copy of each current filing made by a financial institution pursuant to subdivision (a). The Department of Financial Institutions may satisfy its obligation under this

subdivision by posting all current designations of a financial institution, or the pertinent information therein, on an Internet Web site available to the public without charge, and if that information is made available, the Department of Financial Institutions may impose a reasonable fee for furnishing that information in any other manner.

(f) As to deposit accounts maintained or property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box at a branch or office covered by central process, service of legal process at a location other than a central location designated by the financial institution shall not be effective unless the financial institution, in its absolute discretion, elects to act upon the process at that location as if it were effective. In the absence of an election, the financial institution may respond to the legal process by mailing or delivery of the garnishee's memorandum to the levying officer within the time otherwise provided therefor, with a statement on the garnishee's memorandum that the legal process was not properly served at the financial institution's designated location for receiving legal process, and, therefore, was not processed, and the address at which the financial institution is to receive legal process.

(g) If any legal process is served at a central location of a financial institution pursuant to this section, all related papers to be served on the financial institution shall be served at that location, unless agreed to the contrary between the serving party and the financial institution.

(h) This subdivision shall apply whenever a financial institution operates within this state at least one branch or office in addition to its head office or main office, as applicable, or a financial institution headquartered in another state operates more than one branch or office within this state, and no central location has been designated or deemed to have been designated by the institution for service of legal process relating to deposit accounts maintained at the financial institution's head office or main office, as applicable, and branches located within this state. If a judgment creditor reasonably believes that, pursuant to Section 700.140 and, if applicable, Section 700.160, any act of enforcement would be effective against a specific deposit account maintained at a financial institution described in this subdivision, the judgment creditor may file with the financial institution a written request that the financial

institution identify the branch or office within this state at which a specified account might be maintained by the financial institution. The written request shall contain the following statements or information:

(1) The name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands.

(2) If the name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands is not a judgment debtor identified in the writ of execution, a statement that a person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands will be appropriately identified in the legal process to be served pursuant to Section 700.160, including any supplementary papers, such as a court order or affidavit if the same will be required by Section 700.160.

(3) The specific identifying number of the account reasonably believed to be maintained with the financial institution and standing in the name of the judgment debtor or other person.

(4) The address of the requesting party.

(5) An affidavit by the judgment creditor or the judgment creditor's counsel stating substantially the following:

I hereby declare that this deposit account location request complies with Section 684.115 of the Code of Civil Procedure, that the account or accounts of the judgment debtor or other person or persons appropriately identified in the legal process and specified herein are subject to a valid writ of execution, or court order, that I have a reasonable belief, formed after an inquiry reasonable under the circumstances, that the financial institution receiving this deposit account location request has an account standing in the name of the judgment debtor or other person or persons appropriately identified in the legal process, and that information pertaining to the location of the account will assist the judgment creditor in enforcing the judgment.

(i) The affidavit contemplated by subdivision (h) shall be signed by the judgment creditor or the judgment creditor's counsel and filed at the financial institution's head office located within this state or, if the financial institution's head office is in another state,

at one of its branches or offices within this state. Failure to comply with the requirements of subdivision (h) and this subdivision shall be sufficient basis for the financial institution to refuse to produce the information that would otherwise be required by subdivision (j).

(j) Within 10 banking days following receipt by a financial institution at the applicable location specified in subdivision (i) of a request contemplated by subdivision (h), as to each specific deposit account identified in the request contemplated by subdivision (h), the financial institution shall respond by mailing, by first-class mail with postage prepaid, to the requester's address as specified in the request a response indicating the branch or office location of the financial institution at which the specified deposit account might be maintained, or, if the specified deposit account, if it exists, would not be maintained at a specific location, at least one place within this state at which legal process relating to the deposit account should or may be served. The response to be furnished pursuant to this subdivision shall not require the financial institution to determine whether an account exists or, if an account does exist, whether it would be reached by the legal process, rather, the branch or office location shall be determined and reported by the financial institution based solely upon its determination that an account with the identifying number provided by the requester would be maintained at that branch if an account did exist, and the response shall not contain any information about the name in which the account stands or any other information concerning the account, if it exists. If more than one account number is specified in the request, the financial institution's responses as to some or all of those account numbers may be combined in a single writing.

(k) A response furnished in good faith by the financial institution pursuant to subdivision (j) shall not be deemed to violate the privacy of any person in whose name the specified deposit account stands nor the privacy of any other person, and shall not require the consent of the person in whose name the account stands nor that of any other person.

(*l*) A financial institution shall not notify the person in whose name the specified deposit account stands or any other person related to the specified account of the receipt of any request made pursuant to subdivision (h) and affecting that person's or persons' accounts at the financial institution, provided that the financial

institution shall have no liability for its failure to comply with the provisions of this subdivision.

SEC. 24. Section 1282.4 of the Code of Civil Procedure is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes that waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, satisfies all of the following:

(1) He or she timely serves the certificate described in subdivision (c).

(2) The attorney's appearance is approved in writing on that certificate by the arbitrator, the arbitrators, or the arbitral forum.

(3) The certificate bearing approval of the attorney's appearance is filed with the State Bar of California and served on the parties as described in this section.

(c) Within a reasonable period of time after the attorney described in subdivision (b) indicates an intention to appear in the arbitration, the attorney shall serve a certificate in a form prescribed by the State Bar of California on the arbitrator, arbitrators, or arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. The certificate shall state all of the following:

(1) The case name and number, and the name of the arbitrator, arbitrators, or arbitral forum assigned to the proceeding in which the attorney seeks to appear.

(2) The attorney's residence and office address.

(3) The courts before which the attorney has been admitted to practice and the dates of admission.

(4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(5) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(6) That the attorney is not a resident of the State of California.

(7) That the attorney is not regularly employed in the State of California.

(8) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(9) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(10) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application or certificate, and whether or not it was granted. If the attorney has made repeated appearances, the certificate shall reflect the special circumstances that warrant the approval of the attorney's appearance in the arbitration.

(11) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) The arbitrator, arbitrators, or arbitral forum may approve the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed. In the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed.

(e) Within a reasonable period of time after the arbitrator, arbitrators, or arbitral forum approves the certificate, the attorney shall file the certificate with the State Bar of California and serve the certificate as described in Section 1013a on all parties and counsel in the arbitration whose address is known to the attorney.

(f) An attorney who fails to file or serve the certificate required by this section or files or serves a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to that certificate or any of his or her acts occurring in the course of the arbitration.

(g) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(h) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(i) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(j) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal.4th 119, as modified at 17 Cal.4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (h), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (i), it is the intent of the Legislature to make clear that nothing in this section shall affect those

provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

SEC. 25. Section 7237 of the Corporations Code is amended to read:

7237. (a) For purposes of this section, "agent" means a person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the corporation or of another enterprise at the request of the predecessor corporation; "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify a person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the

corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation, or brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this subdivision:

(1) ~~In respect of~~ *With respect to* any claim, issue, or matter as to which the person shall have been adjudged to be liable to the corporation in the performance of the person's duty to the corporation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(3) Of expenses incurred in defending a threatened or pending action that is settled or otherwise disposed of without court approval unless the action concerns assets held in charitable trust and is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that

indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by:

(1) A majority vote of a quorum consisting of directors who are not parties to the proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; or

(3) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney, or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this section. The provisions of subdivision (a) of Section 7235 do not apply to advances made pursuant to this subdivision.

(g) A provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement, or otherwise, shall not be valid unless consistent with this section. Nothing contained in this section shall affect any right to indemnification to which persons other than the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of an agent of the corporation against any liability asserted against or incurred by the agent in that capacity

or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against that liability under the provisions of this section.

(j) This section does not apply to any proceeding against a trustee, investment manager, or other fiduciary of a pension, deferred compensation, saving, thrift, or other retirement, incentive, or benefit plan, trust, or provision for any or all of the corporation's directors, officers, employees, and persons providing services to the corporation or any of its subsidiary or related or affiliated corporations, in that person's capacity as such, even though the person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify the trustee, investment manager, or other fiduciary to the extent permitted by subdivision (e) of Section 7140.

SEC. 26. The heading of Chapter 5.5 (commencing with Section 15900) of Title 2 of the Corporations Code is amended and renumbered to read:

CHAPTER 4.5. UNIFORM LIMITED PARTNERSHIP ACT OF 2008

SEC. 27. Section 15282 of the Education Code is amended to read:

15282. (a) The citizens' oversight committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the school district or community college district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the school district. For a community college district, one member shall be a student who is both currently enrolled in the community college district and active in a community college group, such as student government. The community college student member may, at the discretion of the

governing board of the community college district, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) An employee or official of the school district or community college district shall not be appointed to the citizens' oversight committee. A vendor, contractor, or consultant of the school district or community college district shall not be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code.

SEC. 28. Section 17193.5 of the Education Code is amended to read:

17193.5. (a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, that consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other law, a public credit provider, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a participating party, may require the participating party to agree to the following conditions:

(1) If a participating party adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, a public credit provider is required to make principal or interest payments, or both, pursuant to a credit enhancement agreement, the public credit provider shall

immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to a participating party, provided that such moneys are from one or more of the following:

(A) Any revenue limit apportionments to a school district or county office of education without regard to the specific funding source of the apportionment.

(B) Any general apportionments to a community college district without regard to the specific funding source of the apportionment.

(C) Any charter school block grant apportionments to a charter school without regard to the specific funding source of the apportionment.

(D) Any charter school categorical block grant apportionments to a charter school without regard to the specific funding source of the apportionment.

(b) The amount apportioned for a participating party pursuant to this section shall be deemed to be an allocation to the participating party and shall be included in the computation of allocation, limit, entitlement, or apportionment for the participating party. The participating party and its creditors do not have a claim to funds apportioned or anticipated to be apportioned to the trustee by the Controller pursuant to paragraph (3) of subdivision (a).

SEC. 29. Section 17250.25 of the Education Code is amended to read:

17250.25. Design-build projects shall progress as follows:

(a) (1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be

prepared by a design professional duly licensed or registered in this state. The request for proposal shall not include a design-build-operate contract for educational facilities pursuant to this chapter.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.

(b) (1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades, surety industry, school districts, and other affected parties. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract, including, but not limited to, electrical and mechanical subcontractors.

(B) Evidence that the members of the design-build entity have completed, or demonstrated, the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(C) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of a license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that ensures the school district that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against a member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project.

(G) Any instance where an entity, its owners, officers, or managing employees, submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(H) Any instance where the entity, its owners, officers, or managing employees defaulted on a construction contract.

(I) Any prior violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against a member of the design-build entity.

(J) Information concerning the bankruptcy or receivership of a member of the entity, including information concerning any work completed by a surety.

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and a member of the design-build entity during the five-year period preceding submission of the bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association.

(2) The information required pursuant to this subdivision shall be verified under oath by the design-build entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) The school district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20110 of the Public Contract Code, a school district may use a design-build competition based upon performance and other criteria set forth by the governing board of the school district in the solicitation of proposals. Criteria used in this evaluation of

proposals may include, but need not be limited to, the proposed design approach, life-cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the school district.

(A) An architectural or engineering firm or individual retained by the governing board of the school district to assist in the development criteria or preparation of the request for proposal shall not be eligible to participate in the competition with the design-build entity.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the school district, to be the best value to the school district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The school district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the school district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the school district's rationale for the contract award.

(F) For purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing

apprenticeship training for any craft that has not been deemed by the United States Department of Labor and the Department of Industrial Relations to be an apprenticable craft in the two years before enactment of this act.

(G) For purposes of this chapter, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period ~~does~~ *do* not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

SEC. 30. Section 18720 of the Education Code is amended to read:

18720. (a) There is hereby established in the state government the California Library Services Board, to consist of 13 members. The Governor shall appoint nine members of the board. Three of the Governor's appointments shall be representative of laypersons, one of whom shall represent people with disabilities, one of whom shall represent limited- and non-English-speaking persons, and one of whom shall represent economically disadvantaged persons.

(b) The Governor shall also appoint six members of the board, each of whom shall represent one of the following categories: school libraries, libraries for institutionalized persons, public library trustees or commissioners, public libraries, special libraries, and academic libraries.

(c) The Legislature shall appoint the remaining four public members from persons who are not representative of categories mentioned in this section. Two shall be appointed by the Senate Committee on Rules and two shall be appointed by the Speaker of the Assembly.

(d) The terms of office of members of the board shall be for four years and shall begin on January 1 of the year in which the respective terms are to start.

(e) On January 1, 2013, the members of the board shall be those persons serving on the former Library of California Board, appointed pursuant to former Section 18820, as it existed on December 31, 2012, who shall serve for the duration of their terms.

SEC. 31. Section 22138.5 of the Education Code, as added by Section 2 of Chapter 829 of the Statutes of 2012, is amended to read:

22138.5. (a) (1) "Full time" means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, "full time" may not be less than the minimum standard specified in this section. Each collective bargaining agreement or employment agreement that applies to a member subject to the minimum standard specified in either paragraph (5) or (6) of subdivision (c) shall specify the number of hours of creditable service that ~~equal~~ *equals* "full time" pursuant to this section for each class of employee subject to either paragraph and make specific reference to this section, and the district shall submit a copy of the agreement to the system.

(2) The copies of each agreement shall be submitted electronically in a format determined by the system that ensures the security of the transmitted member data.

(3) The copies shall be electronically submitted annually to the system on or before July 1, or on or before the effective date of the agreement, whichever is later.

(b) The minimum standard for full time in prekindergarten through grade 12 is as follows:

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

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

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

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

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

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

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

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

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

(5) Five hundred twenty-five instructional hours per school year for all instructors employed on a part-time basis, except instructors specified in paragraph (6). If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51 of Division 7 of Title 3, the minimum standard shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per school year for all instructors employed in adult education programs. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51 of Division 7 of Title 3, the minimum standard shall be increased appropriately by the number of office hours required annually for the class of employees.

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

(e) This section shall become operative on July 1, 2013.

SEC. 32. Section 33195 of the Education Code is amended to read:

33195. (a) Every person, firm, association, partnership, or corporation operating a heritage school as defined in Section 33195.4 shall, between the 1st and 31st day of January of each year, commencing on January 1, 2011, file with the Superintendent

an electronic registration form, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

(1) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.

(2) The address, including city and street, of the location at which the heritage school delivers services to pupils.

(3) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.

(4) The school enrollment, by grade span, number of teachers, and coeducational or enrollment limited to boys or girls.

(5) That the following records are maintained at the address stated, and are true and accurate:

(A) The courses of study offered by the institution.

(B) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each faculty member.

(6) Criminal record summary information that has been obtained pursuant to Section 44237.

(7) The heritage school telephone number.

(8) Acknowledgment that the director of the heritage school and all employees are mandated reporters and subject to the requirements established by the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code) and, consistent with that act, certification that:

(A) The employer is aware that it is encouraged to provide its employees with training in the duties imposed by the act.

(B) Employees have signed a statement provided by the employer that the employees have knowledge of the act and will comply with its provisions.

(C) Employees have been notified by the employer of their reporting obligations and confidentiality rights, pursuant to Section 11165.9 of the Penal Code.

(b) If two or more heritage schools are under the effective control or supervision of a single administrative unit, the administrative unit shall comply with the provisions of this section

by submitting an electronic registration form on behalf of every heritage school under its effective control or supervision.

(c) Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for a school to expressly or impliedly represent, that the State of California, the Superintendent, the state board, the department or a division or bureau of the department, or an accrediting agency has made an evaluation, recognition, approval, or endorsement of the school or course, unless this is an actual fact.

(d) Filing pursuant to this section does not grant a heritage school a right to receive state funding.

SEC. 33. Section 35583 of the Education Code is amended to read:

35583. For purposes of paragraph (1) of subdivision (a) of Section 35735.1, the blended revenue limit per unit of average daily attendance for the Wiseburn Unified School District shall be calculated as follows:

(a) Multiply the Wiseburn School District revenue limit per unit of average daily attendance for the 2012–13 fiscal year by nine.

(b) Multiply the Centinela Valley Union High School District revenue limit per unit of average daily attendance for the 2012–13 fiscal year by four.

(c) Add the products determined pursuant to subdivisions (a) and (b).

(d) Divide the sum determined pursuant to subdivision (c) by 13. This amount shall be the blended revenue limit per unit of average daily attendance for the Wiseburn Unified School District.

SEC. 34. Section 38000 of the Education Code is amended to read:

38000. (a) The governing board of a school district may establish a security department under the supervision of a chief of security as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board of a school district may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. It is the intent of the Legislature in enacting this section that a school district security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district may establish a school police department under the supervision of a school chief of police and, in accordance with Chapter 5 (commencing with Section 45100) of Part 25, may employ peace officers, as defined in subdivision (b) of Section 830.32 of the Penal Code, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district.

(c) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or school chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of a peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or school chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or school chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of additional personnel.

(d) A school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police officers pursuant to this section.

SEC. 35. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the school district of the apportionments made pursuant to Section 41320 constitutes the agreement by the school district to all of the following conditions:

(a) The Superintendent shall appoint a trustee who has recognized expertise in management and finance and may employ, on a short-term basis, staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows:

(1) The expenses incurred by the trustee and necessary staff shall be borne by the school district.

(2) The Superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the Superintendent.

(3) The trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place, the Superintendent has determined that the school district's future compliance with the fiscal plan approved for the school district under Section 41320 is probable, and the Superintendent decides to terminate the trustee's appointment, but in no event, for less than three years. The Superintendent shall notify the county superintendent of schools, the Legislature, the Department of Finance, and the Controller no less than 60 days before the time that the Superintendent expects these conditions to be met.

(4) Before the school district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the Superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the Superintendent may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the school district.

(5) Notwithstanding any other law, all reports submitted to the trustee are public records.

(6) To facilitate the appointment of the trustee and the employment of necessary staff, for purposes of this section, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(7) Notwithstanding any other law, the Superintendent may appoint an employee of the department to act as trustee for up to the duration of the trusteeship. The salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(b) (1) The trustee appointed by the Superintendent shall monitor and review the operation of the school district. During the period of his or her service, the trustee may stay or rescind an action of the governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

(2) After the trustee's period of service, and until the loan is repaid, the county superintendent of schools that has jurisdiction over the school district may stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. The county superintendent of schools shall notify the Superintendent, within five business days, if he or she stays or rescinds an action of the governing board of the school district. The notice shall include, but not be limited to, both of the following:

(A) A description of the governing board of the school district's intended action and its financial implications.

(B) The rationale and findings that support the county superintendent of school's decision to stay or rescind the action of the governing board of the school district.

(3) If the Superintendent is notified by the county superintendent of schools pursuant to paragraph (2), the Superintendent shall report to the Legislature, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.

(4) The Superintendent may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the school district. The trustee shall approve or reject all reports and other materials required from the school district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce an apportionment to the school district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under this part, and shall report to the Legislature a failure of the school district to comply with the requirements of this section. If the Superintendent determines, at any time, that the fiscal plan approved for the school district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, and the school district shall comply with the plan as modified.

(c) At the request of the Superintendent, the Controller shall transfer to the department, from an apportionment to which the school district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee and associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and every year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the school district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the school district and approved by the Controller. The costs of these audits shall be borne by the school district. These audits shall be required until the Controller determines, in consultation with the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(e) For purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local educational agency to which he or she is assigned. For purposes of workers' compensation benefits, the trustee is an employee of the local educational agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

(f) Except for an individual appointed by the Superintendent as trustee pursuant to paragraph (7) of subdivision (a), the state-appointed trustee is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a member or is already a member, the trustee shall be placed on the payroll of the school district for the purpose of providing appropriate contributions to the system. The Superintendent may also require

that an individual appointed as trustee pursuant to paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For purposes of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local educational agency to which he or she is assigned, except that a trustee who is appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

SEC. 36. Section 41326 of the Education Code is amended to read:

41326. (a) Notwithstanding any other provision of this code, the acceptance by a school district of an apportionment made pursuant to Section 41320 that exceeds an amount equal to 200 percent of the amount of the reserve recommended for that school district under the standards and criteria adopted pursuant to Section 33127 constitutes the agreement by the school district to the conditions set forth in this article. Before applying for an emergency apportionment in the amount identified in this subdivision, the governing board of a school district shall discuss the need for that apportionment at a regular or special meeting of the governing board of the school district and, at that meeting, shall receive testimony regarding the apportionment from parents, exclusive representatives of employees of the school district, and other members of the community. For purposes of this article, "qualifying school district" means a school district that accepts a loan as described in this subdivision.

(b) The Superintendent shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The Superintendent, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision in accordance with all of the following:

(1) The administrator shall serve under the direction and supervision of the Superintendent until terminated by the Superintendent at his or her discretion. The Superintendent shall consult with the county superintendent of schools before terminating the administrator.

(2) The administrator shall have recognized expertise in management and finance.

(3) To facilitate the appointment of the administrator and the employment of necessary staff, for purposes of this section, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(4) Notwithstanding any other law, the Superintendent may appoint an employee of the state or the office of the county superintendent of schools to act as administrator for up to the duration of the administratorship. During the tenure of his or her appointment, the administrator, if he or she is an employee of the state or the office of the county superintendent of schools, is an employee of the qualifying school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent of schools. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the state or the office of the county superintendent of schools. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or the office of the county superintendent of schools.

(5) Except for an individual appointed as an administrator by the Superintendent pursuant to paragraph (4), the administrator shall be a member of the State Teachers' Retirement System, if qualified, for the period of service as administrator, unless he or she elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the administrator chooses to become a member or is already a member, the administrator shall be placed on the payroll of the qualifying school district for purposes of providing appropriate contributions to the system. The Superintendent may also require the administrator to be placed on the payroll of the qualifying school district for purposes of remuneration, other benefits, and payroll deductions.

(6) For purposes of workers' compensation benefits, the administrator is an employee of the qualifying school district,

except that an administrator appointed pursuant to paragraph (4) may be deemed an employee of the state or office of the county superintendent of schools, as applicable.

(7) The qualifying school district shall add the administrator as a covered employee of the qualifying school district for all purposes of errors and omissions liability insurance policies.

(8) The salary and benefits of the administrator shall be established by the Superintendent and paid by the qualifying school district.

(9) The Superintendent or the administrator may employ, on a short-term basis and at the expense of the qualifying school district, any staff necessary to assist the administrator, including, but not limited to, a certified public accountant.

(10) The administrator may do all of the following:

(A) Implement substantial changes in the fiscal policies and practices of the qualifying school district, including, if necessary, the filing of a petition under Chapter 9 (commencing with Section 901) of Title 11 of the United States Code for the adjustment of indebtedness.

(B) Revise the educational program of the qualifying school district to reflect realistic income projections and pupil performance relative to state standards.

(C) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the qualifying school district.

(D) Consult, for the purposes described in this subdivision, with the governing board of the qualifying school district, the exclusive representatives of the employees of the qualifying school district, parents, and the community.

(E) Consult with, and seek recommendations from, the Superintendent, the county superintendent of schools, and the County Office Fiscal Crisis and Management Assistance Team authorized pursuant to subdivision (c) of Section 42127.8 for purposes described in this article.

(F) With the approval of the Superintendent, enter into agreements on behalf of the qualifying school district and, subject to any contractual obligation of the qualifying school district, change existing school district rules, regulations, policies, or practices as necessary for the effective implementation of the recovery plans referred to in Sections 41327 and 41327.1.

(c) (1) Except as provided for in paragraph (2), the period of time during which the Superintendent exercises the authority described in subdivision (b), the governing board of the qualifying school district shall serve as an advisory body reporting to the state-appointed administrator, and has no rights, duties, or powers, and is not entitled to any stipend, benefits, or other compensation from the qualifying school district.

(2) (A) After one complete fiscal year has elapsed following the qualifying school district's acceptance of an emergency apportionment, the governing board of the qualifying school district may conduct an annual advisory evaluation of an administrator for the duration of the administratorship.

(B) An advisory evaluation of an administrator shall focus on the administrator's effectiveness in leading the qualifying school district toward fiscal recovery and improved academic achievement. Advisory evaluation criteria shall be agreed upon by the governing board of the qualifying school district and the administrator before the advisory evaluation. The advisory evaluation shall include, but not be limited to, all of the following:

(i) Goals and standards consistent with Section 41327.1.

(ii) Commendations in the areas of the administrator's strengths and achievements.

(iii) Recommendations for improving the administrator's effectiveness in areas of concern and unsatisfactory performance.

(C) An advisory evaluation of an administrator conducted by the governing board of a qualifying school district shall be submitted to the Governor, the Legislature, the Superintendent, and the County Office Fiscal Crisis and Management Assistance Team.

(3) Upon the appointment of an administrator pursuant to this section, the district superintendent is no longer an employee of the qualifying school district.

(4) A determination of the severance compensation for the district superintendent shall be made pursuant to subdivision (j).

(d) Notwithstanding Section 35031 or any other law, the administrator, after according the affected employee reasonable notice and the opportunity for a hearing, may terminate the employment of a deputy, associate, assistant superintendent, or other school district level administrator who is employed by a qualifying school district under a contract of employment signed

or renewed after January 1, 1992, if the employee fails to document, to the satisfaction of the administrator, that before the date of the acceptance of the emergency apportionment he or she either advised the governing board of the qualifying school district, or his or her superior, that actions contemplated or taken by the governing board of the qualifying school district could result in the fiscal insolvency of the qualifying school district, or took other appropriate action to avert that fiscal insolvency.

(e) The authority of the Superintendent, and the administrator, under this section shall continue until all of the following occur:

(1) (A) After one complete fiscal year has elapsed following the qualifying school district's acceptance of an emergency apportionment as described in subdivision (a), the administrator determines, and so notifies the Superintendent and the county superintendent of schools, that future compliance by the qualifying school district with the recovery plans approved pursuant to paragraph (2) is probable.

(B) The Superintendent may return power to the governing board of the qualifying school district for an area listed in subdivision (a) of Section 41327.1 if performance under the recovery plan for that area has been demonstrated to the satisfaction of the Superintendent.

(2) The Superintendent has approved all of the recovery plans referred to in subdivision (a) of Section 41327 and the County Office Fiscal Crisis and Management Assistance Team completes the improvement plans specified in Section 41327.1 and has completed a minimum of two reports identifying the qualifying school district's progress in implementing the improvement plans.

(3) The administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified, and that the agreements are consistent with the terms of the recovery plans.

(4) The qualifying school district has completed all reports required by the Superintendent and the administrator.

(5) The Superintendent determines that future compliance by the qualifying school district with the recovery plans approved pursuant to paragraph (2) is probable.

(f) When the conditions stated in subdivision (e) have been met, and at least 60 days after the Superintendent has notified the Legislature, the Department of Finance, the Controller, and the county superintendent of schools that he or she expects the

conditions prescribed pursuant to this section to be met, the governing board of the qualifying school district shall regain all of its legal rights, duties, and powers, except for the powers held by the trustee provided for pursuant to Article 2 (commencing with Section 41320). The Superintendent shall appoint a trustee under Section 41320.1 to monitor and review the operations of the qualifying school district until the conditions of subdivision (b) of that section have been met.

(g) Notwithstanding subdivision (f), if the qualifying school district violates a provision of the recovery plans approved by the Superintendent pursuant to this article within five years after the trustee appointed pursuant to Section 41320.1 is removed or after the emergency apportionment is repaid, whichever occurs later, or the improvement plans specified in Section 41327.1 during the period of the trustee's appointment, the Superintendent may reassume, either directly or through an administrator appointed in accordance with this section, all of the legal rights, duties, and powers of the governing board of the qualifying school district. The Superintendent shall return to the governing board of the qualifying school district all of its legal rights, duties, and powers reassumed under this subdivision when he or she determines that future compliance with the approved recovery plans is probable, or after a period of one year, whichever occurs later.

(h) Article 2 (commencing with Section 41320) shall apply except as otherwise specified in this article.

(i) It is the intent of the Legislature that the legislative budget subcommittees annually conduct a review of each qualifying school district that includes an evaluation of the financial condition of the qualifying school district, the impact of the recovery plans upon the qualifying school district's educational program, and the efforts made by the state-appointed administrator to obtain input from the community and the governing board of the qualifying school district.

(j) (1) The district superintendent is entitled to a due process hearing for purposes of determining final compensation. The final compensation of the district superintendent shall be between zero and six times his or her monthly salary. The outcome of the due process hearing shall be reported to the Superintendent and the public. The information provided to the public shall explain the rationale for the compensation.

(2) This subdivision applies only to a contract for employment negotiated on or after June 21, 2004.

(k) (1) When the Superintendent assumes control over a qualifying school district pursuant to subdivision (b), he or she shall, in consultation with the County Office Fiscal Crisis and Management Assistance Team, review the fiscal oversight of the qualifying school district by the county superintendent of schools. The Superintendent may consult with other fiscal experts, including other county superintendents of schools and regional fiscal teams, in conducting this review.

(2) Within three months of assuming control over a qualifying school district, the Superintendent shall report his or her findings to the Legislature and shall provide a copy of that report to the Department of Finance. This report shall include findings as to fiscal oversight actions that were or were not taken and may include recommendations as to an appropriate legislative response to improve fiscal oversight.

(3) If, after performing the duties described in paragraphs (1) and (2), the Superintendent determines that the county superintendent of schools failed to carry out his or her responsibilities for fiscal oversight as required by this code, the Superintendent may exercise the authority of the county superintendent of schools who has oversight responsibilities for a qualifying school district. If the Superintendent finds, based on the report required in paragraph (2), that the county superintendent of schools failed to appropriately take into account particular types of indicators of financial distress, or failed to take appropriate remedial actions in the qualifying school district, the Superintendent shall further investigate whether the county superintendent of schools failed to take into account those indicators, or similarly failed to take appropriate actions in other school districts with negative or qualified certifications, and shall provide an additional report on the fiscal oversight practices of the county superintendent of schools to the appropriate policy and fiscal committees of each house of the Legislature and the Department of Finance.

SEC. 37. Section 47660 of the Education Code is amended to read:

47660. (a) For purposes of computing eligibility for, and entitlements to, general purpose funding and operational funding

for categorical programs, the enrollment and average daily attendance of a sponsoring local educational agency shall exclude the enrollment and attendance of pupils in its charter schools funded pursuant to this chapter.

(b) (1) Notwithstanding subdivision (a), and commencing with the 2005–06 fiscal year, for purposes of computing eligibility for, and entitlements to, revenue limit funding, the average daily attendance of a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, shall include all attendance of pupils who reside in the unified school district and who would otherwise have been eligible to attend a noncharter school of the school district, if the school district was a basic aid school district in the prior fiscal year, or if the pupils reside in the unified school district and attended a charter school of that school district that converted to charter status on or after July 1, 2005. Only the attendance of the pupils described by this paragraph shall be included in the calculation made pursuant to paragraph (7) of subdivision (h) of Section 42238.

(2) Notwithstanding subdivision (a), for the 2005–06 fiscal year only, for purposes of computing eligibility for, and entitlements to, revenue limit funding, the average daily attendance of a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606 and is operating them as charter schools, shall include all attendance of pupils who reside in the unified school district and who would otherwise have been eligible to attend a noncharter school of the unified school district if the pupils attended a charter school operating in the unified school district prior to July 1, 2005. Only the attendance of pupils described by this paragraph shall be included in the calculation made pursuant to Section 42241.3. The attendance of the pupils described by this paragraph shall be included in the calculation made pursuant to paragraph (7) of subdivision (h) of Section 42238.

(c) (1) For the attendance of pupils specified in subdivision (b), the general-purpose entitlement for a charter school that is established through the conversion of an existing public school within a unified school district on or after July 1, 2005, but before January 1, 2010, shall be determined using the following amount of general-purpose funding per unit of average daily attendance,

in lieu of the amount calculated pursuant to subdivision (a) of Section 47633:

(A) The amount of the actual unrestricted revenues expended per unit of average daily attendance for that school in the year prior to its conversion to, and operation as, a charter school, adjusted for the base revenue limit per pupil inflation increase adjustment set forth in Section 42238.1, if this adjustment is provided, and also adjusted for equalization, deficit reduction, and other state general-purpose increases, if any, provided for the unified school district in the year of conversion to, and operation as a charter school.

(B) For a subsequent fiscal year, the general-purpose entitlement shall be determined based on the amount per unit of average daily attendance allocated in the prior fiscal year adjusted for the base revenue limit per pupil inflation increase adjustment set forth in Section 42238.1, if this adjustment is provided, and also adjusted for equalization, deficit reduction, and other state general-purpose increases, if any, provided for the unified school district in that fiscal year.

(2) This subdivision shall not apply to a charter school that is established through the conversion of an existing public school within a unified school district on or after January 1, 2010, which instead shall receive general-purpose funding pursuant to Section 47633. This paragraph does not preclude a charter school or unified school district from agreeing to an alternative funding formula.

(d) Commencing with the 2005–06 fiscal year, the general-purpose funding per unit of average daily attendance specified for a unified school district for purposes of paragraph (7) of subdivision (h) of Section 42238 for a school within the unified school district that converted to charter status on or after July 1, 2005, shall be deemed to be the amount computed pursuant to subdivision (c).

(e) A unified school district that is the sponsoring local educational agency, as defined in subdivision (j) of Section 47632, of a charter school that is subject to paragraphs (1) and (2) of subdivision (c) shall certify to the Superintendent the amount specified in paragraph (1) of subdivision (c) prior to the approval of the charter petition by the governing board of the school district. This amount may be based on estimates of the unrestricted revenues expended in the fiscal year prior to the school's conversion to

charter status and the school's operation as a charter school, provided that the amount is recertified when the actual data becomes available.

(f) For the purposes of this section, "basic aid school district" means a school district that does not receive from the state an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(g) A school district may use the existing Standardized Account Code Structure and cost allocation methods, if appropriate, for an accounting of the actual unrestricted revenues expended in support of a school pursuant to subdivision (c).

(h) For purposes of this section and Section 42241.3, "operating" means that pupils are attending and receiving instruction at the charter school.

SEC. 38. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil described in subdivision (a) of Section 48853.5 who is placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil is entitled to remain in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

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

(3) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interests of the pupil to be placed in another educational program, in which case the parent or guardian or other person holding the right to make educational decisions for the pupil shall provide a written statement that he or she has made that determination to the local educational agency. This statement shall include a declaration that the parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of all of the following:

(A) The pupil has a right to attend a regular public school in the least restrictive environment.

(B) The alternate education program is a special education program, if applicable.

(C) The decision to unilaterally remove the pupil from the regular public school and to place the pupil in an alternate education program may not be financed by the local educational agency.

(D) Any attempt to seek reimbursement for the alternate education program may be at the expense of the parent, guardian, or other person holding the right to make educational decisions for the pupil.

(b) For purposes of ensuring a parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of the information described in subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (a), the local educational agency may provide him or her with that information in writing.

(c) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, a community school as described in Sections 1981 and 48660, or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(d) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin, as defined in subdivision (e) of Section 48853.5, pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

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

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

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

(1) For health and safety emergencies.

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

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

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

SEC. 39. Section 48853.5 of the Education Code is amended to read:

48853.5. (a) This section applies to a foster child. "Foster child" means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of Division 3, the educational liaison shall be affiliated with the local foster children services program. The educational liaison shall do all of the following:

(1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.

(2) Assist foster children when transferring from one school to another school or from one school district to another school district in ensuring proper transfer of credits, records, and grades.

(c) If so designated by the superintendent of the local educational agency, the educational liaison shall notify a foster child's attorney and the appropriate representative of the county child welfare

agency of pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, if the foster child is an individual with exceptional needs, pending manifestation determinations pursuant to Section 1415(k) of Title 20 of the United States Code if the local educational agency has proposed a change in placement due to an act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools.

(d) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or legal guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.

(e) (1) At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the jurisdiction of the court.

(2) If the jurisdiction of the court is terminated before the end of an academic year, the local educational agency shall allow a former foster child who is in kindergarten or any of grades 1 to 8, inclusive, to continue his or her education in the school of origin through the duration of the academic school year.

(3) (A) If the jurisdiction of the court is terminated while a foster child is in high school, the local educational agency shall allow the former foster child to continue his or her education in the school of origin through graduation.

(B) For purposes of this paragraph, a school district is not required to provide transportation to a former foster child who has an individualized education program that does not require transportation as a related service and who changes residence but remains in his or her school of origin pursuant to this paragraph, unless the individualized education program team determines that transportation is a necessary related service.

(4) To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the local educational agency shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district.

(5) Paragraphs (2), (3), and (4) do not require a school district to provide transportation services to allow a foster child to attend a school or school district, unless otherwise required under federal law. This paragraph does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

(6) The educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, may recommend, in accordance with the foster child's best interests, that the foster child's right to attend the school of origin be waived and the foster child be enrolled in a public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

(7) Before making a recommendation to move a foster child from his or her school of origin, the educational liaison shall provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how the recommendation serves the foster child's best interest.

(8) (A) If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agrees that the best interests of the foster child would best be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such as previous academic records, medical records, including,

but not limited to, records or other proof of immunization history pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code, proof of residency, other documentation, or school uniforms.

(C) Within two business days of the foster child's request for enrollment, the educational liaison for the new school shall contact the school last attended by the foster child to obtain all academic and other records. The last school attended by the foster child shall provide all required records to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. The educational liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

(9) If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the local educational agency.

(10) The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

(11) It is the intent of the Legislature that this subdivision shall not supersede or exceed other laws governing special education services for eligible foster children.

(f) For purposes of this section, "school of origin" means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected and that the foster child attended within the immediately preceding 15 months, the educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin.

(g) This section does not supersede other law governing the educational placements in juvenile court schools, as described in Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

SEC. 40. Section 48900 of the Education Code is amended to read:

48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stole or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars,

miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, "hazing" means a method of initiation or preinitiation into a pupil organization or body, whether or not the pupil organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, "hazing" does not include athletic events or school-sanctioned events.

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(1) "Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that have or can be reasonably predicted to have the effect of one or more of the following:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2) (A) "Electronic act" means the transmission, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or

attributes of an actual pupil other than the pupil who created the false profile.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) "Reasonable pupil" means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, "school property" includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior as specified in Section 48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 41. Section 48902 of the Education Code is amended to read:

48902. (a) The principal of a school or the principal's designee shall, before the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the pupil that may violate Section 245 of the Penal Code.

(b) The principal of a school or the principal's designee shall, within one schoolday after suspension or expulsion of any pupil, notify, by telephone or any other appropriate method chosen by the school, the appropriate law enforcement authorities of the county or the school district in which the school is situated of any acts of the pupil that may violate subdivision (c) or (d) of Section 48900.

(c) Notwithstanding subdivision (b), the principal of a school or the principal's designee shall notify the appropriate law enforcement authorities of the county or city in which the school is located of any acts of a pupil that may involve the possession or sale of narcotics or of a controlled substance or a violation of Section 626.9 or 626.10 of the Penal Code. The principal of a school or the principal's designee shall report any act specified in paragraph (1) or (5) of subdivision (c) of Section 48915 committed by a pupil or nonpupil on a schoolsite to the city police or county sheriff with jurisdiction over the school and the school security department or the school police department, as applicable.

(d) A principal, the principal's designee, or any other person reporting a known or suspected act described in subdivision (a) or (b) is not civilly or criminally liable as a result of making any report authorized by this article unless it can be proven that a false report was made and that the person knew the report was false or the report was made with reckless disregard for the truth or falsity of the report.

(e) The principal of a school or the principal's designee reporting a criminal act committed by a schoolage individual with exceptional needs, as defined in Section 56026, shall ensure that copies of the special education and disciplinary records of the pupil are transmitted, as described in Section 1415(k)(6) of Title 20 of

the United States Code, for consideration by the appropriate authorities to whom he or she reports the criminal act. Any copies of the pupil's special education and disciplinary records may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).

SEC. 42. Section 48911 of the Education Code is amended to read:

48911. (a) The principal of the school, the principal's designee, or the district superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the district superintendent of schools shall be preceded by an informal conference conducted by the principal, the principal's designee, or the district superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the district superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her, and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal, the principal's designee, or the district superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal, the principal's designee, or the district superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the district superintendent of schools to constitute a clear and present danger to the life, safety, or health of pupils or school personnel. If a pupil is suspended without a conference before suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or

hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. If a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause for the suspension, to the governing board of the school district or to the district superintendent of schools in accordance with the regulations of the governing board of the school district.

(f) The parent or guardian of a pupil shall respond without delay to a request from school officials to attend a conference regarding his or her child's behavior.

No penalties shall be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

(g) In a case where expulsion from a school or suspension for the balance of the semester from continuation school is being processed by the governing board of the school district, the district superintendent of schools or other person designated by the district superintendent of schools in writing may extend the suspension until the governing board of the school district has rendered a decision in the action. However, an extension may be granted only if the district superintendent of schools or the district superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil is a foster child, as defined in Section 48853.5, the district superintendent of schools or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and

may be held in conjunction with the initial meeting on the merits of the suspension.

(h) For purposes of this section, a "principal's designee" is one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

This section is not an exception to, nor does it place any limitation on, Section 48903.

SEC. 43. Section 49076 of the Education Code is amended to read:

49076. (a) A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

(1) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(A) School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(B) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(C) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported education program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

(D) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.

(E) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of Title 26 of the United States Code.

(F) A pupil 16 years of age or older or having completed the 10th grade who requests access.

(G) A district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(H) A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(I) (i) A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(ii) For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed

to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.

(iii) Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.

(J) A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(K) A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, provided the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.

(2) School districts may release information from pupil records to the following:

(A) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the requirements set forth in Section 99.31(a)(5) of Title 34 of the Code of Federal Regulations.

(B) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(C) Pursuant to Section 99.37 of Title 34 of the Code of Federal Regulations, a county elections official, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote. The information shall not be used for any other purpose or given or transferred to any other person or agency.

(D) Accrediting associations in order to carry out their accrediting functions.

(E) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations, the information will be destroyed when no longer needed for the purpose for which it is obtained, and the organization enters into a written agreement with the educational agency or institution that complies with Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

(F) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068 and in compliance with the requirements in Section 99.34 of Title 34 of the Code of Federal Regulations. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

(G) (i) A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

(ii) ~~A~~ *Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a* disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.

(3) A person, persons, agency, or organization permitted access to pupil records pursuant to this section shall not permit access to any information obtained from those records by another person, persons, agency, or organization, except for allowable exceptions contained within the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the written consent of the pupil's parent. This paragraph does not require prior parental consent when information obtained pursuant

to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate educational interest in the information pursuant to Section 99.31(a)(1) of Title 34 of the Code of Federal Regulations.

(4) Notwithstanding any other provision of law, a school district, including a county office of education or county superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or school districts as to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements are met:

(A) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(B) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(C) Each school district shall comply with the access log requirements of Section 49064.

(D) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(E) An agency or school district shall not make public or otherwise release information on an individual contained in the database if the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

(b) The officials and authorities to whom pupil records are disclosed pursuant to subdivision (e) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil's educational rights.

(c) (1) Any person or party who is not permitted access to pupil records pursuant to subdivision (a) or (b) may request access to pupil records as provided for in paragraph (2).

(2) A local educational agency or other person or party who has received pupil records, or information from pupil records, may release the records or information to a person or party identified in paragraph (1) without the consent of the pupil's parent or guardian pursuant to Section 99.31(b) of Title 34 of the Code of Federal Regulations, if the records or information are deidentified, which requires the removal of all personally identifiable information, provided that the disclosing local educational agency or other person or party has made a reasonable determination that a pupil's identity is not personally identifiable, whether through single or multiple releases, and has taken into account other pertinent reasonably available information.

SEC. 44. Section 49548 of the Education Code is amended to read:

49548. (a) The state board, in order to effect compliance with legislative findings expressed in Section 49547, shall restrict the criteria for the issuance of waivers from the requirements of Section 49550 to feed children during a summer school session. A waiver shall be granted for a period not to exceed one year if either of the following conditions exists:

(1) (A) A summer school session serving pupils enrolled in elementary school, as defined in clause (iii), shall be granted a waiver if a Summer Food Service Program for Children site is available within one-half mile of the schoolsite and either of the following conditions exists:

(i) The hours of operation of the Summer Food Service Program for Children site commence no later than one-half hour after the completion of the summer school session day.

(ii) The hours of operation of the Summer Food Service Program for Children site conclude no earlier than one hour after the completion of the summer school session day.

(iii) For purposes of this subdivision, "elementary school" means a public school that maintains kindergarten or any of grades 1 to 8, inclusive.

(B) A summer school session serving pupils enrolled in middle school, junior high school, or high school shall be granted a waiver if a Summer Food Service Program for Children site is available within one mile of the schoolsite and either of the following conditions exists:

(i) The hours of operation of the Summer Food Service Program for Children site commence no later than one-half hour after the completion of the summer school session day.

(ii) The hours of operation of the Summer Food Service Program for Children site conclude no earlier than one hour after the completion of the summer school session day.

(2) (A) Serving meals during the summer school session would result in a financial loss to the school district, documented in a financial analysis performed by the school district, in an amount equal to one-third of net cash resources, as defined in Section 210.2 of Part 210 of Title 7 of the Code of Federal Regulations, which, for purposes of this article, shall exclude funds that are encumbered. If there are no net cash resources, an amount equal to the operating costs of one month as averaged over the summer school sessions.

(B) The financial analysis required by subparagraph (A) shall include a projection of future meal program participation based on either of the following:

(i) Commencement of a meal service period after the commencement of the summer school session day and conclusion of a meal service period before the completion of the summer school session day.

(ii) Operation of a schoolsite as an open Summer Seamless Option or a Summer Food Service Program for Children site, and providing adequate notification thereof, including flyers and banners, in order to fulfill community needs under the Summer Food Service Program for Children (7 C.F.R. 225.14(d)(3)).

(3) The entire summer school day is two hours or less in duration.

(b) The state board and the Superintendent shall provide leadership to encourage and support schools and public agencies to participate in the Summer Food Service Program for Children, consistent with the intent of Section 49504.

(c) An application for a waiver shall be submitted no later than 60 days before the last regular meeting of the state board before the commencement of the summer school session for which the waiver is sought.

SEC. 45. Section 52052 of the Education Code is amended to read:

52052. (a) (1) The Superintendent, with approval of the state board, shall develop an Academic Performance Index (API) to measure the performance of schools, especially the academic performance of pupils.

(2) A school shall demonstrate comparable improvement in academic achievement as measured by the API by all numerically significant pupil subgroups at the school, including:

(A) Ethnic subgroups.

(B) Socioeconomically disadvantaged pupils.

(C) English learners.

(D) Pupils with disabilities.

(3) (A) For purposes of this section, a numerically significant pupil subgroup is one that meets both of the following criteria:

(i) The subgroup consists of at least 50 pupils, each of whom has a valid test score.

(ii) The subgroup constitutes at least 15 percent of the total population of pupils at a school who have valid test scores.

(B) If a subgroup does not constitute 15 percent of the total population of pupils at a school who have valid test scores, the subgroup may constitute a numerically significant pupil subgroup if it has at least 100 valid test scores.

(C) For a school with an API score that is based on no fewer than 11 and no more than 99 pupils with valid test scores, numerically significant pupil subgroups shall be defined by the Superintendent, with approval by the state board.

(4) (A) The API shall consist of a variety of indicators currently reported to the department, including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(B) The Superintendent, with the approval of the state board, may also incorporate into the API the rates at which pupils successfully promote from one grade to the next in middle school and high school, and successfully matriculate from middle school to high school.

(C) Graduation rates for pupils in secondary schools shall be calculated for the API as follows:

(i) Four-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school

year, which is considered to be three school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (ii).

(ii) The number of pupils entering grade 9 for the first time in the school year three school years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was three school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was three school years before the current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(iii) Five-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school year, which is considered to be four school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (iv).

(iv) The number of pupils entering grade 9 for the first time in the school year four years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was four school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was four years before the current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(v) Six-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school year, which is considered to be five school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (vi).

(vi) The number of pupils entering grade 9 for the first time in the school year five years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was five school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was five years before the

current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(D) The inclusion of five- and six-year graduation rates for pupils in secondary schools shall meet the following requirements:

(i) Schools shall be granted one-half the credit in their API scores for graduating pupils in five years that they are granted for graduating pupils in four years.

(ii) Schools shall be granted one-quarter the credit in their API scores for graduating pupils in six years that they are granted for graduating pupils in four years.

(iii) Notwithstanding clauses (i) and (ii), schools shall be granted full credit in their API scores for graduating in five or six years a pupil with disabilities who graduates in accordance with his or her individualized education program.

(E) The pupil data collected for the API that comes from the achievement test administered pursuant to Section 60640 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English learners, socioeconomic status, gender, and ethnic group. Only the test scores of pupils who were counted as part of the enrollment in the annual data collection of the California Basic Educational Data System for the current fiscal year and who were continuously enrolled during that year may be included in the test result reports in the API score of the school.

(F) (i) Commencing with the baseline API calculation in 2016, and for each year thereafter, results of the achievement test and other tests specified in subdivision (b) shall constitute no more than 60 percent of the value of the index for secondary schools.

(ii) In addition to the elements required by this paragraph, the Superintendent, with approval of the state board, may incorporate into the index for secondary schools valid, reliable, and stable measures of pupil preparedness for postsecondary education and career.

(G) Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index for primary schools and middle schools.

(H) It is the intent of the Legislature that the state's system of public school accountability be more closely aligned with both the public's expectations for public education and the workforce needs of the state's economy. It is therefore necessary that the

accountability system evolve beyond its narrow focus on pupil test scores to encompass other valuable information about school performance, including, but not limited to, pupil preparedness for college and career, as well as the high school graduation rates already required by law.

(I) The Superintendent shall annually determine the accuracy of the graduation rate data. Notwithstanding any other law, graduation rates for pupils in dropout recovery high schools shall not be included in the API. For purposes of this subparagraph, "dropout recovery high school" means a high school in which 50 percent or more of its pupils have been designated as dropouts pursuant to the exit/withdrawal codes developed by the department or left a school and were not otherwise enrolled in a school for a period of at least 180 days.

(J) To complement the API, the Superintendent, with the approval of the state board, may develop and implement a program of school quality review that features locally convened panels to visit schools, observe teachers, interview pupils, and examine pupil work, if an appropriation for this purpose is made in the annual Budget Act.

(K) The Superintendent shall annually provide to local educational agencies and the public a transparent and understandable explanation of the individual components of the API and their relative values within the API.

(L) An additional element chosen by the Superintendent and the state board for inclusion in the API pursuant to this paragraph shall not be incorporated into the API until at least one full school year after the state board's decision to include the element into the API.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The standards-based achievement tests provided for in Section 60642.5.

(2) The high school exit examination.

(c) Based on the API, the Superintendent shall develop, and the state board shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the

statewide API performance target adopted by the state board pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between the actual API score of a school and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the state board may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant pupil subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the state board, the Superintendent shall recommend, and the state board shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools, at a minimum, shall meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The state board may establish additional criteria that schools must meet to be eligible for the Governor's Performance Award Program.

(e) (1) A school with 11 to 99 pupils with valid test scores shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school annually shall receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the performance of the school for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the API score of the school are not representative of the pupil population at the school.

(C) Significant demographic changes in the pupil population render year-to-year comparisons of pupil performance invalid.

(D) The department discovers or receives information indicating that the integrity of the API score has been compromised.

(E) Insufficient pupil participation in the assessments included in the API.

(3) If a school has fewer than 100 pupils with valid test scores, the calculation of the API or adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and federal regulations may be calculated over more than one annual administration of the tests administered pursuant to Section 60640 and the high school exit examination administered pursuant to Section 60851, consistent with regulations adopted by the state board.

(f) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(g) The Superintendent, with the approval of the state board, shall develop an alternative accountability system for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools pursuant to Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools. Schools in the alternative accountability system may receive an API score, but shall not be included in the API rankings.

SEC. 46. Section 60200.8 of the Education Code is amended to read:

60200.8. (a) Notwithstanding Section 60200.7, the state board may consider the adoption of a revised curriculum framework and evaluation criteria for instructional materials in history-social science.

(b) The department shall conduct work necessary to revise the curriculum framework and evaluation criteria for instructional materials in history-social science only after it has completed work related to the development of curriculum frameworks for the common core academic content standards pursuant to Section 60207.

SEC. 47. Section 60209 of the Education Code is amended to read:

60209. For purposes of conducting an adoption of basic instructional materials for mathematics pursuant to Section 60207, all of the following shall apply:

(a) The department shall provide notice, pursuant to subdivision (b), to all publishers or manufacturers known to produce basic

instructional materials in that subject, post an appropriate notice on the Internet Web site of the department, and take other reasonable measures to ensure that appropriate notice is widely circulated to potentially interested publishers and manufacturers.

(b) The notice shall specify that each publisher or manufacturer choosing to participate in the adoption shall be assessed a fee based on the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

(c) The fee assessed pursuant to subdivision (d) shall be in an amount that does not exceed the reasonable costs to the department in conducting the adoption process. The department shall take reasonable steps to limit costs of the adoption and to keep the fee modest.

(d) The department, before incurring substantial costs for the adoption, shall require that a publisher or manufacturer that wishes to participate in the adoption first declare the intent to submit one or more specific programs for adoption and specify the specific grade levels to be covered by each program.

(1) After a publisher or manufacturer declares the intent to submit one or more programs and the grade levels to be covered by each program, the department shall assess a fee that shall be payable by the publisher or manufacturer even if the publisher or manufacturer subsequently chooses to withdraw a program or reduce the number of grade levels covered.

(2) A submission by a publisher or manufacturer shall not be reviewed for purposes of adoption until the fee assessed has been paid in full.

(e) (1) Upon the request of a small publisher or small manufacturer, the state board may reduce the fee for participation in the adoption.

(2) For purposes of this section, “small publisher” and “small manufacturer” mean an independently owned or operated publisher or manufacturer that is not dominant in its field of operation and that, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years.

(f) If the department determines that there is little or no interest in participating in an adoption by publishers and manufacturers, the department shall recommend to the state board whether or not

the adoption shall be conducted, and the state board may choose not to conduct the adoption.

(g) Revenue derived from fees assessed pursuant to subdivision (d) shall be budgeted as reimbursements and subject to review through the annual budget process, and may be used to pay for costs associated with any adoption and for any costs associated with the review of instructional materials, including reimbursement of substitute costs for teacher reviewers and may be used to cover stipends for content review experts.

SEC. 48. Section 60605.87 of the Education Code is amended to read:

60605.87. (a) The department shall recommend, and the state board shall approve, evaluation criteria to guide the development and review of supplemental instructional materials for English learners.

(b) Notwithstanding any other law, and on a one-time basis, the department, on or before March 1, 2014, shall develop a list of supplemental instructional materials for beginning through advanced levels of proficiency for use in kindergarten and grades 1 to 8, inclusive, that are aligned with the revised English language development standards adopted pursuant to Section 60811.3. The supplemental instructional materials shall provide a bridge between the current English language development standards and the revised English language development standards pursuant to Section 60811.3 with the purpose of ensuring the supplemental instructional materials address the unique features of the English language development standards and remain consistent with the relevant elements of the evaluation criteria for English language arts supplemental instructional materials adopted pursuant to Section 60605.86.

(c) (1) The department shall recommend, and the state board shall approve, content review experts to review, in an open and transparent process, supplemental instructional materials submitted for approval in the subject area of English language development.

(2) The majority of content review experts approved pursuant to paragraph (1) shall be elementary and secondary schoolteachers who are credentialed in English language arts, possess the appropriate state English learner authorization, and have five years of classroom experience instructing English learners. The content review experts also shall include appropriate persons possessing

English learner expertise from postsecondary educational institutions and school and school district curriculum administrators possessing English learner expertise, and other persons who are knowledgeable in English language arts and English language development.

(d) (1) On or before June 30, 2014, the state board shall do the following:

(A) Approve all, or a portion, of the list of supplemental instructional materials proposed by the department, taking into consideration the review of the content review experts and any other relevant information, as appropriate.

(B) Reject all, or a portion, of the list of supplemental instructional materials proposed by the department, taking into consideration the review of the content review experts and any other relevant information, as appropriate.

(2) If the state board rejects all, or a portion, of the list of supplemental instructional materials proposed by the department, or adds an item to the list, the state board, in a public meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), shall provide written reasons for the removal or addition of an item on the list. The state board shall not approve a supplemental instructional material it adds to the list at the same time it provides its written reason for adding the material; instead, the state board shall approve the added material at a subsequent public meeting.

(e) (1) The governing board of a school district and a county board of education may approve supplemental instructional materials other than those approved by the state board pursuant to subdivision (d) if the governing board of a school district or county board of education determines that other supplemental instructional materials are aligned with the revised English language development standards adopted pursuant to Section 60811.3 and meet the needs of pupils of the district who are English learners. The governing board of a school district or the county board of education may only approve supplemental instructional materials that comply with all of the following:

(A) The evaluation criteria approved pursuant to subdivision (a).

(B) Section 60226.

(C) Subdivision (h).

(D) Article 4 (commencing with Section 60060) of Chapter 1.

(2) (A) A supplemental instructional material approved by a governing board of a school district or county board of education pursuant to this subdivision that is in the subject area of English language development shall be reviewed by content review experts chosen by the governing board.

(B) The majority of the content review experts chosen pursuant to subparagraph (A) shall be elementary and secondary schoolteachers who are credentialed in English language arts, possess the appropriate state English learner authorization, and have five years of classroom experience instructing English learners.

(C) The content review experts also shall include appropriate persons possessing English learner expertise from postsecondary educational institutions and school and school district curriculum administrators possessing English learner expertise, and other persons who are knowledgeable in English language arts and English language development.

(f) Publishers choosing to submit supplemental instructional materials for approval by the state board shall submit standards maps.

(g) (1) Before approving supplemental instructional materials pursuant to this section, the state board shall review those instructional materials for academic content, social content, and instructional support to teachers and pupils. Supplemental instructional materials approved by the state board pursuant to this section shall meet required program criteria for grade-level programs and shall include materials for use by teachers.

(2) Before approving supplemental instructional materials pursuant to this section, the governing board of a school district or county board of education shall review those instructional materials for academic content and instructional support to teachers and pupils who are English learners. Supplemental instructional materials approved by the governing board of a school district or county board of education pursuant to this section shall meet required program criteria for grade-level programs and shall include materials for use by teachers.

(h) Supplemental instructional materials approved pursuant to this section shall comply with the social content review requirements pursuant to Section 60050.

(i) The department shall maintain on its Internet Web site the list of supplemental instructional materials approved by the state board pursuant to subdivision (d).

(j) This section shall become inoperative on July 1, 2014, and, as of July 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before July 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 60852.1 of the Education Code is amended to read:

60852.1. (a) The Superintendent shall recommend, and the state board shall select, members of a panel that shall convene to make recommendations regarding alternative means for eligible pupils with disabilities to demonstrate that they have achieved the same level of academic achievement in the content standards in English language arts or mathematics, or both, required for passage of the high school exit examination.

(1) The panel shall be composed of educators and other individuals who have experience with the population of pupils with disabilities eligible for alternative means of demonstrating academic achievement, as defined in Section 60852.2, and educators and other individuals who have expertise with multiple forms of assessment. The panel shall consult with experts in other states that offer alternative means for pupils with disabilities to demonstrate academic achievement. A majority of the panel shall be classroom teachers.

(2) The panel shall make findings and recommendations regarding all of the following:

(A) Specific options for alternative assessments, submission of evidence, or other alternative means by which eligible pupils with disabilities may demonstrate that they have achieved the same level of academic achievement in the content standards in English language arts or mathematics, or both, required for passage of the high school exit examination.

(B) Scoring or other evaluation systems designed to ensure that the eligible pupil with a disability has achieved the same competence in the content standards required for passage of the high school exit examination.

(C) Processes to ensure that the form, content, and scoring of assessments, evidence, or other means of demonstrating academic achievement are applied uniformly across the state.

(D) Estimates of one-time or ongoing costs, and whether each option should be implemented on a statewide or regional basis, or both.

(3) The panel shall present its options and make its findings and recommendations to the Superintendent and to the state board by October 1, 2009.

(b) For those portions of, or those academic content standards assessed by, the high school exit examination for which the state board determines it is feasible to create alternative means by which eligible pupils with disabilities may demonstrate the same level of academic achievement required for passage of the high school exit examination, the state board, taking into consideration the findings and recommendations of the panel, shall adopt regulations for alternative means by which eligible pupils with disabilities, as defined in Section 60852.2, may demonstrate that they have achieved the same level of academic achievement in the content standards required for passage of the high school exit examination. The regulations shall include appropriate timelines and the manner in which eligible pupils with disabilities and school districts shall be timely notified of the results.

SEC. 50. Section 66407 of the Education Code is amended to read:

66407. (a) (1) The publisher of a textbook, or an agent or employee of the publisher, shall provide a prospective purchaser of the textbook with all of the following:

(A) A list of all the products offered for sale by the publisher germane to the prospective purchaser's subject area of interest.

(B) For a product listed pursuant to subparagraph (A), the wholesale or retail price of the product, and the estimated length of time the publisher intends to keep the product on the market.

(C) For each new edition of a product listed pursuant to subparagraph (A), a list of the substantial content differences or changes between the new edition and the previous edition of the textbook.

(2) The publisher shall make the lists required by paragraph (1) available to a prospective purchaser at the commencement of a sales interaction, including, but not necessarily limited to, a sales

interaction conducted in person, by telephone, or electronically. The publisher shall also post in a prominent position on its Internet Web site the lists required by paragraph (1).

(b) As used in this section, the following terms have the following meanings:

(1) "Product" means each version, including, but not necessarily limited to, a version in a digital format, of a textbook, or set of textbooks, in a particular subject area, including, but not necessarily limited to, a supplemental item, whether or not the supplemental item is sold separately or together with a textbook.

(2) "Publisher" has the same meaning as defined in subdivision (b) of Section 66406.7.

(3) "Purchaser" means a faculty member of a public or private postsecondary educational institution who selects the textbooks assigned to students.

(4) "Textbook" has the same meaning as defined in subdivision (b) of Section 66406.7.

SEC. 51. Section 81378.1 of the Education Code is amended to read:

81378.1. (a) The governing board of a community college district may, without complying with any other provision of this article, let, in the name of the district, any buildings, grounds, or space therein, together with any personal property located thereon, not needed for academic activities, upon the terms and conditions agreed upon by the governing board and the lessee for a period of more than five days but less than five years, as determined by the governing board. Before executing the lease, the governing board shall include in an agenda of a meeting of the board open to the public a description of the proposed lease and an explanation of the methodology used to establish the lease rate and for determining the fair market value of the lease.

(b) The governing board shall give public notice before taking any action pursuant to subdivision (a). The notice shall include a description of the governing board's intended action. The notice shall be printed once a week for three successive weeks prior to the board meeting described in subdivision (a) in a newspaper of general circulation that is published at least once a week.

(c) The governing board shall include, as a condition in any agreement to let any buildings, grounds, or space therein, together with any personal property located thereon, a provision that the

agreement shall be subject to renegotiation and may be rescinded after 60 days' notice to the lessee if the governing board determines at any time during the term of the agreement that the buildings, grounds, or space therein subject to the agreement are needed for academic activities. Any revenue derived pursuant to the agreement shall be retained for the exclusive use of the community college district whose buildings, grounds, or space therein are the basis of the agreement and shall be used to supplement, but not supplant, any state funding. Any buildings, grounds, or space therein let by the district shall be included as space actually available for use by the college in any calculations related to any plan for capital construction submitted to the board of governors pursuant to Chapter 4 (commencing with Section 81800), or any other law.

(d) The authority of a governing board under this section does not apply to the letting of an entire campus.

(e) The use of any buildings, grounds, or space therein, together with any personal property located thereon, let by the governing board pursuant to this section shall be consistent with all applicable zoning ordinances and regulations.

SEC. 52. Section 88620 of the Education Code is amended to read:

88620. The following definitions govern the construction of this part:

(a) "Board of governors" means the Board of Governors of the California Community Colleges.

(b) "Business Resource Assistance and Innovation Network" means the network of projects and programs that comprise the California Community Colleges Economic and Workforce Development Program.

(c) "California Community Colleges Economic and Workforce Development Program" and "economic and workforce development program" mean the program.

(d) "Career pathways," and "career ladders," or "career lattices" mean an identified series of positions, work experiences, or educational benchmarks or credentials that offer occupational and financial advancement within a specified career field or related fields over time.

(e) (1) "Center" means a comprehensive program of services offered by one or more community colleges to an economic region of the state in accordance with criteria established by the

chancellor's office for designation as an economic and workforce development program center. Center services shall be designed to respond to the statewide strategic priorities pursuant to the mission of the community colleges' economic and workforce development program, and to be consistent with programmatic priorities, competitive and emerging industry sectors and industry clusters, identified economic development, career technical education, business development, and continuous workforce training needs of a region. Centers shall provide a foundation for ~~the~~ *a* long-term, sustained relationship with businesses, labor, colleges, and other workforce education and training delivery systems, such as local workforce investment boards, in the region.

(2) A center shall support, develop, and deliver direct services to students, businesses, colleges, labor organizations, employees, and employers. For purposes of this subdivision, direct services include, but are not necessarily limited to, data analysis both of labor market information and college performance; intraregion and multiregion sector coordination and logistics; inventory of community college and other assets relevant to meeting a labor market need; curriculum development, curriculum model development, or job task analysis development; articulation of curriculum in a career pathway or career lattice or in a system of stackable credentials; faculty training; calibration to a career readiness or other assessment; assessment administration; career guidance module development or counseling; convenings, such as seminars, workshops, conferences, and training; facilitating collaboration between faculty working in related disciplines and sectors; upgrading, leveraging, and developing technology; and other educational services. The establishment and maintenance of the centers is under the sole authority of the chancellor's office in order to preserve the flexibility of the system to adapt to labor market needs and to integrate resources.

(f) "Chancellor" means the Chancellor of the California Community Colleges.

(g) "Economic security" means, with respect to a worker, earning a wage sufficient to adequately support a family and to, over time, save money for emergency expenses and adequate retirement income, the sufficiency of which is determined considering a variety of factors including household size, the cost

of living in the worker's community, and other factors that may vary by region.

(h) "High-priority occupation" means an occupation that has a significant presence in a targeted industry sector or industry cluster, is in demand by employers, and pays or leads to payment of high wages.

(i) "Industry cluster" means a geographic concentration or emerging concentration of interdependent industries with direct service, supplier, and research relationships, or independent industries that share common resources in a given regional economy or labor market. An industry cluster is a group of employers closely linked by a common product or services, workforce needs, similar technologies, and supply chains in a given regional economy or labor market.

(j) "Industry-driven regional collaborative" means a regional public, private, or other community organizational structure that jointly defines priorities, delivers services across programs, sectors, and in response to, or driven by, industry needs. The industry-driven regional collaborative projects meet the needs and fill gaps in services that respond to regional business, employee, and labor needs. These service-delivery structures offer flexibility to local communities and partners to meet the identified needs in an economic development region. Industry-driven regional collaboratives are broadly defined to allow maximum local autonomy in developing projects responding to the needs of business, industry, and labor.

(k) "Industry sector" means those firms that produce similar products or provide similar services using somewhat similar business processes.

(*l*) "Initiative" is an identified strategic priority area that is organized statewide, but is a regionally based effort to develop and implement innovative solutions designed to facilitate the development, implementation, and coordination of community college economic development and related programs and services. Each initiative shall be workforce and business development driven by a statewide committee made up of community college faculty and administrators and practitioners and managers from business, labor, and industry. Centers, industry-driven regional collaboratives, and other economic and workforce development programs performing services as a part of the implementation of

an initiative shall coordinate services statewide and within regions of the state, as appropriate.

(m) "Job development incentive training" means programs that provide incentives to employers to create entry-level positions in their businesses, or through their suppliers or prime customers, for welfare recipients and the working poor.

(n) "Matching resources" means any combination of public or private resources, either cash or in-kind, derived from sources other than the economic and workforce development program funds appropriated by the annual Budget Act, that are determined to be necessary for the success of the project to which they are applied. The criteria for in-kind resources shall be developed by the board of governors, with advice from the chancellor and the California Community Colleges Economic and Workforce Development Program Advisory Committee, and shall be consistent with generally accepted accounting practices for state and federal matching requirements. The ratio of matching resources to economic and workforce development program funding shall be determined by the board of governors.

(o) "Performance improvement training" means training delivered by a community college that includes all of the following:

(1) An initial needs assessment process that identifies both training and nontraining issues that need to be addressed to improve individual and organizational performance.

(2) Consultation with employers to develop action plans that address business or nonprofit performance improvements.

(3) Training programs that link individual performance requirements with quantifiable business measures, resulting in demonstrable productivity gains, and, as appropriate, job retention, job creation, improvement in wages, or attainment of wages that provide economic security.

(p) "Program" means the California Community Colleges Economic and Workforce Development Program established under this part.

(q) "Region" means a geographic area of the state defined by economic and labor market factors containing at least one industry cluster and the cities, counties, or community college districts, or all of them, in the industry cluster's geographic area. For the purposes of this chapter, "California Community College economic development regions" shall be designated by the board of governors

based on factors, including, but not necessarily limited to, all of the following:

(1) Regional economic development and training needs of business and industry.

(2) Regional collaboration, as appropriate, among community colleges and districts, and existing economic development, continuous workforce improvement, technology deployment, and business development.

(3) Other state economic development definitions of regions.

(r) "Sector strategies" means prioritizing investments in competitive and emerging industry sectors and industry clusters on the basis of labor market and other economic data that indicate strategic growth potential, especially with regard to jobs and income. Sector strategies focus workforce investment in education and workforce training programs that are likely to lead to high-wage jobs or to entry-level jobs with well-articulated career pathways into high-wage jobs. Sector strategies effectively boost labor productivity or reduce business barriers to growth and expansion stemming from workforce supply problems, including skills gaps, and occupational shortages by directing resources and making investments to plug skills gaps and provide education and training programs for high-priority occupations. Sector strategies may be implemented using articulated career pathways or career lattices and a system of stackable credentials. Sector strategies often target underserved communities, disconnected youth, incumbent workers, and recently separated military veterans. Cluster-based sector strategies focus workforce and economic development on those sectors that have demonstrated a capacity for economic growth and job creation in a particular geographic area. Industry clusters are similar to industry sectors, but the focus is on a geographic concentration of interdependent industries.

(s) "Skills panel" means a collaboration which brings together multiple employers from an industry sector or industry cluster with career technical educators, including, but not limited to, community college career technical education faculty, and other stakeholders which may include workers and organized labor to address common workforce needs. Skills panels assess workforce training and education needs through the identification of assets relevant to industry need, produce curricula models, perform job task analysis, define how curricula articulate into career pathways or

career lattices or a system of stackable credentials, calibrate career readiness, develop other assessment tools, and produce career guidance tools.

(t) "Stackable credentials" means a progression of training modules, credentials, or certificates that build on one another and are linked to educational and career advancement.

SEC. 53. Section 2162 of the Elections Code is amended to read:

2162. (a) No affidavits of registration other than those provided by the Secretary of State to the county elections officials or the national voter registration forms authorized pursuant to the federal National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg et seq.) shall be used for the registration of voters.

(b) A voter registration card shall not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution of the cards.

(c) The affidavit portion of a voter registration card shall not be marked, stamped, or partially or fully completed by a person other than an elector attempting to register to vote or by a person assisting the elector in completing the affidavit at the request of the elector.

SEC. 54. Section 2224 of the Elections Code is amended to read:

2224. (a) If a voter has not voted in an election within the preceding four years, and his or her residence address, name, or party affiliation has not been updated during that time, the county elections official may send an alternate residency confirmation postcard. The use of this postcard may be sent subsequent to NCOA or sample ballot returns, but shall not be used in the residency confirmation process conducted under Section 2220. The postcard shall be forwardable, including a postage-paid and preaddressed return form to enable the voter to verify or correct the address information, and shall be in substantially the following form:

"If the person named on the postcard is not at this address, PLEASE help keep the voter rolls current and save taxpayer dollars by returning this postcard to your mail carrier."

"IMPORTANT NOTICE"

"According to our records you have not voted in any election during the past four years, which may indicate that you no longer reside in ____ County. If you continue to reside in this county you must confirm your residency address in order to remain on the active voter list and receive election materials in the mail."

"If confirmation has not been received within 15 days, you may be required to provide proof of your residence address in order to vote at future elections. If you no longer live in ____ County, you must reregister at your new residence address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections office or the Secretary of State's office."

(b) The use of a toll-free number to confirm the old residence address is optional. Any change to a voter's address shall be received in writing.

(c) A county using the alternate residency confirmation procedure shall notify all voters of the procedure in the sample ballot pamphlet or in a separate mailing.

SEC. 55. Section 2225 of the Elections Code is amended to read:

2225. (a) Based on change-of-address data received from the United States Postal Service or its licensees, the county elections official shall send a forwardable notice, including a postage-paid and preaddressed return form, to enable the voter to verify or correct address information.

Notification received through NCOA or Operation Mail that a voter has moved and has given no forwarding address shall not require the mailing of a forwardable notice to that voter.

(b) If postal service change-of-address data indicates that the voter has moved to a new residence address in the same county, the forwardable notice shall be in substantially the following form:

"We have received notification that the voter has moved to a new residence address in ____ County. You will be registered to vote at your new address unless you notify our office within 15 days that the address to which this card was mailed is not a change of your permanent residence. You must notify our office by either returning the attached postage-paid postcard, or by calling toll free. If this is not a permanent residence, and if you do not notify

us within 15 days, you may be required to provide proof of your residence address in order to vote at future elections."

(c) If postal service change-of-address data indicates that the voter has moved to a new address in another county, the forwardable notice shall be in substantially the following form:

"We have received notification that you have moved to a new address not in ____ County. Please use the attached postage-paid postcard to: (1) advise us if this is or is not a permanent change of residence address, or (2) to advise us if our information is incorrect. If you do not return this card within 15 days and continue to reside in ____ County, you may be required to provide proof of your residence address in order to vote at future elections and, if you do not offer to vote at any election in the period between the date of this notice and the second federal general election following this notice, your voter registration will be canceled and you will have to reregister in order to vote. If you no longer live in ____ County, you must reregister at your new residence address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections officer or 1-800-345-VOTE."

(d) If postal service change-of-address data received from a nonforwardable mailing indicates that a voter has moved and left no forwarding address, a forwardable notice shall be sent in substantially the following form:

"We are attempting to verify postal notification that the voter to whom this card is addressed has moved and left no forwarding address. If the person receiving this card is the addressed voter, please confirm your continued residence or provide current residence information on the attached postage-paid postcard within 15 days. If you do not return this card and continue to reside in ____ County, you may be required to provide proof of your residence address in order to vote at future elections and, if you do not offer to vote at any election in the period between the date of this notice and the second federal general election following this notice, your voter registration will be cancelled and you will have to reregister in order to vote. If you no longer live in ____

County, you must reregister at your new residence address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections office or the Secretary of State's office."

(e) The use of a toll-free number to confirm the old residence address is optional. Any change to the voter address must be received in writing.

SEC. 56. Section 3111 of the Elections Code is amended to read:

3111. If a military or overseas voter is unable to appear at his or her polling place because of being recalled to service after the final day for making application for a vote by mail ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official in the county in which the military or overseas voter is registered or, if within the state, in the county in which he or she is recalled to service and make application for a vote by mail ballot, which may be submitted by facsimile, or by electronic mail or online transmission if the elections official makes the transmission option available. The elections official shall deliver to him or her a vote by mail ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other vote by mail ballots. To be counted, the ballot shall be returned to the elections official's office in person, by facsimile transmission, or by an authorized person on or before the close of the polls on the day of the election. If the military or overseas voter appears in the county in which he or she is recalled to service, rather than the county to which he or she is registered, the elections official shall coordinate with the elections official in the county in which the military or overseas voter is registered to provide the ballot that contains the appropriate measures and races for the precinct in which the military or overseas voter is registered.

SEC. 57. Section 13115 of the Elections Code is amended to read:

13115. The order in which all state measures that are to be submitted to the voters shall appear on the ballot is as follows:

(a) Bond measures, including those proposed by initiative, in the order in which they qualify.

(b) Constitutional amendments, including those proposed by initiative, in the order in which they qualify.

(c) Legislative measures, other than those described in subdivision (a) or (b), in the order in which they are approved by the Legislature.

(d) Initiative measures, other than those described in subdivision (a) or (b), in the order in which they qualify.

(e) Referendum measures, in the order in which they qualify.

SEC. 58. Section 21000 of the Elections Code is amended to read:

21000. The county elections official in each county shall compile and make available to the Legislature or any appropriate committee of the Legislature any information and statistics that may be necessary for use in connection with the reapportionment of legislative districts, including, but not limited to, precinct maps indicating the boundaries of municipalities, school districts, judicial districts, Assembly districts, senatorial districts, and congressional districts, lists showing the election returns for each precinct, and election returns for each precinct reflecting the vote total for all ballots cast, including both vote by mail ballots and ballots cast at polling places, compiled pursuant to Section 15321 in the county at each statewide election. If the county elections official stores the information and statistics in data-processing files, he or she shall make the files available, along with whatever documentation shall be necessary in order to allow the use of the files by the appropriate committee of the Legislature and shall retain these files until the next reapportionment has been completed.

SEC. 59. Section 3047 of the Family Code is amended to read:

3047. (a) A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military duty or temporary duty, mobilization in support of combat or other military operation, or military deployment out of state.

(b) (1) If a party with sole or joint physical custody or visitation receives temporary duty, deployment, or mobilization orders from the military that require the party to move a substantial distance from his or her residence or otherwise has a material effect on the ability of the party to exercise custody or visitation rights, any

necessary modification of the existing custody order shall be deemed a temporary custody order made without prejudice, which shall be subject to review and reconsideration upon the return of the party from military deployment, mobilization, or temporary duty.

(2) If the temporary order is reviewed upon return of the party from military deployment, mobilization, or temporary duty, there shall be a presumption that the custody order shall revert to the order that was in place before the modification, unless the court determines that it is not in the best interest of the child. The court shall not, as part of its review of the temporary order upon the return of the deploying party, order a child custody evaluation under Section 3111 of this code or Section 730 of the Evidence Code, unless the party opposing reversion of the order makes a prima facie showing that reversion is not in the best interest of the child.

(3) (A) If the court makes a temporary custody order, it shall consider any appropriate orders to ensure that the relocating party can maintain frequent and continuing contact with the child by means that are reasonably available.

(B) Upon a motion by the relocating party, the court may grant reasonable visitation rights to a stepparent, grandparent, or other family member if the court does all of the following:

(i) Finds that there is a preexisting relationship between the family member and the child that has engendered a bond such that visitation is in the best interest of the child.

(ii) Finds that the visitation will facilitate the child's contact with the relocating party.

(iii) Balances the interest of the child in having visitation with the family member against the right of the parents to exercise parental authority.

(C) Nothing in this paragraph shall increase the authority of the persons described in subparagraph (B) to seek visitation orders independently.

(D) The granting of visitation rights to a nonparent pursuant to subparagraph (B) shall not impact the calculation of child support.

(c) If a party's deployment, mobilization, or temporary duty will have a material effect on his or her ability, or anticipated ability, to appear in person at a regularly scheduled hearing, the court shall do either of the following:

(1) Upon motion of the party, hold an expedited hearing to determine custody and visitation issues prior to the departure of the party.

(2) Upon motion of the party, allow the party to present testimony and evidence and participate in court-ordered child custody mediation by electronic means, including, but not limited to, telephone, video teleconferencing, or the Internet, to the extent that this technology is reasonably available to the court and protects the due process rights of all parties.

(d) A relocation by a nondeploying parent during a period of a deployed parent's absence while a temporary modification order for a parenting plan is in effect shall not, by itself, terminate the exclusive and continuing jurisdiction of the court for purposes of later determining custody or parenting time under this chapter.

(e) When a court of this state has issued a custody or visitation order, the absence of a child from this state during the deployment of a parent shall be considered a "temporary absence" for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400)), and the court shall retain exclusive continuing jurisdiction under Section 3422.

(f) The deployment of a parent shall not be used as a basis to assert inconvenience of the forum under Section 3427.

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

(1) "Deployment" means the temporary transfer of a member of the Armed Forces in active-duty status in support of combat or some other military operation.

(2) "Mobilization" means the transfer of a member of the National Guard or Military Reserve to extended active-duty status, but does not include National Guard or Military Reserve annual training.

(3) "Temporary duty" means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(h) It is the intent of the Legislature that this section provide a fair, efficient, and expeditious process to resolve child custody and visitation issues when a party receives temporary duty, deployment, or mobilization orders from the military, as well as at the time that the party returns from service and files a motion

to revert back to the custody order in place before the deployment. The Legislature intends that family courts shall, to the extent feasible within existing resources and court practices, prioritize the calendaring of these cases, avoid unnecessary delay or continuances, and ensure that parties who serve in the military are not penalized for their service by a delay in appropriate access to their children.

SEC. 60. Section 3200.5 of the Family Code is amended to read:

3200.5. (a) Any standards for supervised visitation providers adopted by the Judicial Council pursuant to Section 3200 shall conform to this section. A provider, as described in Section 3200, shall be a professional provider or nonprofessional provider.

(b) In any case in which the court has determined that there is domestic violence or child abuse or neglect, as defined in Section 11165.6 of the Penal Code, and the court determines supervision is necessary, the court shall consider whether to use a professional or nonprofessional provider based upon the child's best interest.

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

(1) "Nonprofessional provider" means any person who is not paid for providing supervised visitation services. Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider shall:

(A) Have no record of a conviction for child molestation, child abuse, or other crimes against a person.

(B) Have proof of automobile insurance if transporting the child.

(C) Have no current or past court order in which the provider is the person being supervised.

(D) Agree to adhere to and enforce the court order regarding supervised visitation.

(2) "Professional provider" means any person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency. The professional provider shall:

(A) Be at least 21 years of age.

(B) Have no record of a conviction for driving under the influence (DUI) within the last five years.

(C) Not have been on probation or parole for the last 10 years.

(D) Have no record of a conviction for child molestation, child abuse, or other crimes against a person.

(E) Have proof of automobile insurance if transporting the child.

(F) Have no civil, criminal, or juvenile restraining orders within the last 10 years.

(G) Have no current or past court order in which the provider is the person being supervised.

(H) Be able to speak the language of the party being supervised and of the child, or the provider must provide a neutral interpreter over 18 years of age who is able to do so.

(I) Agree to adhere to and enforce the court order regarding supervised visitation.

(J) Meet the training requirements set forth in subdivision (d).

(d) (1) Professional providers shall have received 24 hours of training that includes training in the following subjects:

(A) The role of a professional provider.

(B) Child abuse reporting laws.

(C) Recordkeeping procedures.

(D) Screening, monitoring, and termination of visitation.

(E) Developmental needs of children.

(F) Legal responsibilities and obligations of a provider.

(G) Cultural sensitivity.

(H) Conflicts of interest.

(I) Confidentiality.

(J) Issues relating to substance abuse, child abuse, sexual abuse, and domestic violence.

(K) Basic knowledge of family and juvenile law.

(2) Professional providers shall sign a declaration or any Judicial Council form that they meet the training and qualifications of a provider.

(e) The ratio of children to a professional provider shall be contingent on:

(1) The degree of risk factors present in each case.

(2) The nature of supervision required in each case.

(3) The number and ages of the children to be supervised during a visit.

(4) The number of people visiting the child during the visit.

(5) The duration and location of the visit.

(6) The experience of the provider.

(f) Professional providers of supervised visitation shall:

(1) Advise the parties before commencement of supervised visitation that no confidential privilege exists.

(2) Report suspected child abuse to the appropriate agency, as provided by law, and inform the parties of the provider's obligation to make those reports.

(3) Suspend or terminate visitation under subdivision (h).

(g) Professional providers shall:

(1) Prepare a written contract to be signed by the parties before commencement of the supervised visitation. The contract should inform each party of the terms and conditions of supervised visitation.

(2) Review custody and visitation orders relevant to the supervised visitation.

(3) Keep a record for each case, including, at least, all of the following:

(A) A written record of each contact and visit.

(B) Who attended the visit.

(C) Any failure to comply with the terms and conditions of the visitation.

(D) Any incidence of abuse, as required by law.

(h) (1) Each provider shall make every reasonable effort to provide a safe visit for the child and the noncustodial party.

(2) If a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated.

(3) All interruptions or terminations of visits shall be recorded in the case file.

(4) All providers shall advise both parties of the reasons for the interruption or termination of a visit.

(i) A professional provider shall state the reasons for temporary suspension or termination of supervised visitation in writing and shall provide the written statement to both parties, their attorneys, the attorney for the child, and the court.

SEC. 61. Section 4055 of the Family Code, as amended by Section 1 of Chapter 646 of the Statutes of 2012, is amended to read:

4055. (a) The statewide uniform guideline for determining child support orders is as follows: CS = K[HN - (H%)(TN)].

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
$0–800	0.20 + TN/16,000
$801–6,666	0.25
$6,667–10,000	0.10 + 1,000/TN
Over $10,000	0.12 + 800/TN

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is $1,000, K = (1 + 0.20) × 0.25, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is $1,000, K = (2 - 0.80) × 0.25, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described above if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars ($1,500), adjusted annually for cost-of-living increases, there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. On March 1, 2013, and annually thereafter, the Judicial Council shall determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the

numerator of which is 1,500 minus the obligor's net disposable income per month, and the denominator of which is 1,500.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 62. Section 4055 of the Family Code, as added by Section 2 of Chapter 646 of the Statutes of 2012, is amended to read:

4055. (a) The statewide uniform guideline for determining child support orders is as follows: CS = K[HN - (H%)(TN)].

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
$0–800	0.20 + TN/16,000
$801–6,666	0.25
$6,667–10,000	0.10 + 1,000/TN
Over $10,000	0.12 + 800/TN

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is $1,000, K = (1 + 0.20) × 0.25, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is $1,000, K =(2 - 0.80) × 0.25, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where

there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described above if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand dollars ($1,000), there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user

whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

(d) This section shall become operative on January 1, 2018.

SEC. 63. Section 1587 of the Fish and Game Code is amended to read:

1587. (a) The Mirage Trail within the Magnesia Spring Ecological Reserve shall be open nine months of the year to recreational hiking if the commission determines that the following conditions are met:

(1) Local public agencies or other entities will assume complete financial responsibility for the following as determined to be necessary by the commission:

(A) Fencing to dissuade hikers from traversing beyond the trail and into sensitive Peninsular bighorn sheep habitat.

(B) Signage and educational materials to educate hikers about Peninsular bighorn sheep.

(2) A single entity has been designated to fulfill the financial arrangements and other terms and conditions determined by the commission to be necessary pursuant to paragraph (1).

(b) The commission shall determine seasonal openings and closures of the trail that will not conflict with the use of the area by Peninsular bighorn sheep, consistent with subdivision (a).

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 64. Section 15100 of the Fish and Game Code is amended to read:

15100. There is within the department an aquaculture coordinator who shall perform all of the following duties as part of the department's aquaculture program:

(a) Promote understanding of aquaculture among public agencies and the general public.

(b) Propose methods of reducing the negative impact of public regulation at all levels of government on the aquaculture industry.

(c) Provide information on all aspects of regulatory compliance to the various sectors of the aquaculture industry.

(d) Provide advice to the owner of a registered aquaculture facility on project siting and facility design, as necessary, to comply with regulatory requirements.

(e) Coordinate with the Aquaculture Development Committee regarding the duties described in subdivisions (a) to (d), inclusive.

SEC. 65. Section 4101.3 of the Food and Agricultural Code, as amended by Section 2 of Chapter 137 of the Statutes of 2012, is amended to read:

4101.3. (a) Notwithstanding any other provision of law, the California Science Center is hereby authorized to enter into a site lease with the California Science Center Foundation, a California Nonprofit Corporation, with the approval of the Natural Resources Agency, the Department of Finance, and the Department of General Services, for the purpose of the foundation developing, constructing, equipping, furnishing, and funding the project known as Phase II of the California Science Center. The overall construction cost and scope shall be consistent with the amount authorized in the Budget Act of 2002, provided that nothing in this section shall prevent the foundation from expending additional nonstate funds to complete Phase II provided that the additional expenditures do not result in additional state operation and maintenance costs. Any additional expenditure of nonstate funds by the foundation shall not increase the state's contribution.

(b) For the purpose of carrying out subdivision (a), all of the following shall apply:

(1) In connection with the development described in subdivision (a), above, the foundation may, in its determination, select the most qualified construction manager/general contractor to oversee and manage the work and prepare the competitive bid packages for all major subcontractors to be engaged in the construction of Phase II Project. Any construction manager/general contractor selected shall be required to have a California general contractor's license.

(2) Prior to commencement of construction of the Phase II Project, the California Science Center shall enter into a lease-purchase agreement upon approval by the Department of Finance with the foundation on terms that are compatible with the Phase I Project financing. The term of the lease-purchase agreement shall be a term not to exceed 25 years. Lease payments on behalf of the state shall be commensurate with the twenty-two million

nine hundred forty-five thousand two hundred sixty-three dollars ($22,945,263), (nineteen million one hundred thirty-seven thousand dollars ($19,137,000) plus 19.9 percent augmentation authority) construction cost allocation of the state. Lease payments may also include any cost of financing that the foundation may incur related to tax-exempt financing. The California Science Center shall be authorized to direct the Controller to send the rental payments under the lease-purchase agreement directly to the foundation's bond trustee.

(3) The foundation shall ensure that the Phase II Project is inspected during construction by the state in the manner consistent with state infrastructure projects. The foundation shall also indemnify and defend and save harmless the Department of General Services for any and all claims and losses accruing and resulting from or arising out of the foundation's use of the state's plans and specifications. The foundation and the California Science Center, upon consultation with the Director of General Services and the Department of Finance shall agree on a reasonable level of state oversight throughout the construction of the Phase II Project in order to assist the foundation in the completion of the project within the intended scope and cost.

(4) At the end of the term of the site lease and the lease-purchase agreement unencumbered title to the land and improvements shall return to the state with jurisdiction held by the California Science Center.

SEC. 66. Section 4106 of the Food and Agricultural Code, as amended by Section 6 of Chapter 137 of the Statutes of 2012, is amended to read:

4106. (a) The California Science Center shall work with the Los Angeles Memorial Coliseum Commission, the City of Los Angeles, and the County of Los Angeles to develop additional parking facilities in Exposition Park to the extent necessary to allow for expansion of the park.

(b) The California Science Center shall manage or operate its parking facilities in a manner that preserves and protects the interests of itself and the California African American Museum and recognizes the cultural and educational character of Exposition Park.

(c) The Exposition Park Improvement Fund is hereby created in the State Treasury. All revenues received by the California

Science Center from its parking facilities, from rental of museum facilities, or from other business activities shall be deposited in the Exposition Park Improvement Fund.

(d) The moneys in the Exposition Park Improvement Fund may only be used, upon appropriation by the Legislature, for improvements to Exposition Park, including, but not limited to, maintenance of existing parking and museum facilities, replacement of museum equipment, supplies and wages expended to generate revenues from rental of museum facilities, development of new parking facilities, and acquisition of land within or adjacent to Exposition Park.

(e) (1) The Legislature hereby finds and declares that there is a need for development of additional park, recreation, museum, and parking facilities in Exposition Park. The Legislature recognizes that the provision of these needed improvements as identified in the California Science Center Exposition Park Master Plan may require the use of funds provided by other governmental agencies or private donors.

(2) The California Science Center may accept funds from other governmental agencies or private contributions for the purpose of implementation of the California Science Center Exposition Park Master Plan. The private contributions and funds from governmental agencies other than state governmental agencies shall be deposited in the Exposition Park Improvement Fund in the State Treasury and shall be available for expenditure without regard to fiscal years by the California Science Center for implementation of the California Science Center Exposition Park Master Plan. Funds from other state governmental agencies shall be deposited in the Exposition Park Improvement Fund and shall be available for expenditure, upon appropriation, by the California Science Center for implementation of the California Science Center Exposition Park Master Plan. However, any expenditure is not authorized sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house *of the Legislature* that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time as the chairperson of the joint committee, or his or her designee, may in each instance determine. Neither the City of Los Angeles nor the County of Los Angeles

shall impose any tax upon tickets purchased authorizing the use of parking facilities owned by the California Science Center.

SEC. 67. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment not to exceed two mills ($0.002) per dollar of sales for all fertilizing materials. A licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills ($0.002) per dollar of sales. The secretary may, based on the findings and recommendations of the board, reduce the assessment rate to a lower rate that provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the secretary may impose an assessment in an amount not to exceed one mill ($0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of fertilizing material, including, but not limited to, support for University of California Cooperative Extension, the California resource conservation districts, other California institutions of postsecondary education, or other qualified entities to develop programs in the following areas:

(1) Technical education for users of fertilizer materials in the development and implementation of nutrient management projects that result in more agronomically sound uses of fertilizer materials and minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use.

(2) Research to improve nutrient management practices resulting in more agronomically sound uses of fertilizer materials and to minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use.

(3) Education to increase awareness of more agronomically sound use of fertilizer materials to reduce the environmental impacts resulting from the overuse or inefficient use of fertilizing materials.

SEC. 68. Section 19447 of the Food and Agricultural Code is amended to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed five thousand dollars ($5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted the opportunity to review the secretary's evidence and, for up to 30 days following the issuance of the notice, the opportunity to present written argument and evidence to the secretary as to why the civil penalty should not be imposed or should be reduced from the amount specified in the penalty notice. Notwithstanding Chapter 4.5 (commencing with Section 11400) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2 of the Government Code or any other provision of law, this section does not require the department to conduct either a formal or informal hearing. The secretary instead may dispose of the matter upon review of the documentation presented.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 20 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party, at the time of filing the appeal, or within 10 days thereafter, may present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal, or within 15 days of the date of oral arguments. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

(8) A review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) (1) If the person upon whom a penalty is levied does not file a petition for a writ of administrative mandamus, the court, upon receiving a certified copy of the department's final decision that directs payment of a civil penalty, shall enter judgment in favor of the department.

(2) After completion of the appeal procedure provided for in this section, the secretary may file a certified copy of the department's final decision that directs payment of a civil penalty and, if applicable, any order denying a petition for a writ of administrative mandamus, with the clerk of the superior court of any county that has jurisdiction over the matter. No fees shall be charged by the clerk of the superior court for the performance of any official services required in connection with the entry of judgment pursuant to this section.

(e) Any penalties levied by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund, and, upon appropriation by the Legislature, shall be used for the purposes described in Section 221.

SEC. 69. Section 55527.6 of the Food and Agricultural Code is amended to read:

55527.6. (a) Licensees or applicants for a license shall be required to furnish and maintain an irrevocable guarantee in a form and amount satisfactory to the secretary if, within the preceding four years, the secretary determines that they have done any of the following:

(1) Engaged in conduct which demonstrates a lack of financial responsibility, including, but not limited to, delinquent accounts payable, judgments of liability, insolvency, or bankruptcy.

(2) Failed to assure future financial responsibility unless an irrevocable guarantee is provided.

(3) Otherwise violated this chapter which resulted in license revocation.

(b) The irrevocable guarantee may include a personal or corporate guarantee, a certificate of deposit, a bank letter of credit, or a surety bond, as determined to be appropriate by the secretary.

(c) The guarantee shall not be less than ten thousand dollars ($10,000) or 20 percent of the annual dollar volume of business based on farm product value returned to the grower, whichever is greater, as assurance that the licensee's or applicant's business will be conducted in accordance with this chapter and that the licensee or applicant will pay all amounts due farm products creditors.

(d) The secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the guarantee, but in no case shall the guarantee be reduced below ten thousand dollars ($10,000). A licensee who is notified by the secretary to provide a guarantee in an increased amount shall do so within a reasonable time as specified by the secretary. If the licensee fails to do so, the secretary may, after a notice and opportunity for a hearing, suspend or revoke the license of the licensee.

SEC. 70. Section 64101 of the Food and Agricultural Code is amended to read:

64101. There is in the state government the Dairy Council of California which shall consist of not less than 24, nor more than 25, members. All members of the council shall be appointed by the secretary and may hold office at the pleasure of the secretary. The membership of the council shall be as follows:

(a) There shall be 12 members that are actually engaged in the production of milk. These 12 members are the producer members of the council.

(b) There shall be 12 members that are handlers or producer-handlers of dairy products. These 12 members are the handler members of the council.

(c) Upon the recommendation of the council, the secretary may appoint one person who is neither a producer, handler, or producer-handler, and who shall represent the public generally.

SEC. 71. 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 Human Resources, 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, 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 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. 72. 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 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 Human Resources, 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, 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. 73. Section 7480 of the Government Code, as amended by Section 2 of Chapter 304 of the Statutes of 2011, is repealed.

SEC. 74. Section 7522.20 of the Government Code is amended to read:

7522.20. (a) Each retirement system that offers a defined benefit plan for nonsafety members of the system shall use the formula prescribed by this section. The defined benefit plan shall provide a pension at retirement for service equal to the percentage of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding quarter year, in the following table, multiplied by the number of years of service in the system as a nonsafety member. A member may retire for service under this section after five years of service and upon reaching 52 years of age.

Age of Retirement	Fraction
52	1.000
52 ¼	1.025
52 ½	1.050
52 ¾	1.075
53	1.100
53 ¼	1.125
53 ½	1.150
53 ¾	1.175
54	1.200
54 ¼	1.225
54 ½	1.250
54 ¾	1.275
55	1.300
55 ¼	1.325
55 ½	1.350
55 ¾	1.375
56	1.400
56 ¼	1.425
56 ½	1.450
56 ¾	1.475
57	1.500
57 ¼	1.525
57 ½	1.550
57 ¾	1.575
58	1.600
58 ¼	1.625

58 ½	1.650
58 ¾	1.675
59	1.700
59 ¼	1.725
59 ½	1.750
59 ¾	1.775
60	1.800
60 ¼	1.825
60 ½	1.850
60 ¾	1.875
61	1.900
61 ¼	1.925
61 ½	1.950
61 ¾	1.975
62	2.000
62 ¼	2.025
62 ½	2.050
62 ¾	2.075
63	2.100
63 ¼	2.125
63 ½	2.150
63 ¾	2.175
64	2.200
64 ¼	2.225
64 ½	2.250
64 ¾	2.275
65	2.300
65 ¼	2.325
65 ½	2.350
65 ¾	2.375
66	2.400
66 ¼	2.425
66 ½	2.450
66 ¾	2.475
67	2.500

(b) Pensionable compensation used to calculate the defined benefit shall be limited as described in Section 7522.10.

(c) A new member of the State Teachers' Retirement System shall be subject to the formula established pursuant to Section 24202.6 of the Education Code.

SEC. 75. Section 7522.56 of the Government Code is amended to read:

7522.56. (a) This section shall apply to any person who is receiving a pension benefit from a public retirement system and shall supersede any other provision in conflict with this section.

(b) A retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by this section.

(c) A person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration.

(d) Appointments of the person authorized under this section shall not exceed a total for all employers in that public retirement system of 960 hours or other equivalent limit, in a calendar or fiscal year, depending on the administrator of the system. The rate of pay for the employment shall not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties, divided by 173.333 to equal an hourly rate. A retired person whose employment without reinstatement is authorized by this section shall acquire no service credit or retirement rights under this section with respect to the employment unless he or she reinstates from retirement.

(e) (1) Notwithstanding subdivision (c), any retired person shall not be eligible to serve or be employed by a public employer if, during the 12-month period prior to an appointment described in this section, the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with a public employer. A retiree shall certify in writing to the employer upon accepting an offer of employment that he or she is in compliance with this requirement.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(f) A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement unless he or she meets one of the following conditions:

(1) The employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.

(2) The state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources. The department may establish a process to delegate appointing authority to individual state agencies, but shall audit the process to determine if abuses of the system occur. If necessary, the department may assume an agency's appointing authority for retired workers and may charge the department an appropriate amount for administering that authority.

(3) The retiree is eligible to participate in the Faculty Early Retirement Program pursuant to a collective bargaining agreement with the California State University that existed prior to January 1, 2013, or has been included in subsequent agreements.

(4) The retiree is a public safety officer or firefighter.

(g) A retired person who accepted a retirement incentive upon retirement shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement and subdivision (f) shall not apply.

(h) This section shall not apply to a person who is retired from the State Teachers' Retirement System, and who is subject to Section 24214, 24214.5, or 26812 of the Education Code.

(i) This section shall not apply to (1) a subordinate judicial officer whose position, upon retirement, is converted to a judgeship pursuant to Section 69615, and he or she returns to work in the converted position, and the employer is a trial court, or (2) a retiree

who takes office as a judge of a court of record pursuant to Article VI of the California Constitution or a retiree of the Judges' Retirement System I or the Judges' Retirement System II who is appointed to serve as a retired judge.

SEC. 76. Section 7522.57 of the Government Code is amended to read:

7522.57. (a) This section shall apply to any retired person who is receiving a pension benefit from a public retirement system and is first appointed on or after January 1, 2013, to a salaried position on a state board or commission. This section shall supersede any other provision in conflict with this section.

(b) A person who is retired from a public retirement system may serve without reinstatement from retirement or loss or interruption of benefits provided that appointment is to a part-time state board or commission. A retired person whose employment without reinstatement is authorized by this subdivision shall acquire no benefits, service credit, or retirement rights with respect to the employment. Unless otherwise defined in statute, for the purpose of this section, a part-time appointment shall mean an appointment with a salary of no more than $60,000 annually, which shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

(c) A person who is retired from the Public Employees' Retirement System shall not serve on a full-time basis on a state board or commission without reinstatement unless that person serves as a nonsalaried member of the board or commission and receives only per diem authorized to all members of the board or commission. A person who serves as a nonsalaried member of a board or commission shall not earn any service credit or benefits in the Public Employees' Retirement System or make contributions with respect to the service performed.

(d) A person retired from a public retirement system other than the Public Employees' Retirement System who is appointed on a full-time basis to a state board or commission shall choose one of the following options:

(1) The person may serve as a nonsalaried member of the board or commission and continue to receive his or her retirement

allowance, in addition to any per diem authorized to all members of the board or commission. The person shall not earn service credit or benefits in the Public Employees' Retirement System and shall not make contributions with respect to the service performed.

(2) (A) The person may suspend his or her retirement allowance or allowances and instate as a new member of the Public Employees' Retirement System for the service performed on the board or commission. The pensionable compensation earned pursuant to this paragraph shall not be eligible for reciprocity with any other retirement system or plan.

(B) Upon retiring for service after serving on the board or commission, the appointee shall be entitled to reinstatement of any suspended benefits, including employer provided retiree health benefits, that he or she was entitled to at the time of being appointed to the board or commission.

(e) Notwithstanding subdivisions (c) and (d), a person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment to a full-time state board pursuant to Section 5075 of the Penal Code.

SEC. 77. Section 7522.72 of the Government Code is amended to read:

7522.72. (a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, and, on and after that date, Section 7522.70 shall not apply.

(b) (1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(2) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or

her official duties, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(c) (1) A public employee shall forfeit all the retirement benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The retirement benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the public employee's conviction. Retirement benefits attributable to service performed prior to the date of the first commission of the felony for which the public employee was convicted shall not be forfeited as a result of this section.

(2) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

(d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.

(2) Any funds returned to the public employee pursuant to subdivision (d) shall be disbursed by electronic funds transfer to an account of the public employee, in a manner conforming with the requirements of the Internal Revenue Code, and the public retirement system shall notify the court and the district attorney at least three business days before that disbursement of funds.

(3) For the purposes of this subdivision, a "distribution event" means any of the following:

(A) Separation from employment.

(B) Death of the member.

(C) Retirement of the member.

(e) (1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:

(A) The date of conviction.

(B) The date of the first known commission of the felony.

(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) The public employer that employs or employed a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(g) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

(h) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to do either of the following:

(1) Recover the forfeited retirement benefits as adjusted for the contributions received pursuant to subdivision (d).

(2) Redeposit those contributions and interest, as determined by the system actuary, and then recover the full amount of the forfeited benefits.

(i) A public employee first employed by a public employer or first elected or appointed to an office on or after January 1, 2013, shall be subject to Section 7522.74.

SEC. 78. Section 8164.1 of the Government Code is amended to read:

8164.1. There is in state government a Capitol Area Committee consisting of nine members who shall be appointed in the following manner:

(a) Four members of the committee shall be appointed by the Governor of which at least one member shall be appointed from a list of three candidates submitted by the City of Sacramento and at least one member shall be appointed from a list of three candidates submitted by the County of Sacramento. Two members shall be appointed for a term expiring December 31, 1979, and two for a term expiring December 31, 1981.

(b) Two members shall be appointed by the Speaker of the Assembly, one of whom may be a Member of the Assembly, and

two members shall be appointed by the Senate Rules Committee, one of whom may be a Member of the Senate. Legislative members of the committee shall meet and, except as otherwise provided by the Constitution, advise the department to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. Of the four appointments by the Legislature, two shall be appointed for a term expiring December 31, 1979, and two for a term expiring December 31, 1981.

(c) One shall be appointed by and serve at the pleasure of the director.

Subsequent appointments pursuant to subdivisions (a) and (b) shall be for terms of four years, ending on December 31 of the fourth year after the end of the prior term, except that appointments to fill vacancies occurring for any reason other than the expiration of the term shall be for the unexpired portion of the term in which they occur. The members of the board shall hold office until their successors are appointed and qualify.

The members of the committee shall not receive compensation from the state for their services under this article but, when called to attend a meeting of the committee, shall be reimbursed for their actual and necessary expenses incurred in connection with the meeting in accordance with the rules of the Department of Human Resources.

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 79. The heading of Chapter 3.1 (commencing with Section 8240) of Division 1 of Title 2 of the Government Code is amended to read:

Chapter 3.1. Commission on the Status of Women and Girls

SEC. 80. Section 11019 of the Government Code is amended to read:

11019. (a) Any department or authority specified in subdivision (b) may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, advance to a

community-based private nonprofit agency with which it has contracted, pursuant to federal law and related state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws during the fiscal year to the private nonprofit agency. Advances in excess of 25 percent may be made on contracts financed by a federal program when the advances are not prohibited by federal guidelines. Advance payments may be provided for services to be performed under any contract with a total annual contract amount of four hundred thousand dollars ($400,000) or less. This amount shall be increased by 5 percent, as determined by the Department of Finance, for each year commencing with 1989. Advance payments may also be made with respect to any contract that the Department of Finance determines has been entered into with any community-based private nonprofit agency with modest reserves and potential cashflow problems. No advance payment shall be granted if the total annual contract exceeds four hundred thousand dollars ($400,000), without the prior approval of the Department of Finance.

The specific departments and authority mentioned in subdivision (b) shall develop a plan to establish control procedures for advance payments. Each plan shall include a procedure whereby the department or authority determines whether or not an advance payment is essential for the effective implementation of a particular program being funded. Each plan shall be approved by the Department of Finance.

(b) Subdivision (a) shall apply to the Emergency Medical Services Authority, the California Department of Aging, the State Department of Developmental Services, the State Department of Alcohol and Drug Programs, the Department of Corrections and Rehabilitation, including the Division of Juvenile Justice, the Department of Community Services and Development, the Employment Development Department, the State Department of Health Services, the State Department of State Hospitals, the Department of Rehabilitation, the State Department of Social Services, the Department of Child Support Services, the State Department of Education, the area boards on developmental disabilities, the State Council on Developmental Disabilities, the Office of Statewide Health Planning and Development, and the

California Environmental Protection Agency, including all boards and departments contained therein.

Subdivision (a) shall also apply to the California Health and Human Services Agency, which may make advance payments, pursuant to the requirements of that subdivision, to multipurpose senior services projects as established in Chapter 8 (commencing with Section 9560) of Division 8.5 of the Welfare and Institutions Code.

Subdivision (a) shall also apply to the Natural Resources Agency, including all boards and departments contained in that agency, which may make advance payments pursuant to the requirements of that subdivision with respect to grants and contracts awarded to certified local community conservation corps.

(c) A county may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to any applicable federal or state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency.

SEC. 81. Section 11020 of the Government Code is amended to read:

11020. (a) Unless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays. However, any state agency or division, branch, or office thereof may be kept open for the transaction of business on other hours and on other days than those specified in this subdivision.

(b) If this section is in conflict with a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, the memorandum shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Subdivision (a) shall not apply to any fair or association specified under Division 3 (commencing with Section 3001) of the Food and Agricultural Code.

SEC. 82. Section 11435.15 of the Government Code is amended to read:

11435.15. (a) The following state agencies shall provide language assistance in adjudicative proceedings to the extent provided in this article:

~~Agricultural~~

(1) Agricultural Labor Relations Board.

~~State~~

(2) State Department of Alcohol and Drug Programs.

~~State~~

(3) State Athletic Commission.

~~California~~

(4) California Unemployment Insurance Appeals Board.

~~Board~~

(5) Board of Parole Hearings.

~~State~~

(6) State Board of Barbering and Cosmetology.

~~State~~

(7) State Department of Developmental Services.

~~Public~~

(8) Public Employment Relations Board.

~~Franchise~~

(9) Franchise Tax Board.

~~State~~

(10) State Department of Health Care Services.

~~Department~~

(11) Department of Housing and Community Development.

~~Department~~

(12) Department of Industrial Relations.

~~State~~

(13) State Department of State Hospitals.

~~Department~~

(14) Department of Motor Vehicles.

~~Notary~~

(15) Notary Public Section, Office of the Secretary of State.

~~Public~~

(16) Public Utilities Commission.

~~Office~~
(17) Office of Statewide Health Planning and Development.
~~State~~
(18) State Department of Social Services.
~~Workers'~~
(19) Workers' Compensation Appeals Board.
~~Division~~
(20) Division of Juvenile Justice.
~~Division~~
(21) Division of Juvenile Parole Operations.
~~Department~~
(22) Department of Insurance.
~~State~~
(23) State Personnel Board.
~~California~~
(24) California Board of Podiatric Medicine.
~~Board~~
(25) Board of Psychology.

(b) Nothing in this section prevents an agency other than an agency listed in subdivision (a) from electing to adopt any of the procedures in this article, provided that any selection of an interpreter is subject to Section 11435.30.

(c) Nothing in this section prohibits an agency from providing an interpreter during a proceeding to which this chapter does not apply, including an informal factfinding or informal investigatory hearing.

(d) This article applies to an agency listed in subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency's adjudicative proceedings.

SEC. 83. Section 11552 of the Government Code is amended to read:

11552. (a) Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(1) Commissioner of Business Oversight.
(2) Director of Transportation.
(3) Real Estate Commissioner.
(4) Director of Social Services.
(5) Director of Water Resources.
(6) Director of General Services.

(7) Director of Motor Vehicles.
(8) Executive Officer of the Franchise Tax Board.
(9) Director of Employment Development.
(10) Director of Alcoholic Beverage Control.
(11) Director of Housing and Community Development.
(12) Director of Alcohol and Drug Programs.
(13) Director of Statewide Health Planning and Development.
(14) Director of the Department of Human Resources.
(15) Director of Health Care Services.
(16) Director of State Hospitals.
(17) Director of Developmental Services.
(18) State Public Defender.
(19) Director of the California State Lottery.
(20) Director of Fish and Wildlife.
(21) Director of Parks and Recreation.
(22) Director of Rehabilitation.
(23) Director of the Office of Administrative Law.
(24) Director of Consumer Affairs.
(25) Director of Forestry and Fire Protection.
(26) The Inspector General pursuant to Section 6125 of the Penal Code.
(27) Director of Child Support Services.
(28) Director of Industrial Relations.
(29) Director of Toxic Substances Control.
(30) Director of Pesticide Regulation.
(31) Director of Managed Health Care.
(32) Director of Environmental Health Hazard Assessment.
(33) Director of Technology.
(34) Director of California Bay-Delta Authority.
(35) Director of California Conservation Corps.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 84. Section 12460 of the Government Code is amended to read:

12460. The Controller shall submit an annual report to the Governor containing a statement of the funds of the state, its

revenues, and the public expenditures during the preceding fiscal year. The annual report shall be known as the budgetary-legal basis annual report and prepared in a manner that will account for prior year adjustments, fund balances, encumbrances, deferred payroll, revenues, expenditures, and other components on the same basis as that of the applicable Governor's Budget and the applicable Budget Act, as determined by the Director of Finance in consultation with the Controller. If the Governor's Budget or the Budget Act does not provide the applicable information for this purpose, funds shall be accounted for in the budgetary-legal basis annual report in a manner prescribed by Section 13344. The requirements of this section shall apply beginning with the issuance of the budgetary-legal basis annual report for the 2013–14 fiscal year. The Controller shall confer with the Department of Finance to propose and develop methods to facilitate these changes pursuant to Section 13344, including methods to ensure that information related to encumbrances and deferred payroll continue to be listed in the state's financial statements, as deemed appropriate by the Controller.

The Controller shall also issue a comprehensive annual financial report prepared strictly in accordance with "Generally Accepted Accounting Principles."

The annual reports referenced in this section shall be compiled and published by the Controller in the time, form, and manner prescribed by him or her.

SEC. 85. Section 12838.14 of the Government Code is amended to read:

12838.14. (a) Notwithstanding any other provision of law, money recovered by the Department of Corrections and Rehabilitation from a union paid leave settlement agreement shall be credited to the fiscal year in which the recovered money is received. An amount not to exceed the amount of the money received shall be available for expenditure to the Department of Corrections and Rehabilitation for the fiscal year in which the recovered money is received, upon approval of the Department of Finance. If this statute is enacted on or after July 1, 2012, any money received prior to July 1, 2012, for purposes of this section, shall be available for expenditure for the 2012–13 fiscal year.

(b) The Department of Corrections and Rehabilitation shall identify and report the total amount collected annually to the Department of Finance.

(c) This section shall become inoperative on June 30, 2021, and, as of January 1, 2022, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2022, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 86. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, 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, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) (1) "Genetic information" means, with respect to any individual, information about any of the following:

(A) The individual's genetic tests.

(B) The genetic tests of family members of the individual.

(C) The manifestation of a disease or disorder in family members of the individual.

(2) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) "Genetic information" does not include information about the sex or age of any individual.

(h) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(i) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(j) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation.

(*l*) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(m) Notwithstanding subdivisions (j) and (*l*), if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or (*l*), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (*l*).

(n) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(o) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(p) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice, including religious dress and

grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.

(q) (1) “Sex” includes, but is not limited to, the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(r) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(s) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(t) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 87. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Manufacturer" means a business that meets both of the following requirements:

(1) It is primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) It is classified between Codes 31 to 33, inclusive, of the North American Industry Classification System.

(d) (1) "Small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) "Microbusiness" is a small business which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars ($2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

(3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude the qualification of businesses that are dominant in their industry. In addition, the standards shall provide that the certified small

business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(A) A certified small business or microbusiness is deemed to perform a commercially useful function if the business does all of the following:

(i) Is responsible for the execution of a distinct element of the work of the contract.

(ii) Carries out its obligation by actually performing, managing, or supervising the work involved.

(iii) Performs work that is normal for its business services and functions.

(iv) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.

(v) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation.

(e) "Disabled veteran business enterprise" means an enterprise that has been certified as meeting the qualifications established by paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code.

SEC. 88. The heading of Chapter 3 (commencing with Section 15570) of Part 8.5 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 89. Section 15606.5 of the Government Code, as added by Chapter 1167 of the Statutes of 1967, is amended and renumbered to read:

15606.7 Training of assessors and their staffs under Sections 15606 and 15608 shall be provided by the board on a nonreimbursable basis.

SEC. 90. Section 15814.25 of the Government Code, as added by Section 1 of Chapter 234 of the Statutes of 1997, is amended and renumbered to read:

15814.29 Notwithstanding subdivision (f) of Section 15814.11, for the purposes of this chapter "state agency" also shall include any local government as defined in subdivision (b) of Section 5921.

SEC. 91. Section 15819.30 of the Government Code, as added by Section 8 of Chapter 585 of the Statutes of 1993, is amended and renumbered to read:

15819.17 (a) The necessary funding for the construction of the Secure Substance Abuse Treatment Facility authorized by Section 5 of Chapter 585 of the Statutes of 1993 may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for this purpose provided that the following apply:

(1) "Prison facility" as used in Section 15819.1 includes the Secure Substance Abuse Treatment Facility.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the Secure Substance Abuse Treatment Facility.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the Secure Substance Abuse Treatment Facility deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections and Rehabilitation for the purpose of acquiring and constructing or refinancing the prison facility so financed.

The sum of ninety-three million five hundred thousand dollars ($93,500,000) shall be available for capital outlay for the Secure Substance Abuse Treatment Facility from funds derived from lease-purchase financing methods.

Funds so appropriated shall be available as necessary for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, *and* long lead and equipment items. A maximum of two million

dollars ($2,000,000) of the funds may be available for mitigation costs of local government and school districts.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in this section pursuant to the board's authority under Section 13332.11. In addition, the State Public Works Board may authorize any additional amounts necessary to establish a reasonable construction reserve and to pay the costs of financing, including the payment of interest during acquisition or construction of the project, the cost of financing a debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 92. Section 15820.922 of the Government Code is amended to read:

15820.922. (a) The board may issue up to five hundred million dollars ($500,000,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 (commencing with Section 15830) to finance the acquisition, design, and construction, including, without limitation, renovation, and a reasonable construction reserve, of approved adult local criminal justice facilities described in Section 15820.92, and any additional amount authorized under Section 15849.6 to pay for the cost of financing.

(b) Proceeds from the revenue bonds, notes, or bond anticipation notes may be used to reimburse a participating county for the costs of acquisition, design, and construction, including, without limitation, renovation, for approved adult local criminal justice facilities.

(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.921 are continuously appropriated for purposes of this chapter.

SEC. 93. Section 19815 of the Government Code is amended to read:

19815. As used in this part:

(a) "Department" means the Department of Human Resources.

(b) "Director" means the Director of the Department of Human Resources.

(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, employees of the Department of Human Resources, 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. 94. Section 20391 of the Government Code is amended to read:

20391. "State peace officer/firefighter member" means:

(a) All persons in the Board of Parole Hearings, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Care Services, the Department of Toxic Substances Control, the California Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the State Department of State Hospitals, the Department of Motor Vehicles, the Department of Social Services employed with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), and Investigator Assistant (Class Code 8554) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(b) All persons in the Department of Alcoholic Beverage Control employed with the class title Investigator Trainee, Alcoholic Beverage Control (Class Code 7553), Investigator I, Alcoholic Beverage Control, Range A and B (Class Code 7554), and Investigator II, Alcoholic Beverage Control (Class Code 7555) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(c) All persons within the Department of Justice who are state employees as defined in subdivision (c) of Section 3513 and who have been designated as peace officers and performing investigative duties.

(d) All persons in the Department of Parks and Recreation employed with the class title of Park Ranger (Intermittent) (Class Code 0984) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(e) All persons in the Franchise Tax Board who have been designated as peace officers in subdivision (s) of Section 830.3 of the Penal Code.

(f) A member who is employed in a position that is reclassified to state peace officer/firefighter pursuant to this section may make an irrevocable election in writing to remain subject to the service retirement benefit and the normal rate of contribution applicable prior to reclassification by filing a notice of election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for service included in the federal system.

SEC. 95. Section 20410 of the Government Code is amended to read:

20410. "State safety member" also includes all persons in the Department of Alcoholic Beverage Control, the Board of Parole Hearings, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Care Services, the Department of Toxic Substances Control, the California Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the State Department of State Hospitals, the Department of Motor Vehicles, and the Department of Social Services employed with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), Investigator Trainee (Class Code 8555) and Investigator Assistant (Class Code 8554), Supervising Special Investigator I (Class Code 8548), Special Investigator II (Class Code 8547), and persons in the class of State Park Ranger (Intermittent) (Class Code 0984) in the Department of Parks and Recreation, who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

SEC. 96. Section 20516 of the Government Code is amended to read:

20516. (a) Notwithstanding any other provision of this part, with or without a change in benefits, a contracting agency and its employees may agree, in writing, to share the costs of the employer contribution. The cost sharing pursuant to this section shall also apply for related nonrepresented employees as approved in a resolution passed by the contracting agency.

(b) The collective bargaining agreement shall specify the exact percentage of member compensation that shall be paid toward the current service cost of the benefits by members. The member contributions shall be contributions over and above normal contributions otherwise required by this part and shall be treated as normal contributions for all purposes of this part. The contributions shall be uniform, except as described in subdivision (c), with respect to all members within each of the following classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, and all local safety members other than local police officers, local firefighters, and county peace officers. The balance of any costs shall be paid by the contracting agency and shall be credited to the employer's account. An employer shall not use impasse procedures to impose member cost sharing on any contribution amount above that which is authorized by law.

(c) Member cost sharing may differ by classification for groups of employees subject to different levels of benefits pursuant to Sections 7522.20, 7522.25, and 20475, or by a recognized collective bargaining unit if agreed to in a memorandum of understanding reached pursuant to the applicable collective bargaining laws.

(d) This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts. Contributions provided by this section shall be withheld from member compensation or otherwise collected when the contract amendment becomes effective.

(e) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that,

in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(f) Nothing in this section shall preclude a contracting agency and its employees from independently agreeing in a memorandum of understanding to share the costs of any benefit, in a manner inconsistent with this section. However, any agreement in a memorandum of understanding that is inconsistent with this section shall not be part of the contract between this system and the contracting agency.

(g) If, and to the extent that, the board determines that a cost-sharing agreement under this section would conflict with Title 26 of the United States Code, the board may refuse to approve the agreement.

(h) Nothing in this section shall require a contracting agency to enter into a memorandum of understanding or collective bargaining agreement with a bargaining representative in order to increase the amount of member contributions when such a member contribution increase is authorized by other provisions under this part.

SEC. 97. Section 20677.7 of the Government Code is amended to read:

20677.7. (a) Notwithstanding Section 20677.4, effective with the beginning of the September 2010 pay period, the normal rate of contribution for state miscellaneous or state industrial members who are represented by State Bargaining Unit 8, shall be:

(1) Eleven percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid to a member whose service is not included in the federal system.

(2) Ten percent of compensation in excess of five hundred thirteen dollars ($513) per month paid to a member whose service has been included in the federal system.

(b) Notwithstanding Section 20677.4, effective with the beginning of the September 2010 pay period, the normal rate of contribution for state miscellaneous or state industrial members who are represented by State Bargaining Unit 5 shall be:

(1) Eight percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid to a member whose service is not included in the federal system.

(2) Seven percent of compensation in excess of five hundred thirteen dollars ($513) per month paid to a member whose service has been included in the federal system.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless and until approved by the Legislature in the annual Budget Act.

(d) Consistent with the normal rate of contribution for all members identified in this subdivision, the Director of the Department of Personnel Administration may exercise his or her discretion to establish the normal rate of contribution for a related state employee who is excepted from the definition of "state employee" in subdivision (c) of Section 3513, and an officer or employee of the executive branch of state government who is not a member of the civil service.

SEC. 98. Section 25060 of the Government Code is amended to read:

25060. Whenever a vacancy occurs in a board of supervisors, the Governor shall fill the vacancy. The appointee shall hold office until the election and qualification of his or her successor.

SEC. 99. Section 25062 of the Government Code is amended to read:

25062. When a vacancy occurs from the failure of the person elected to file his or her oath or bond as provided by law, and the person elected is appointed to fill the vacancy, he or she shall hold office for the unexpired term.

SEC. 100. Section 65040.7 of the Government Code is amended to read:

65040.7. (a) For purposes of this section, the following terms have the following meanings:

(1) "Energy security and military mission goals" means federal laws, regulations, or executive orders, related to alternative fuel and vehicle technology, clean energy, energy efficiency, water and waste conservation, greenhouse gas emissions reductions, and related infrastructure, including, but not limited to, the federal laws, regulations, and executive orders, and the goals set forth

therein, of the National Energy Conservation Policy Act (42 U.S.C. Sec. 8201 et seq.), the Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17001 et seq.), the Energy Policy Act of 2005 (42 U.S.C. Sec. 15801 et seq.), and the Energy Policy Act of 1992 (42 U.S.C. Sec. 13201 et seq.), and the goals set forth in Executive Order No. 13514, Executive Order No. 13423, and Executive Order No. 13221.

(2) "State energy and environmental policies" includes, but is not limited to, policies involving alternative fuels and vehicle technology and related fueling infrastructure, renewable electricity generation and related transmission infrastructure, energy efficiency and demand response, waste management, recycling, water conservation, water quality, water supply, greenhouse gas emissions reductions, and green chemistry.

(b) A state agency that is identified by the Office of Planning and Research pursuant to paragraph (1) of subdivision (c) shall, when developing and implementing state energy and environmental policies, consider the direct impacts of those policies upon the United States Department of Defense's energy security and military mission goals.

(c) The Office of Planning and Research shall do both of the following:

(1) Identify state agencies that develop and implement state energy and environmental policies that directly impact the United States Department of Defense's energy security and military mission goals in the state.

(2) Serve as a liaison to coordinate effective inclusion of the United States Department of Defense in the development and implementation of state energy and environmental policy.

(d) This section shall not do any of the following:

(1) Interfere with the existing authority of, or prevent, an agency or department from carrying out of its programs, projects, or responsibilities.

(2) Limit compliance with requirements imposed under any other law.

(3) Authorize or require the United States Department of Defense to operate differently from any other self-generating ratepayer, or alter an existing rate structure.

SEC. 101. Section 65302.5 of the Government Code is amended to read:

65302.5. (a) At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the California Geological Survey of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

(b) (1) The draft element of or draft amendment to the safety element of a county or a city's general plan shall be submitted to the State Board of Forestry and Fire Protection and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to either of the following:

(A) The adoption or amendment to the safety element of its general plan for each county that contains state responsibility areas.

(B) The adoption or amendment to the safety element of its general plan for each city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (i) of Section 51177.

(2) A county that contains state responsibility areas and a city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (i) of Section 51177 shall submit for review the safety element of its general plan to the State Board of Forestry and Fire Protection and every local agency that provides fire protection to territory in the city or county in accordance with

the following dates, as specified, unless the local government submitted the element within five years prior to that date:

(A) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 2010.

(B) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2011.

(C) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2012.

(D) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2013.

(E) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2014.

(F) All other local governments: December 31, 2015.

(3) The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft or an existing safety element and recommend changes to the planning agency within 60 days of its receipt regarding both of the following:

(A) Uses of land and policies in state responsibility areas and very high fire hazard severity zones that will protect life, property, and natural resources from unreasonable risks associated with wildland fires.

(B) Methods and strategies for wildland fire risk reduction and prevention within state responsibility areas and very high fire hazard severity zones.

(4) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county or the city council of a city shall consider the recommendations, if any, made by the State Board of Forestry and Fire Protection and any local agency that provides fire protection to territory in the city or county. If the board of supervisors or city council determines not to accept all or some of the recommendations, if any, made by the State Board of Forestry and Fire Protection or local agency, the board of supervisors or city council shall communicate in writing to the State Board of Forestry and Fire Protection or the local agency, its reasons for not accepting the recommendations.

(5) If the State Board of Forestry and Fire Protection's or local agency's recommendations are not available within the time limits required by this section, the board of supervisors or city council may act without those recommendations. The board of supervisors or city council shall take the recommendations into consideration the next time it considers amendments to the safety element.

SEC. 102. Section 65915 of the Government Code, as amended by Section 53 of Chapter 181 of the Statutes of 2012, is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 4100 of the Civil Code for persons and families of moderate income, as defined in Section

50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes

described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent

for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may

request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5

17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18

24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23

19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during

which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(*l*) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act *of* 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

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

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a

setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

SEC. 103. The heading of Chapter 3 (commencing with Section 80) of Division 1 of the Harbors and Navigation Code, as added by Section 2 of Chapter 136 of the Statutes of 2012, is amended to read:

CHAPTER 3. ~~BOATING AND WATERWAYS COMMISSION~~
BOATING AND WATERWAYS COMMISSION

SEC. 104. Section 80.2 of the Harbors and Navigation Code, as added by Section 2 of Chapter 136 of the Statutes of 2012, is amended to read:

80.2. The commission shall be composed of seven members appointed by the Governor, with the advice and consent of the Senate. The members shall have experience and background consistent with the functions of the commission. In making appointments to the commission, the Governor shall give primary consideration to geographical location of the residence of members as related to boating activities and harbors. In addition to the geographical considerations, the members of the commission shall be appointed with regard to their special interests in recreational boating. At least one of the members shall be a member of a recognized statewide organization representing recreational boaters. One member of the commission shall be a private small craft harbor owner and operator. One member of the commission shall be an officer or employee of a law enforcement agency responsible for enforcing boating laws.

The Governor shall appoint the first seven members of the commission for the following terms to expire on January 15: one member for one year, two members for two years, two members for three years, and two members for four years. Thereafter, appointments shall be for a four-year term. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

SEC. 105. Section 82 of the Harbors and Navigation Code, as added by Section 2 of Chapter 136 of the Statutes of 2012, is amended to read:

82. The division, consistent with Section 82.3, and in furtherance of the public interest and in accordance therewith, shall have only the following duties with respect to the commission:

(a) To submit any proposed changes in regulations pertaining to boating functions and responsibilities of the division to the commission for its advice and comment prior to enactment of changes.

(b) To submit proposals for transfers pursuant to Section 70, loans pursuant to Section 71.4 or 76.3, and grants pursuant to Section 72.5 to the commission for its advice and comment.

(c) To submit any proposed project it is considering approving to the commission if that project could have a potentially significant

impact on either public health or safety, public access, or the environment for the commission's advice and comment prior to approval by the division.

(d) To annually submit a report on its budget and expenditures to the commission for its advice and comment.

(e) To cause studies and surveys to be made of the need for small craft harbors and connecting waterways throughout the state and the most suitable sites therefor, and submit those studies and surveys to the commission for advice and comment.

SEC. 106. Section 1339.40 of the Health and Safety Code is amended to read:

1339.40. For purposes of this article, the following definitions apply:

(a) "Bereavement services" has the same meaning as defined in subdivision (a) of Section 1746.

(b) "Hospice care" means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes an interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care that emphasizes supportive services, including, but not limited to, home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary caregiver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family in coping with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(c) "Hospice facility" means a health facility as defined in subdivision (n) of Section 1250.

(d) "Inpatient hospice care" means hospice care that is provided to patients in a hospice facility, including routine, continuous, and inpatient care directly as specified in Section 418.110 of Title 42 of the Code of Federal Regulations, and may include short-term inpatient respite care as specified in Section 418.108 of Title 42 of the Code of Federal Regulations.

(e) "Interdisciplinary team" has the same meaning as defined in subdivision (g) of Section 1746.

(f) "Medical direction" has the same meaning as defined in subdivision (h) of Section 1746.

(g) "Palliative care" has the same meaning as defined in subdivision (j) of Section 1746.

(h) "Plan of care" has the same meaning as defined in subdivision (*l*) of Section 1746.

(i) "Skilled nursing services" has the same meaning as defined in subdivision (n) of Section 1746.

(j) "Social services/counseling services" has the same meaning as defined in subdivision (o) of Section 1746.

(k) "Terminal disease" or "terminal illness" has the same meaning as defined in subdivision (p) of Section 1746.

(*l*) "Volunteer services" has the same meaning as defined in subdivision (q) of Section 1746.

SEC. 107. Section 1339.41 of the Health and Safety Code is amended to read:

1339.41. (a) A person, governmental agency, or political subdivision of the state shall not be licensed as a hospice facility under this chapter unless the person or entity is a provider of hospice services licensed pursuant to Section 1751 and is certified as a hospice facility under Part 418 of Title 42 of the Code of Federal Regulations.

(b) A hospice provider that intends to provide inpatient hospice care in the hospice provider's own facility shall submit an application and fee for licensure as a hospice facility under this chapter. Notwithstanding the maximum period for a provisional license under subdivision (b) of Section 1268.5, the department may issue a provisional license to a hospice facility for a period of up to one year.

(c) A verified application for a new license completed on forms furnished by the department shall be submitted to the department upon the occurrence of either of the following:

(1) Establishment of a hospice facility.

(2) Change of ownership.

(d) The licensee shall submit to the department a verified application for a corrected license completed on forms furnished by the department upon the occurrence of any of the following:

(1) Construction of new or replacement hospice facility.

(2) Increase in licensed bed capacity.

(3) Change of name of facility.

(4) Change of licensed category.

(5) Change of location of facility.

(6) Change in bed classification.

(e) (1) A hospice facility that participates in the Medicare and Medicaid programs may obtain initial certification from a federal Centers for Medicare and Medicaid Services (CMS) approved accreditation organization.

(2) If the CMS-approved accreditation organization conducts certification inspections, the hospice facility shall transmit to the department, within 30 days of receipt, a copy of the final accreditation report of the accreditation organization.

(f) A hospice facility shall be separately licensed, irrespective of the location of the facility.

(g) (1) The licensee shall notify the department in writing of any changes in the information provided pursuant to subdivision (d) within 10 days of these changes. This notice shall include information and documentation regarding the changes.

(2) Each licensee shall notify the department within 10 days in writing of any change of the mailing address of the licensee. This notice shall include the new mailing address of the licensee.

(3) When a change in the principal officer of a corporate licensee, including the chairman, president, or general manager

occurs, the licensee shall notify the department of this change within 10 days in writing. This notice shall include the name and business address of the officer.

(4) Any decrease in licensed bed capacity of the facility shall require notification by letter to the department and shall result in the issuance of a corrected license.

SEC. 108. Section 1367.65 of the Health and Safety Code is amended to read:

1367.65. (a) On or after January 1, 2000, each health care service plan contract, except a specialized health care service plan contract, that is issued, amended, delivered, or renewed shall be deemed to provide coverage for mammography for screening or diagnostic purposes upon referral by a participating nurse practitioner, participating certified nurse-midwife, participating physician assistant, or participating physician, providing care to the patient and operating within the scope of practice provided under existing law.

(b) This section does not prevent application of copayment or deductible provisions in a plan, nor shall this section be construed to require that a plan be extended to cover any other procedures under an individual or a group health care service plan contract. This section does not authorize a plan enrollee to receive the services required to be covered by this section if those services are furnished by a nonparticipating provider, unless the plan enrollee is referred to that provider by a participating physician, nurse practitioner, or certified nurse-midwife providing care.

SEC. 109. Section 1531.15 of the Health and Safety Code is amended to read:

1531.15. (a) A licensee of an adult residential facility or group home for no more than 15 residents, that is eligible for and serving clients eligible for federal Medicaid funding and utilizing delayed egress devices pursuant to Section 1531.1, may install and utilize secured perimeters in accordance with the provisions of this section.

(b) As used in this section, “secured perimeters” means fences that meet the requirements prescribed by this section.

(c) Only individuals meeting all of the following conditions may be admitted to or reside in a facility described in subdivision (a) utilizing secured perimeters:

(1) The person shall have a developmental disability as defined in Section 4512 of the Welfare and Institutions Code.

(2) The person shall be receiving services and case management from a regional center under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

(3) (A) The person shall be 14 years of age or older, except as specified in subparagraph (B).

(B) Notwithstanding subparagraph (A), a child who is at least 10 years of age and less than 14 years of age may be placed in a licensed group home described in subdivision (a) using secured perimeters only if both of the following occur:

(i) A comprehensive assessment is conducted and an individual program plan meeting is convened to determine the services and supports needed for the child to receive services in a less restrictive, unlocked residential setting in California, and the regional center requests assistance from the State Department of Developmental Services' statewide specialized resource service to identify options to serve the child in a less restrictive, unlocked residential setting in California.

(ii) The regional center requests placement of the child in a licensed group home described in subdivision (a) using secured perimeters on the basis that the placement is necessary to prevent out-of-state placement or placement in a more restrictive, locked residential setting and the State Department of Developmental Services approves the request.

(4) The person is not a foster child under the jurisdiction of the juvenile court pursuant to Section 300, 450, 601, or 602 of the Welfare and Institutions Code.

(5) An interdisciplinary team, through the individual program plan (IPP) process pursuant to Section 4646.5 of the Welfare and Institutions Code, shall have determined the person lacks hazard awareness or impulse control and, for his or her safety and security, requires the level of supervision afforded by a facility equipped with secured perimeters, and, but for this placement, the person would be at risk of admission to, or would have no option but to remain in, a more restrictive placement. The individual program planning team shall determine the continued appropriateness of the placement at least annually.

(d) The licensee shall be subject to all applicable fire and building codes, regulations, and standards, and shall receive approval by the county or city fire department, the local fire prevention district, or the State Fire Marshal for the installed secured perimeters.

(e) The licensee shall provide staff training regarding the use and operation of the secured perimeters, protection of residents' personal rights, lack of hazard awareness and impulse control behavior, and emergency evacuation procedures.

(f) The licensee shall revise its facility plan of operation. These revisions shall first be approved by the State Department of Developmental Services. The plan of operation shall not be approved by the State Department of Social Services unless the licensee provides certification that the plan was approved by the State Department of Developmental Services. The plan shall include, but not be limited to, all of the following:

(1) A description of how the facility is to be equipped with secured perimeters that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143.6.

(2) A description of how the facility will provide training for staff.

(3) A description of how the facility will ensure the protection of the residents' personal rights consistent with Sections 4502, 4503, and 4504 of the Welfare and Institutions Code, and any applicable personal rights provided in Title 22 of the California Code of Regulations.

(4) A description of how the facility will manage residents' lack of hazard awareness and impulse control behavior.

(5) A description of the facility's emergency evacuation procedures.

(g) Secured perimeters shall not substitute for adequate staff.

(h) Emergency fire and earthquake drills shall be conducted on each shift in accordance with existing licensing requirements, and shall include all facility staff providing resident care and supervision on each shift.

(i) Interior and exterior space shall be available on the facility premises to permit clients to move freely and safely.

(j) For the purpose of using secured perimeters, the licensee shall not be required to obtain a waiver or exception to a regulation

that would otherwise prohibit the locking of a perimeter fence or gate.

(k) This section shall become operative only upon the publication in Title 17 of the California Code of Regulations of emergency regulations filed by the State Department of Developmental Services. These regulations shall be developed with stakeholders, including the State Department of Social Services, consumer advocates, and regional centers. The regulations shall establish program standards for homes that include secured perimeters, including requirements and timelines for the completion and updating of a comprehensive assessment of each consumer's needs, including the identification through the individual program plan process of the services and supports needed to transition the consumer to a less restrictive living arrangement, and a timeline for identifying or developing those services and supports. The regulations shall establish a statewide limit on the total number of beds in homes with secured perimeters. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 110. Section 11378 of the Health and Safety Code is amended to read:

11378. Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.

(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).

(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.

(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.

(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

SEC. 111. Section 11755 of the Health and Safety Code is amended to read:

11755. The department shall do all of the following:

(a) Adopt regulations pursuant to Section 11152 of the Government Code.

(b) Employ administrative, technical, and other personnel as may be necessary for the performance of its powers and duties.

(c) Do or perform any of the acts that may be necessary, desirable, or proper to carry out the purpose of this division.

(d) Provide funds to counties for the planning and implementation of local programs to alleviate problems related to alcohol and other drug use.

(e) Review and execute contracts for drug and alcohol services submitted for funds allocated or administered by the department.

(f) Provide for technical assistance and training to local alcohol and other drug programs to assist in the planning and implementation of quality services.

(g) Review research in, and serve as a resource to provide information relating to, alcohol and other drug programs.

(h) In cooperation with the Department of Human Resources, encourage training in other state agencies to assist the agencies to recognize employee problems relating to alcohol and other drug use that affects job performance and encourage the employees to seek appropriate services.

(i) Assist and cooperate with the Office of Statewide Health Planning and Development in the drafting and adoption of the state health plan to ensure inclusion of appropriate provisions relating to alcohol and other drug problems.

(j) In the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget for the alcohol and other drug ~~program~~ *programs*, which budget shall include expenditures proposed to be made under this division, and may include expenditures proposed to be made by any other state agency relating to alcohol and other drug problems, pursuant to an interagency agreement with the department.

(k) Review and certify alcohol and other drug programs meeting state standards pursuant to Chapter 7 (commencing with Section 11830) and Chapter 13 (commencing with Section 11847) of Part 2.

(*l*) Develop standards for ensuring minimal statewide levels of service quality provided by alcohol and other drug programs.

(m) Review and license narcotic treatment programs.

(n) Develop and implement, in partnership with the counties, alcohol and other drug prevention strategies especially designed for youth.

(o) Develop and maintain a centralized alcohol and drug abuse indicator data collection system that shall gather and obtain information on the status of the alcohol and other drug abuse problems in the state. This information shall include, but not be limited to, all of the following:

(1) The number and characteristics of persons receiving recovery or treatment services from alcohol and other drug programs providing publicly funded services or services licensed by the state.

(2) The location and types of services offered by these programs.

(3) The number of admissions to hospitals on both an emergency room and inpatient basis for treatment related to alcohol and other drugs.

(4) The number of arrests for alcohol and other drug violations.

(5) The number of Department of Corrections and Rehabilitation, Division of Juvenile Facilities, commitments for drug violations.

(6) The number of Department of Corrections and Rehabilitation commitments for drug violations.

(7) The number or percentage of persons having alcohol or other drug problems as determined by survey information.

(8) The amounts of illicit drugs confiscated by law enforcement in the state.

(9) The statewide alcohol and other drug program distribution and the fiscal impact of alcohol and other drug problems upon the state.

Providers of publicly funded services or services licensed by the department to clients-participants shall report data in a manner, in a format, and under a schedule prescribed by the department.

(p) Issue an annual report that portrays the drugs abused, populations affected, user characteristics, crime-related costs, socioeconomic costs, and other related information deemed necessary in providing a problem profile of alcohol and other drug abuse in the state.

(q) (1) Require any individual, public or private organization, or government agency, receiving federal grant funds, to comply with all federal statutes, regulations, guidelines, and terms and conditions of the grants. The failure of the individual, public or private organization, or government agency, to comply with the statutes, regulations, guidelines, and terms and conditions of grants received may result in the department's disallowing noncompliant costs, or the suspension or termination of the contract or grant award allocating the grant funds.

(2) Adopt regulations implementing this subdivision in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed necessary for the preservation of the public peace, health and safety, or general welfare. Subsequent amendments to the adoption of emergency regulations shall be deemed an emergency only if those amendments are adopted in direct response to a change in federal statutes, regulations, guidelines, or the terms and conditions of federal grants. Nothing in this paragraph shall be interpreted as prohibiting the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code.

SEC. 112. Section 25110.11 of the Health and Safety Code is amended to read:

25110.11. (a) "Contained gaseous material," for purposes of subdivision (a) of Section 25124 or any other provision of this chapter, means any gas that is contained in an enclosed cylinder or other enclosed container.

(b) Notwithstanding subdivision (a), "contained gaseous material" does not include any exhaust or flue gas, or other vapor stream, or any air or exhaust gas stream that is filtered or otherwise processed to remove particulates, dusts, or other air pollutants, regardless of the source.

SEC. 113. Section 34177 of the Health and Safety Code is amended to read:

34177. Successor agencies are required to do all of the following:

(a) Continue to make payments due for enforceable obligations.

(1) On and after February 1, 2012, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency under Section 34169. However, payments associated with obligations excluded from the definition of enforceable obligations by paragraph (2) of subdivision (d) of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision. The enforceable obligation payment schedule may be amended by the successor agency at any public meeting and shall be subject to the approval of the oversight board as soon as the board has sufficient members to form a quorum. In recognition of the fact that the timing of the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231 delayed the preparation by successor agencies and the approval by oversight boards of the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule, a successor agency may amend the Enforceable Obligation Payment Schedule to authorize the continued payment of enforceable obligations until the time that the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule has been approved by the oversight board and by the Department of Finance.

(2) The Department of Finance and the Controller shall each have the authority to require any documents associated with the enforceable obligations to be provided to them in a manner of their choosing. Any taxing entity, the department, and the Controller shall each have standing to file a judicial action to prevent a violation under this part and to obtain injunctive or other appropriate relief.

(3) Commencing on the date the Recognized Obligation Payment Schedule is valid pursuant to subdivision (*l*), only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule. In addition, after it becomes valid, the Recognized Obligation Payment Schedule shall supersede the Statement of Indebtedness, which shall no longer be prepared nor have any effect under the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(4) Nothing in the act adding this part is to be construed as preventing a successor agency, with the prior approval of the oversight board, as described in Section 34179, from making payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule.

(5) From February 1, 2012, to July 1, 2012, a successor agency shall have no authority and is hereby prohibited from accelerating payment or making any lump-sum payments that are intended to prepay loans unless such accelerated repayments were required prior to the effective date of this part.

(b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(c) Perform obligations required pursuant to any enforceable obligation.

(d) Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency. In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(e) Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. The disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each

as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188. The requirements of this subdivision shall not apply to a successor agency that has been issued a finding of completion by the Department of Finance pursuant to Section 34179.7.

(f) Enforce all former redevelopment agency rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency.

(g) Effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.

(h) Expeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.

(i) Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

(j) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.

(2) Proposed sources of payment for the costs identified in paragraph (1).

(3) Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

(k) Provide administrative cost estimates, from its approved administrative budget that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund, to the county auditor-controller for each six-month fiscal period.

(*l*) (1) Before each six-month fiscal period, prepare a Recognized Obligation Payment Schedule in accordance with the requirements of this paragraph. For each recognized obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

(A) Low and Moderate Income Housing Fund.

(B) Bond proceeds.

(C) Reserve balances.

(D) Administrative cost allowance.

(E) The Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by this part.

(F) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board in accordance with this part.

(2) A Recognized Obligation Payment Schedule shall not be deemed valid unless all of the following conditions have been met:

(A) A Recognized Obligation Payment Schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency. The initial schedule shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had the redevelopment agency not been dissolved.

(B) The Recognized Obligation Payment Schedule is submitted to and duly approved by the oversight board. The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the county administrative officer, the county auditor-controller, and the Department of Finance at the same time that the successor agency submits the Recognized Obligation Payment Schedule to the oversight board for approval.

(C) A copy of the approved Recognized Obligation Payment Schedule is submitted to the county auditor-controller and both the Controller's office and the Department of Finance and be posted on the successor agency's Internet Web site.

(3) The Recognized Obligation Payment Schedule shall be forward looking to the next six months. The first Recognized Obligation Payment Schedule shall be submitted to the Controller's office and the Department of Finance by April 15, 2012, for the period of January 1, 2012, to June 30, 2012, inclusive. This Recognized Obligation Payment Schedule shall include all payments made by the former redevelopment agency between January 1, 2012, through January 31, 2012, and shall include all

payments proposed to be made by the successor agency from February 1, 2012, through June 30, 2012. Former redevelopment agency enforceable obligation payments due, and reasonable or necessary administrative costs due or incurred, prior to January 1, 2012, shall be made from property tax revenues received in the spring of 2011 property tax distribution, and from other revenues and balances transferred to the successor agency.

(m) The Recognized Obligation Payment Schedule for the period of January 1, 2013, to June 30, 2013, shall be submitted by the successor agency, after approval by the oversight board, no later than September 1, 2012. Commencing with the Recognized Obligation Payment Schedule covering the period July 1, 2013, through December 31, 2013, successor agencies shall submit an oversight board-approved Recognized Obligation Payment Schedule to the Department of Finance and to the county auditor-controller no fewer than 90 days before the date of property tax distribution. The Department of Finance shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations no later than 45 days after the Recognized Obligation Payment Schedule is submitted. Within five business days of the department's determination, a successor agency may request additional review by the department and an opportunity to meet and confer on disputed items. The meet and confer period may vary; an untimely submittal of a Recognized Obligation Payment Schedule may result in a meet and confer period of less than 30 days. The department shall notify the successor agency and the county auditor-controllers as to the outcome of its review at least 15 days before the date of property tax distribution.

(1) The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the Department of Finance electronically, and the successor agency shall complete the Recognized Obligation Payment Schedule in the manner provided for by the department. A successor agency shall be in noncompliance with this paragraph if it only submits to the department an electronic message or a letter stating that the oversight board has approved a Recognized Obligation Payment Schedule.

(2) If a successor agency does not submit a Recognized Obligation Payment Schedule by the deadlines provided in this

subdivision, the city, county, or city and county that created the redevelopment agency shall be subject to a civil penalty equal to ten thousand dollars ($10,000) per day for every day the schedule is not submitted to the department. The civil penalty shall be paid to the county auditor-controller for allocation to the taxing entities under Section 34183. If a successor agency fails to submit a Recognized Obligation Payment Schedule by the deadline, any creditor of the successor agency or the Department of Finance or any affected taxing entity shall have standing to and may request a writ of mandate to require the successor agency to immediately perform this duty. Those actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Additionally, if an agency does not submit a Recognized Obligation Payment Schedule within 10 days of the deadline, the maximum administrative cost allowance for that period shall be reduced by 25 percent.

(3) If a successor agency fails to submit to the department an oversight board-approved Recognized Obligation Payment Schedule that complies with all requirements of this subdivision within five business days of the date upon which the Recognized Obligation Payment Schedule is to be used to determine the amount of property tax allocations, the department may determine if any amount should be withheld by the county auditor-controller for payments for enforceable obligations from distribution to taxing entities, pending approval of a Recognized Obligation Payment Schedule. The county auditor-controller shall distribute the portion of any of the sums withheld pursuant to this paragraph to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183 upon notice by the department that a portion of the withheld balances are in excess of the amount of enforceable obligations. The county auditor-controller shall distribute withheld funds to the successor agency only in accordance with a Recognized Obligation Payment Schedule approved by the department. County auditor-controllers shall lack the authority to withhold any other amounts from the allocations provided for under Section 34183 or 34188, unless required by a court order.

(n) Cause a postaudit of the financial transactions and records of the successor agency to be made at least annually by a certified public accountant.

SEC. 114. Section 34183.5 of the Health and Safety Code is amended to read:

34183.5. (a) The Legislature hereby finds and declares that due to the delayed implementation of this part due to the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231, some disruption to the intended application of this part and other law with respect to passthrough payments may have occurred.

(1) If a redevelopment agency or successor agency did not pay any portion of an amount owed for the 2011–12 fiscal year to an affected taxing entity pursuant to Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, or pursuant to any passthrough agreement entered into before January 1, 1994, between a redevelopment agency and an affected taxing entity, and to the extent the county auditor-controller did not remit the amounts owed for passthrough payments during the 2011–12 fiscal year, the county auditor-controller shall make the required payments to the taxing entities owed passthrough payments and shall reduce the amounts to which the successor agency would otherwise be entitled pursuant to paragraph (2) of subdivision (a) of Section 34183 at the next allocation of property tax under this part, subject to subdivision (b) of Section 34183. If the amount of available property tax allocation to the successor agency is not sufficient to make the required payment, the county auditor-controller shall continue to reduce allocations to the successor agency under paragraph (2) of subdivision (a) of Section 34183 until the time that the owed amount is fully paid. Alternatively, the county auditor-controller may accept payment from the successor agency's reserve funds for payments of passthrough payments owed as defined in this subdivision.

(2) If a redevelopment agency did not pay any portion of the amount owed for the 2011–12 fiscal year to an affected taxing entity pursuant to Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, or pursuant to any passthrough agreement entered into before January 1, 1994, between a redevelopment agency and an affected taxing entity, but the county auditor-controller did pay the difference that was owing, the county auditor-controller shall deduct from the next allocation of property tax to the successor agency under paragraph (2) of subdivision (a) of Section 34183, the amount of the payment made on behalf of

the successor agency by the county auditor-controller, not to exceed one-half the amount of passthrough payments owed for the 2011–12 fiscal year. If the amount of available property tax allocation to the successor agency is not sufficient to make the required deduction, the county auditor-controller shall continue to reduce allocations to the successor agency under paragraph (2) of subdivision (a) of Section 34183 until the time that the amount is fully deducted. Alternatively, the auditor-controller may accept payment from the successor agency's reserve funds for deductions of passthrough payments owed as defined in this subdivision. Amounts reduced from successor agency payments under this paragraph are available for the purposes of paragraphs (2) to (4), inclusive, of subdivision (a) of Section 34183 for the six-month period for which the property tax revenues are being allocated.

(b) In recognition of the fact that county auditor-controllers were unable to make the payments required by paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012, on January 16, 2012, due to the California Supreme Court's ruling in the case of California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231, in addition to taking the actions specified in Section 34183 with respect to the June 1 property tax allocations, county auditor-controllers should have made allocations as provided in paragraph (1).

(1) From the allocations made on June 1, 2012, for the Recognized Obligation Payment Schedule covering the period July 1, 2012, through December 31, 2012, deduct from the amount that otherwise would be deposited in the Redevelopment Property Tax Trust Fund on behalf of the successor agency an amount equivalent to the amount that each affected taxing entity was entitled to pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012. The amount to be retained by taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 for the January 1, 2012, through June 30, 2012, period is determined based on the Recognized Obligation Payment Schedule approved by the Department of Finance pursuant to subdivision (h) of Section 34179 and any amount determined to be owed pursuant to this subdivision. Any amounts so computed shall not be offset by any shortages in funding for recognized obligations for the period covering July 1, 2012, through December 31, 2012.

(2) (A) If an affected taxing entity has not received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 of the property tax distributed for the period January 1, 2012, through June 30, 2012, and paragraph (1), no later than July 9, 2012, the county auditor-controller shall determine the amount, if any, that is owed by each successor agency to taxing entities and send a demand for payment from the funds of the successor agency for the amount owed to taxing entities if it has distributed the June 1, 2012, allocation to the successor agencies. No later than July 12, 2012, successor agencies shall make payment of the amounts demanded to the county auditor-controller for deposit into the Redevelopment Property Tax Trust Fund and subsequent distribution to taxing entities. No later than July 16, 2012, the county auditor-controller shall make allocations of all money received by that date from successor agencies in amounts owed to taxing entities under this paragraph to taxing entities in accordance with Section 34183. The county auditor-controller shall make allocations of any money received after that date under this paragraph within five business days of receipt. These duties are not discretionary and shall be carried out with due diligence.

(B) If a county auditor-controller fails to determine the amounts owed to taxing entities and present a demand for payment by July 9, 2012, to the successor agencies, the Department of Finance or any affected taxing entity may request a writ of mandate to require the county auditor-controller to immediately perform this duty. Such actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Any county in which the county auditor-controller fails to perform the duties under this paragraph shall be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus 1.5 percent of the amount owed to taxing entities for each month that the duties are not performed. The civil penalties shall be payable to the taxing entities under Section 34183. Additionally, any county in which the county auditor-controller fails to make the required determinations and demands for payment under this paragraph by July 9, 2012, or fails to distribute the full amount of funds received from successor agencies as required by this paragraph shall not receive the distribution of sales and use tax scheduled for July 18, 2012, or any subsequent payment, up to the amount owed to taxing entities,

until the county auditor-controller performs the duties required by this paragraph.

(C) If a successor agency fails to make the payment demanded under subparagraph (A) by July 12, 2012, the Department of Finance or any affected taxing entity may file for a writ of mandate to require the successor agency to immediately make this payment. Such actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Any successor agency that fails to make payment by July 12, 2012, under this paragraph shall be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus one and one-half percent of the amount owed to taxing entities for each month that the payments are not made. Additionally, the city or county or city and county that created the redevelopment agency shall also be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus 1.5 percent of the amount owed to taxing entities for each month the payment is late. The civil penalties shall be payable to the taxing entities under Section 34183. If the Department of Finance finds that the imposition of penalties will jeopardize the payment of enforceable obligations it may request the court to waive some or all of the penalties. A successor agency that does not pay the amount required under this subparagraph by July 12, 2012, shall not pay any obligations other than bond debt service until full payment is made to the county auditor-controller. Additionally, any city, county or city and county that created the redevelopment agency that fails to make the required payment under this paragraph by July 12, 2012, shall not receive the distribution of sales and use tax scheduled for July 18, 2012, or any subsequent payment, up to the amount owed to taxing entities, until the payment required by this paragraph is made.

(D) The Legislature hereby finds and declares that time is of the essence. Funds that should have been received and were expected and spent in anticipation of receipt by community colleges, schools, counties, cities, and special districts have not been received resulting in significant fiscal impact to the state and taxing entities. Continued delay and uncertainty whether funds will be received warrants the availability of extraordinary relief as authorized herein.

(3) If an affected taxing entity has not received the full amount to which it was entitled pursuant to paragraph (4) of subdivision

(a) of Section 34183 for the period January 1, 2012, through June 30, 2012, and paragraph (1), the county auditor-controller shall reapply paragraph (1) to each subsequent property tax allocation until such time as the affected taxing entity has received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012.

SEC. 115. Section 39053 of the Health and Safety Code is amended to read:

39053. "State board" means the State Air Resources Board.

SEC. 116. Section 39510 of the Health and Safety Code is amended to read:

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 12 members.

(b) The members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems.

(c) Six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(d) Six members shall be board members from districts who shall reflect the qualitative requirements of subdivision (c) to the extent practicable. Of these members:

(1) One shall be a board member from the south coast district.

(2) One shall be a board member from the bay district.

(3) One shall be a board member from the San Joaquin Valley Unified Air Pollution Control District.

(4) One shall be a board member from the San Diego County Air Pollution Control District.

(5) One shall be a board member from the Sacramento district, the Placer County Air Pollution Control District, the Yolo-Solano Air Quality Management District, the Feather River Air Quality Management District, or the El Dorado County Air Pollution Control District.

(6) One shall be a board member of any other district.

(e) Any vacancy shall be filled by the Governor within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

(f) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. A member of the state board shall not be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that a member of the state board who is also a member of a district board shall not participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

SEC. 117. Section 39710 of the Health and Safety Code is amended to read:

39710. For purposes of this chapter, "fund" means the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

SEC. 118. Section 39712 of the Health and Safety Code is amended to read:

39712. (a) (1) It is the intent of the Legislature that moneys shall be appropriated from the fund only in a manner consistent with the requirements of this chapter and Article 9.7 (commencing with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) The state shall not approve allocations for a measure or program using moneys appropriated from the fund except after determining, based on the available evidence, that the use of those moneys furthers the regulatory purposes of Division 25.5 (commencing with Section 38500) and is consistent with law. If

any expenditure of moneys from the fund for any measure or project is determined by a court to be inconsistent with law, the allocations for the remaining measures or projects shall be severable and shall not be affected.

(b) Moneys shall be used to facilitate the achievement of reductions of greenhouse gas emissions in this state consistent with Division 25.5 (commencing with Section 38500) and, where applicable and to the extent feasible:

(1) Maximize economic, environmental, and public health benefits to the state.

(2) Foster job creation by promoting in-state greenhouse gas emissions reduction projects carried out by California workers and businesses.

(3) Complement efforts to improve air quality.

(4) Direct investment toward the most disadvantaged communities and households in the state.

(5) Provide opportunities for businesses, public agencies, nonprofits, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

(6) Lessen the impacts and effects of climate change on the state's communities, economy, and environment.

(c) Moneys appropriated from the fund may be allocated, consistent with subdivision (a), for the purpose of reducing greenhouse gas emissions in this state through investments that may include, but are not limited to, any of the following:

(1) Funding to reduce greenhouse gas emissions through energy efficiency, clean and renewable energy generation, distributed renewable energy generation, transmission and storage, and other related actions, including, but not limited to, at public universities, state and local public buildings, and industrial and manufacturing facilities.

(2) Funding to reduce greenhouse gas emissions through the development of state-of-the-art systems to move goods and freight, advanced technology vehicles and vehicle infrastructure, advanced biofuels, and low-carbon and efficient public transportation.

(3) Funding to reduce greenhouse gas emissions associated with water use and supply, land and natural resource conservation and management, forestry, and sustainable agriculture.

(4) Funding to reduce greenhouse gas emissions through strategic planning and development of sustainable infrastructure projects, including, but not limited to, transportation and housing.

(5) Funding to reduce greenhouse gas emissions through increased in-state diversion of municipal solid waste from disposal through waste reduction, diversion, and reuse.

(6) Funding to reduce greenhouse gas emissions through investments in programs implemented by local and regional agencies, local and regional collaboratives, and nonprofit organizations coordinating with local governments.

(7) Funding research, development, and deployment of innovative technologies, measures, and practices related to programs and projects funded pursuant to this chapter.

SEC. 119. Section 39716 of the Health and Safety Code is amended to read:

39716. (a) The Department of Finance, on behalf of the Governor, and in consultation with the state board and any other relevant state entity, shall develop and submit to the Legislature at the time of the department's adjustments to the proposed 2013–14 fiscal year budget pursuant to subdivision (e) of Section 13308 of the Government Code a three-year investment plan. Commencing with the 2016–17 fiscal year budget and every three years thereafter, with the release of the Governor's budget proposal, the Department of Finance shall include updates to the investment plan following the public process described in subdivisions (b) and (c). The investment plan, consistent with the requirements of Section 39712, shall do all of the following:

(1) Identify the state's near-term and long-term greenhouse gas emissions reduction goals and targets by sector.

(2) Analyze gaps, where applicable, in current state strategies to meeting the state's greenhouse gas emissions reduction goals and targets by sector.

(3) Identify priority programmatic investments of moneys that will facilitate the achievement of feasible and cost-effective greenhouse gas emissions reductions toward achievement of greenhouse gas reduction goals and targets by sector, consistent with subdivision (c) of Section 39712.

(b) (1) The state board shall hold at least two public workshops in different regions of the state and one public hearing prior to the Department of Finance submitting the investment plan.

(2) The state board shall, prior to the submission of each investment plan, consult with the Public Utilities Commission to ensure the investment plan is coordinated with, and does not conflict with or unduly overlap with, activities under the oversight or administration of the Public Utilities Commission undertaken pursuant to Part 5 (commencing with Section 38570) of Division 25.5 or other activities under the oversight or administration of the Public Utilities Commission that facilitate greenhouse gas emissions reductions consistent with this division. The investment plan shall include a description of the use of any moneys generated by the sale of allowances received at no cost by the investor-owned utilities pursuant to a market-based compliance mechanism.

(c) The Climate Action Team, established under Executive Order S-3-05, shall provide information to the Department of Finance and the state board to assist in the development of each investment plan. The Climate Action Team shall participate in each public workshop held on an investment plan and provide testimony to the state board on each investment plan. For purposes of this section, the Secretary of Labor and Workforce Development shall assist the Climate Action Team in its efforts.

SEC. 120. Section 39718 of the Health and Safety Code is amended to read:

39718. (a) Moneys in the fund shall be appropriated through the annual Budget Act consistent with the investment plan developed and submitted pursuant to Section 39716.

(b) Upon appropriation, moneys in the fund shall be available to the state board and to administering agencies for administrative purposes in carrying out this chapter.

(c) Any repayment of loans, including interest payments and all interest earnings on or accruing to any moneys, resulting from implementation of this chapter shall be deposited in the fund for purposes of this chapter.

SEC. 121. Section 106985 of the Health and Safety Code is amended to read:

106985. (a) (1) Notwithstanding Section 2052 of the Business and Professions Code or any other law, a radiologic technologist certified pursuant to the Radiologic Technology Act (Section 27) may, under the direct supervision of a licensed physician and surgeon, and in accordance with the facility's protocol that meets, at a minimum, the requirements described in paragraph (2), perform

venipuncture in an upper extremity to administer contrast materials, manually or by utilizing a mechanical injector, if the radiologic technologist has been deemed competent to perform that venipuncture, in accordance with paragraph (3), and issued a certificate, as described in subdivision (b).

(2) (A) In administering contrast materials, a radiologic technologist may, to ensure the security and integrity of the needle's placement or of an existing intravenous cannula, use a saline-based solution *that* conforms with the facility's protocol and that has been approved by a licensed physician and surgeon. The protocol shall specify that only contrast materials or pharmaceuticals approved by the United States Food and Drug Administration may be used and shall also specify that the use shall be in accordance with the labeling.

(B) A person who is currently certified as meeting the standards of competence in nuclear medicine technology pursuant to Article 6 (commencing with Section 107150) and who is authorized to perform a computerized tomography scanner only on a dual-mode machine, as described in Section 106976, may perform the conduct described in this subdivision.

(3) Prior to performing venipuncture pursuant to paragraph (1), a radiologic technologist shall have performed at least 10 venipunctures on live humans under the personal supervision of a licensed physician and surgeon, a registered nurse, or a person the physician or nurse has previously deemed qualified to provide personal supervision to the technologist for purposes of performing venipuncture pursuant to this paragraph. Only after completion of a minimum of 10 venipunctures may the supervising individual evaluate whether the technologist is competent to perform venipuncture under direct supervision. The number of venipunctures required in this paragraph are in addition to those performed for meeting the requirements of paragraph (2) of subdivision (d). The facility shall document compliance with this subdivision.

(b) The radiologic technologist shall be issued a certificate as specified in subdivision (e) or by an instructor indicating satisfactory completion of the training and education described in subdivision (d). This certificate documents completion of the required education and training and may not, by itself, be construed

to authorize a person to perform venipuncture or to administer contrast materials.

(c) (1) "Direct supervision," for purposes of this section, means the direction of procedures authorized by this section by a licensed physician and surgeon who shall be physically present within the facility and available within the facility where the procedures are performed, in order to provide immediate medical intervention to prevent or mitigate injury to the patient in the event of adverse reaction.

(2) "Personal supervision," for purposes of this section, means the oversight of the procedures authorized by this section by a supervising individual identified in paragraph (3) of subdivision (a) who is physically present to observe, and correct, as needed, the performance of the individual who is performing the procedure.

(d) The radiologic technologist shall have completed both of the following:

(1) Received a total of 10 hours of instruction, including all of the following:

(A) Anatomy and physiology of venipuncture sites.

(B) Venipuncture instruments, intravenous solutions, and related equipment.

(C) Puncture techniques.

(D) Techniques of intravenous line establishment.

(E) Hazards and complications of venipuncture.

(F) Postpuncture care.

(G) Composition and purpose of antianaphylaxis tray.

(H) First aid and basic cardiopulmonary resuscitation.

(2) Performed 10 venipunctures on a human or training mannequin upper extremity (for example, an infusion arm or a mannequin arm) under personal supervision. If performance is on a human, only an upper extremity may be used.

(e) Schools for radiologic technologists shall include the training and education specified in subdivision (d). Upon satisfactory completion of the training and education, the school shall issue to the student a completion document. This document may not be construed to authorize a person to perform venipuncture or to administer contrast materials.

(f) Nothing in this section shall be construed to authorize a radiologic technologist to perform arterial puncture, any central venous access procedures including repositioning of previously

placed central venous catheter except as specified in paragraph (1) of subdivision (a), or cutdowns, or establish an intravenous line.

(g) This section shall not be construed to apply to a person who is currently certified as meeting the standards of competence in nuclear medicine technology pursuant to Article 6 (commencing with Section 107150), except as provided in subparagraph (B) of paragraph (2) of subdivision (a).

(h) Radiologic technologists who met the training and education requirements of subdivision (d) prior to January 1, 2013, need not repeat those requirements, or perform the venipunctures specified in paragraph (3) of subdivision (a), provided the facility documents that the radiologic technologist is competent to perform the tasks specified in paragraph (1) of subdivision (a).

SEC. 122. Section 114365.5 of the Health and Safety Code is amended to read:

114365.5. (a) The department shall adopt and post on its Internet Web site a list of nonpotentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation. A cottage food product shall not be potentially hazardous food, as defined in Section 113871.

(b) This list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:

(1) Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.

(2) Candy, such as brittle and toffee.

(3) Chocolate-covered nonperishable foods, such as nuts and dried fruit.

(4) Dried fruit.

(5) Dried pasta.

(6) Dry baking mixes.

(7) Fruit pies, fruit empanadas, and fruit tamales.

(8) Granola, cereals, and trail mixes.

(9) Herb blends and dried mole paste.

(10) Honey and sweet sorghum syrup.

(11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.

(12) Nut mixes and nut butters.

(13) Popcorn.

(14) Vinegar and mustard.

(15) Roasted coffee and dried tea.

(16) Waffle cones and pizelles.

(c) (1) The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list. Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

SEC. 123. Section 114380 of the Health and Safety Code is amended to read:

114380. (a) A person proposing to build or remodel a food facility shall submit complete, easily readable plans drawn to scale, and specifications to the enforcement agency for review, and shall receive plan approval before starting any new construction or remodeling of a facility for use as a retail food facility.

(b) Plans and specifications may also be required by the enforcement agency if the agency determines that they are necessary to ensure compliance with the requirements of this part,

including, but not limited to, a menu change or change in the facility's method of operation.

(c) (1) All new school food facilities or school food facilities that undergo modernization or remodeling shall comply with all structural requirements of this part. Upon submission of plans by a public school authority, the Division of the State Architect and the local enforcement agency shall review and approve all new and remodeled school facilities for compliance with all applicable requirements.

(2) Notwithstanding subdivision (a), the Office of Statewide Health Planning and Development (OSHPD) shall maintain its primary jurisdiction over licensed skilled nursing facilities, and when new construction, modernization, or remodeling must be undertaken to repair existing systems or to keep up the course of normal or routine maintenance, the facility shall complete a building application and plan check process as required by OSHPD. Approval of the plans by OSHPD shall be deemed compliance with the plan approval process required by the local county enforcement agency described in this section.

(3) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing public and private school cafeterias and licensed health care facilities shall be deemed to be in compliance with this part pending replacement or renovation.

(d) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing food facilities that were in compliance with the law in effect on June 30, 2007, shall be deemed to be in compliance with the law pending replacement or renovation. If a determination is made by the enforcement agency that a structural condition poses a public health hazard, the food facility shall remedy the deficiency to the satisfaction of the enforcement agency.

(e) The plans shall be approved or rejected within 20 working days after receipt by the enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the

enforcement agency. Nothing in this section shall require that plans or specifications be prepared by someone other than the applicant.

SEC. 124. Section 116565 of the Health and Safety Code is amended to read:

116565. (a) Each public water system serving 1,000 or more service connections, and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption, shall reimburse the department for the actual cost incurred by the department for conducting those activities mandated by this chapter relating to the issuance of domestic water supply permits, inspections, monitoring, surveillance, and water quality evaluation that relate to that specific public water system. The amount of reimbursement shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities.

(b) Each public water system serving fewer than 1,000 service connections shall pay an annual drinking water operating fee to the department as set forth in this subdivision for costs incurred by the department for conducting those activities mandated by this chapter relating to inspections, monitoring, surveillance, and water quality evaluation relating to public water systems. The total amount of fees shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities. Notwithstanding adjustment of actual fees collected pursuant to Section 100425 as authorized pursuant to subdivision (d) of Section 116590, the amount that shall be paid annually by a public water system pursuant to this section shall be as follows:

(1) Community water systems, six dollars ($6) per service connection, but not less than two hundred fifty dollars ($250) per water system, which may be increased by the department, as provided for in subdivision (f), to ten dollars ($10) per service connection, but not less than two hundred fifty dollars ($250) per water system.

(2) Nontransient noncommunity water systems pursuant to subdivision (k) of Section 116275, two dollars ($2) per person served, but not less than four hundred fifty-six dollars ($456) per water system, which may be increased by the department, as provided for in subdivision (f), to three dollars ($3) per person served, but not less than four hundred fifty-six dollars ($456) per water system.

(3) Transient noncommunity water systems pursuant to subdivision (o) of Section 116275, eight hundred dollars ($800) per water system, which may be increased by the department, as provided for in subdivision (f), to one thousand three hundred thirty-five dollars ($1,335) per water system.

(4) Noncommunity water systems in possession of a current exemption pursuant to former Section 116282 on January 1, 2012, one hundred two dollars ($102) per water system.

(c) For purposes of determining the fees provided for in subdivision (a), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay the fees. The fee charged each system shall reflect the department's actual cost, or in the case of a local primacy agency the local primacy agency's actual cost, of conducting the specified activities.

(d) The department shall submit an invoice for cost reimbursement for the activities specified in subdivision (a) to the public water systems no more than twice a year.

(1) The department shall submit one estimated cost invoice to public water systems serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. This invoice shall include the actual hours expended during the first six months of the fiscal year. The hourly cost rate used to determine the amount of the estimated cost invoice shall be the rate for the previous fiscal year.

(2) The department shall submit a final invoice to the public water system before October 1 following the fiscal year that the costs were incurred. The invoice shall indicate the total hours expended during the fiscal year, the reasons for the expenditure, the hourly cost rate of the department for the fiscal year, the estimated cost invoice, and payments received. The amount of the final invoice shall be determined using the total hours expended during the fiscal year and the actual hourly cost rate of the department for the fiscal year. The payment of the estimated invoice, exclusive of late penalty, if any, shall be credited toward the final invoice amount.

(3) Payment of the invoice issued pursuant to paragraphs (1) and (2) shall be made within 90 days of the date of the invoice. Failure to pay the amount of the invoice within 90 days shall result

in a 10-percent late penalty that shall be paid in addition to the invoiced amount.

(e) Any public water system under the jurisdiction of a local primacy agency shall pay the fees specified in this section to the local primacy agency in lieu of the department. This section shall not preclude a local health officer from imposing additional fees pursuant to Section 101325.

(f) The department may increase the fees established in subdivision (b) as follows:

(1) By February 1 of the fiscal year prior to the fiscal year for which fees are proposed to be increased, the department shall publish a list of fees for the following fiscal year and a report showing the calculation of the amount of the fees.

(2) The department shall make the report and the list of fees available to the public by submitting them to the Legislature and posting them on the department's Internet Web site.

(3) The department shall establish the amount of fee increases subject to the approval and appropriation by the Legislature.

SEC. 125. Section 120365 of the Health and Safety Code is amended to read:

120365. (a) Immunization of a person shall not be required for admission to a school or other institution listed in Section 120335 if the parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, files with the governing authority a letter or affidavit that documents which immunizations required by Section 120355 have been given and which immunizations have not been given on the basis that they are contrary to his or her beliefs.

(b) On and after January 1, 2014, a form prescribed by the State Department of Public Health shall accompany the letter or affidavit filed pursuant to subdivision (a). The form shall include both of the following:

(1) A signed attestation from the health care practitioner that indicates that the health care practitioner provided the parent or guardian of the person who is subject to the immunization requirements of this chapter, the adult who has assumed responsibility for the care and custody of the person, or the person if an emancipated minor, with information regarding the benefits and risks of the immunization and the health risks of the

communicable diseases listed in Section 120335 to the person and to the community. This attestation shall be signed not more than six months before the date when the person first becomes subject to the immunization requirement for which exemption is being sought.

(2) A written statement signed by the parent or guardian of the person who is subject to the immunization requirements of this chapter, the adult who has assumed responsibility for the care and custody of the person, or the person if an emancipated minor, that indicates that the signer has received the information provided by the health care practitioner pursuant to paragraph (1). This statement shall be signed not more than six months before the date when the person first becomes subject to the immunization requirements as a condition of admittance to a school or institution pursuant to Section 120335.

(c) The following shall be accepted in lieu of the original form:

(1) A photocopy of the signed form.

(2) A letter signed by a health care practitioner that includes all information and attestations included on the form.

(d) Issuance and revision of the form shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) When there is good cause to believe that the person has been exposed to one of the communicable diseases listed in subdivision (a) of Section 120325, that person may be temporarily excluded from the school or institution until the local health officer is satisfied that the person is no longer at risk of developing the disease.

(f) For purposes of this section, “health care practitioner” means any of the following:

(1) A physician and surgeon, licensed pursuant to Section 2050 of the Business and Professions Code.

(2) A nurse practitioner who is authorized to furnish drugs pursuant to Section 2836.1 of the Business and Professions Code.

(3) A physician assistant who is authorized to administer or provide medication pursuant to Section 3502.1 of the Business and Professions Code.

(4) An osteopathic physician and surgeon, as defined in the Osteopathic Initiative Act.

(5) A naturopathic doctor who is authorized to furnish or order drugs under a physician and surgeon's supervision pursuant to Section 3640.5 of the Business and Professions Code.

(6) A credentialed school nurse, as described in Section 49426 of the Education Code.

SEC. 126. Section 123327 of the Health and Safety Code is amended to read:

123327. (a) The department shall provide written notice to a retail food vendor if the department determines that the vendor has committed an initial violation for which a pattern of the violation must be established to impose a sanction. Notice shall be provided no later than 30 days after the department determines the first investigation that identified the violation is complete.

(b) The written notice shall be delivered to the vendor 30 days before the department conducts a second investigation for purposes of establishing a pattern of the violation to the vendor's most recent business ownership address on file with the department or to the vendor location upon identification of a violation during vendor monitoring, as defined by Section 40743 of Title 22 of the California Code of Regulations.

(c) The written notice shall include a description of the initial violation and may include information to assist the vendor to take corrective action, including, but not limited to, a 60-day window that includes the date of the violation.

(d) For purposes of this section, "violation" means a violation set forth in Section 246.2 of Title 7 of the Code of Federal Regulations.

(e) It is the intent of the Legislature in enacting this section to clarify existing law.

SEC. 127. Section 123940 of the Health and Safety Code is amended to read:

123940. (a) (1) Annually, the board of supervisors shall appropriate a sum of money for services for handicapped children of the county, including diagnosis, treatment, and therapy services for physically handicapped children in public schools, equal to 25 percent of the actual expenditures for the county program under this article for the 1990–91 fiscal year, except as specified in paragraph (2).

(2) If the state certifies that a smaller amount is needed in order for the county to pay 25 percent of costs of the county's program

from this source. The smaller amount certified by the state shall be the amount that the county shall appropriate.

(b) In addition to the amount required by subdivision (a), the county shall allocate an amount equal to the amount determined pursuant to subdivision (a) for purposes of this article from revenues allocated to the county pursuant to Chapter 6 (commencing with Section 17600) of Division 9 of the Welfare and Institutions Code.

(c) (1) The state shall match county expenditures for this article from funding provided pursuant to subdivisions (a) and (b).

(2) County expenditures shall be waived for payment of services for children who are eligible pursuant to paragraph (2) of subdivision (a) of Section 123870.

(d) The county may appropriate and expend moneys in addition to those set forth in subdivisions (a) and (b) and the state shall match the expenditures, on a dollar-for-dollar basis, to the extent that state funds are available for this article.

(e) County appropriations under subdivisions (a) and (b) shall include county financial participation in the nonfederal share of expenditures for services for children who are enrolled in the Medi-Cal program pursuant to Section 14005.26 of the Welfare and Institutions Code, and who are eligible for services under this article pursuant to paragraph (1) of subdivision (a) of Section 123870, to the extent that federal financial participation is available at the enhanced federal reimbursement rate under Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) and funds are appropriated for the California Children's Services Program in the State Budget.

(f) Nothing in this section shall require the county to expend more than the amount set forth in subdivision (a) plus the amount set forth in subdivision (b) nor shall it require the state to expend more than the amount of the match set forth in subdivision (c).

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, without taking further regulatory action, shall implement this section by means of California Children's Services numbered letters.

SEC. 128. Section 123955 of the Health and Safety Code is amended to read:

123955. (a) The state and the counties shall share in the cost of administration of the California Children's Services Program at the local level.

(b) (1) The director shall adopt regulations establishing minimum standards for the administration, staffing, and local implementation of this article subject to reimbursement by the state.

(2) The standards shall allow necessary flexibility in the administration of county programs, taking into account the variability of county needs and resources, and shall be developed and revised jointly with state and county representatives.

(c) The director shall establish minimum standards for administration, staffing, and local operation of the program subject to reimbursement by the state.

(d) Until July 1, 1992, reimbursable administrative costs, to be paid by the state to counties, shall not exceed 4.1 percent of the gross total expenditures for diagnosis, treatment, and therapy by counties as specified in Section 123940.

(e) Beginning July 1, 1992, this subdivision shall apply with respect to all of the following:

(1) Counties shall be reimbursed by the state for 50 percent of the amount required to meet state administrative standards for that portion of the county caseload under this article that is ineligible for Medi-Cal to the extent funds are available in the State Budget for the California Children's Services Program.

(2) Counties shall be reimbursed by the state for 50 percent of the nonfederal share of the amount required to meet state administrative standards for that portion of the county caseload under this article that is enrolled in the Medi-Cal program pursuant to Section 14005.26 of the Welfare and Institutions Code and who are eligible for services under this article pursuant to subdivision (a) of Section 123870, to the extent that federal financial participation is available at the enhanced federal reimbursement rate under Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) and funds are appropriated for the California Children's Services Program in the State Budget.

(3) On or before September 15 of each year, each county program implementing this article shall submit an application for the subsequent fiscal year that provides information as required

by the state to determine if the county administrative staff and budget meet state standards.

(4) The state shall determine the maximum amount of state funds available for each county from state funds appropriated for CCS county administration. If the amount appropriated for any fiscal year in the Budget Act for county administration under this article differs from the amounts approved by the department, each county shall submit a revised application in a form and at the time specified by the department.

(f) The department and counties shall maximize the use of federal funds for administration of the programs implemented pursuant to this article, including using state and county funds to match funds claimable under Title XIX or Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.; 42 U.S.C. Sec. 1397aa et seq.).

SEC. 129. Section 125286.20 of the Health and Safety Code is amended to read:

125286.20. Unless the context otherwise requires, the following definitions shall apply for purposes of this article:

(a) "Assay" means the amount of a particular constituent of a mixture or of the biological or pharmacological potency of a drug.

(b) "Ancillary infusion equipment and supplies" means the equipment and supplies required to infuse a blood clotting product into a human vein, including, but not limited to, syringes, needles, sterile gauze, field pads, gloves, alcohol swabs, numbing creams, tourniquets, medical tape, sharps or equivalent biohazard waste containers, and cold compression packs.

(c) "Bleeding disorder" means a medical condition characterized by a deficiency or absence of one or more essential blood clotting proteins in the human blood, often called "factors," including all forms of hemophilia and other bleeding disorders that, without treatment, result in uncontrollable bleeding or abnormal blood clotting.

(d) "Blood clotting product" means an intravenously administered medicine manufactured from human plasma or recombinant biotechnology techniques, approved for distribution by the federal Food and Drug Administration, that is used for the treatment and prevention of symptoms associated with bleeding disorders. Blood clotting products include, but are not limited to, factor VII, factor VIIa, factor VIII, and factor IX products, von

Willebrand factor products, bypass products for patients with inhibitors, and activated prothrombin complex concentrates.

(e) "Emergency" means care as defined in Section 1317.1.

(f) "Hemophilia" means a human bleeding disorder caused by a hereditary deficiency of the factor I, II, V, VIII, IX, XI, XII, or XIII blood clotting protein in human blood.

(g) "Hemophilia treatment center" means a facility for the treatment of bleeding disorders, including, but not limited to, hemophilia, that receives funding specifically for the treatment of patients with bleeding disorders from federal government sources, including, but not limited to, the federal Centers for Disease Control and Prevention and the federal Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

(h) "Home use" means infusion or other use of a blood clotting product in a place other than a state-recognized hemophilia treatment center or other clinical setting. Places where home use occurs include, without limitation, a home or other nonclinical setting.

(i) "Patient" means a person needing a blood clotting product for home use.

(j) (1) "Provider of blood clotting products for home use" means all the following pharmacies, except as described in Section 125286.35, that dispense blood clotting factors for home use:

(A) Hospital pharmacies.

(B) Health system pharmacies.

(C) Pharmacies affiliated with hemophilia treatment centers.

(D) Specialty home care pharmacies.

(E) Retail pharmacies.

(2) The providers described in this subdivision shall include a health care service plan and all its affiliated providers if the health care service plan exclusively contracts with a single medical group in a specified geographic area to provide professional services to its enrollees.

SEC. 130. Section 128570 of the Health and Safety Code is amended to read:

128570. (a) Persons participating in the program shall be persons who agree in writing prior to completing an accredited medical or osteopathic school based in the United States to serve in an eligible practice setting, pursuant to subdivision (g) of Section

128565, for at least three years. The program shall be used only for the purpose of promoting the education of medical doctors and doctors of osteopathy and related administrative costs.

(b) A program participant shall commit to three years of full-time professional practice once the participant has achieved full licensure pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of, or Section 2099.5 of, the Business and Professions Code and after completing an accredited residency program. The obligated professional service shall be in direct patient care in an eligible practice setting pursuant to subdivision (g) of Section 128565.

(1) Leaves of absence either during medical school or service obligation shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence, the maximum permissible leaves of absences, and the process for reinstatement. Awarding of scholarship funds shall be deferred until the participant is back to full-time status.

(2) Full-time status shall be defined by the selection committee. The selection committee may establish exemptions from this requirement on a case-by-case basis.

(c) The maximum allowable amount per total scholarship shall be one hundred five thousand dollars ($105,000). These moneys shall be distributed over the course of a standard medical school curriculum. The distribution of funds shall increase over the course of medical school, increasing to ensure that at least 45 percent of the total scholarship award is distributed upon matriculation in the final year of school.

(d) In the event the program participant does not complete medical school and the minimum three years of professional service pursuant to the contractual agreement between the foundation and the participant, the office shall recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

SEC. 131. Section 129725 of the Health and Safety Code is amended to read:

129725. (a) (1) “Hospital building” includes any building not specified in subdivision (b) that is used, or designed to be used, for a health facility of a type required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) Except as provided in paragraph (7) of subdivision (b), hospital building includes a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed on or after March 7, 1973.

(b) "Hospital building" does not include any of the following:

(1) Any building where outpatient clinical services of a health facility licensed pursuant to Section 1250 are provided that is separated from a building in which hospital services are provided. If any one or more outpatient clinical services in the building provides services to inpatients, the building shall not be included as a "hospital building" if those services provided to inpatients represent no more than 25 percent of the total outpatient services provided at the building. Hospitals shall maintain on an ongoing basis, data on the patients receiving services in these buildings, including the number of patients seen, categorized by their inpatient or outpatient status. Hospitals shall submit this data annually to the State Department of Public Health.

(2) A building used, or designed to be used, for a skilled nursing facility or intermediate care facility if the building is of single-story, wood-frame or light steel frame construction.

(3) A building of single-story, wood-frame or light steel frame construction where only skilled nursing or intermediate care services are provided if the building is separated from a building housing other patients of the health facility receiving higher levels of care.

(4) A freestanding structure of a chemical dependency recovery hospital exempted under subdivision (c) of Section 1275.2.

(5) A building licensed to be used as an intermediate care facility/developmentally disabled habilitative with six beds or less and an intermediate care facility/developmentally disabled habilitative of 7 to 15 beds that is a single-story, wood-frame or light steel frame building.

(6) A building subject to licensure as a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed before March 7, 1973.

(7) (A) A building that meets the definition of a correctional treatment center, pursuant to subdivision (j) of Section 1250, for which the final design documents were completed or the construction of which was initiated before January 1, 1994, operated by or to be operated by the Department of Corrections

and Rehabilitation, or by a law enforcement agency of a city, county, or a city and county.

(B) In the case of reconstruction, alteration, or addition to, the facilities identified in this paragraph, and paragraph (6) or any other building subject to licensure as a general acute care hospital, acute psychiatric hospital, correctional treatment center, or nursing facility, as defined in subdivisions (a), (b), (j), and (k) of Section 1250, operated or to be operated by the Department of Corrections and Rehabilitation, or by a law enforcement agency of a city, county, or city and county, only the reconstruction, alteration, or addition, itself, and not the building as a whole, nor any other aspect thereof, shall be required to comply with this chapter or the regulations adopted pursuant thereto.

(8) A freestanding building used, or designed to be used, as a congregate living health facility, as defined in subdivision (i) of Section 1250.

(9) A freestanding building used, or designed to be used, as a hospice facility, as defined in subdivision (n) of Section 1250.

SEC. 132. Section 136000 of the Health and Safety Code is amended to read:

136000. (a) (1) Effective July 1, 2012, there is hereby transferred from the Department of Managed Health Care the Office of Patient Advocate to be established within the California Health and Human Services Agency, to provide assistance to, and advocate on behalf of, individuals served by health care service plans regulated by the Department of Managed Health Care, insureds covered by health insurers regulated by the Department of Insurance, and individuals who receive or are eligible for other health care coverage in California, including coverage available through the Medi-Cal program, the California Health Benefit Exchange, the Healthy Families Program, or any other county or state health care program. The goal of the office shall be to help those individuals secure the health care services to which they are entitled or for which they are eligible under the law. Notwithstanding any provision of this division, each regulator and health coverage program shall retain its respective authority, including its authority to resolve complaints, grievances, and appeals.

(2) The office shall be headed by a patient advocate appointed by the Governor. The patient advocate shall serve at the pleasure of the Governor.

(3) The provisions of this division affecting insureds covered by health insurers regulated by the Department of Insurance and individuals who receive or are eligible for coverage available through the Medi-Cal program, the California Health Benefit Exchange, the Healthy Families Program, or any other county or state health care program shall commence on January 1, 2013, except that for the period July 1, 2012, to January 1, 2013, the office shall continue with any duties, responsibilities, or activities of the office authorized as of July 1, 2011, which shall continue to be authorized.

(b) (1) The duties of the office shall include, but not be limited to, all of the following:

(A) Developing, in consultation with the Managed Risk Medical Insurance Board, the State Department of Health Care Services, the California Health Benefit Exchange, the Department of Managed Health Care, and the Department of Insurance, educational and informational guides for consumers describing their rights and responsibilities, and informing them on effective ways to exercise their rights to secure health care coverage. The guides shall be easy to read and understand and shall be made available in English and other threshold languages, using an appropriate literacy level, and in a culturally competent manner. The informational guides shall be made available to the public by the office, including being made accessible on the office's Internet Web site and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the office's Internet Web site, of a quality of care report card, including, but not limited to, health care service plans.

(C) Rendering assistance to consumers regarding procedures, rights, and responsibilities related to the filing of complaints, grievances, and appeals, including appeals of coverage denials and information about any external appeal process.

(D) Making referrals to the appropriate state agency regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of consumers.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ombudsperson programs.

(2) The office shall employ necessary staff. The office may employ or contract with experts when necessary to carry out the functions of the office. The patient advocate shall make an annual budget request for the office which shall be identified in the annual Budget Act.

(3) Until January 1, 2013, the office shall have access to records of the Department of Managed Health Care, including, but not limited to, information related to health care service plan or health insurer audits, surveys, and enrollee or insured grievances.

(4) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.

(5) The office shall adopt standards for the organizations with which it contracts pursuant to this section to ensure compliance with the privacy and confidentiality laws of this state, including, but not limited to, the Information Practices Act of 1977 (Chapter 1(commencing with Section 1798) of Division 3 of the Civil Code). The office shall conduct privacy trainings as necessary, and regularly verify that the organizations have measures in place to ensure compliance with this provision.

(c) In enacting this act, the Legislature recognizes that, because of the enactment of federal health care reform on March 23, 2010, and the implementation of various provisions by January 1, 2014, it is appropriate to transfer the Office of Patient Advocate and to confer new responsibilities on the Office of Patient Advocate, including assisting consumers in obtaining health care coverage and obtaining health care through health coverage that is regulated by multiple regulators, both state and federal. The new responsibilities include assisting consumers in navigating both public and private health care coverage and assisting consumers in determining which regulator regulates the health care coverage of a particular consumer. In order to assist in implementing federal health care reform in California, commencing January 1, 2013, the office, in addition to the duties set forth in subdivision (b), shall also do all of the following:

(1) Receive and respond to all inquiries, complaints, and requests for assistance from individuals concerning health care coverage available in California.

(2) Provide, and assist in the provision of, outreach and education about health care coverage options as set forth in subparagraph (A) of paragraph (1) of subdivision (b), including, but not limited to:

(A) Information regarding applying for coverage; the cost of coverage; and renewal in, and transitions between, health coverage programs.

(B) Information and assistance regarding public programs, such as Medi-Cal, the Healthy Families Program, federal veterans health benefits, and Medicare; and private coverage, including employer-sponsored coverage, Exchange coverage; and other sources of care if the consumer is not eligible for coverage, such as county services, community clinics, discounted hospital care, or charity care.

(3) Coordinate with other state and federal agencies engaged in outreach and education regarding the implementation of federal health care reform.

(4) Render assistance to, and advocate on behalf of, consumers with problems related to health care services, including care and service problems and claims or payment problems.

(5) Refer consumers to the appropriate regulator of their health coverage programs for filing complaints, grievances, or claims, or for payment problems.

(d) (1) Commencing January 1, 2013, the office shall track and analyze data on problems and complaints by, and questions from, consumers about health care coverage for the purpose of providing public information about problems faced and information needed by consumers in obtaining coverage and care. The data collected shall include demographic data, source of coverage, regulator, and resolution of complaints, including timeliness of resolution.

(2) The Department of Managed Health Care, the State Department of Health Care Services, the Department of Insurance, the Managed Risk Medical Insurance Board, the California Health Benefit Exchange, and other public coverage programs shall provide to the office data in the aggregate concerning consumer complaints and grievances. For the purpose of publicly reporting information about the problems faced by consumers in obtaining

care and coverage, the office shall analyze data on consumer complaints and grievances resolved by these agencies, including demographic data, source of coverage, insurer or plan, resolution of complaints and other information intended to improve health care and coverage for consumers. The office shall develop and provide comprehensive and timely data and analysis based on the information provided by other agencies.

(3) The office shall collect and report data to the United States Secretary of Health and Human Services on complaints and consumer assistance as required to comply with requirements of the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(e) Commencing January 1, 2013, in order to assist consumers in understanding the impact of federal health care reform as well as navigating and resolving questions and problems with health care coverage and programs, the office shall ensure that either the office or a state agency contracting with the office shall do the following:

(1) Operate a toll-free telephone hotline number that can route callers to the proper regulating body or public program for their question, their health plan, or the consumer assistance program in their area.

(2) Operate an Internet Web site, other social media, and up-to-date communication systems to give information regarding the consumer assistance programs.

(f) (1) The office may contract with community-based consumer assistance organizations to assist in any or all of the duties of subdivision (c) in accordance with Section 19130 of the Government Code or provide grants to community-based consumer assistance organizations for portions of these purposes.

(2) Commencing January 1, 2013, any local community-based nonprofit consumer assistance program with which the office contracts shall include in its mission the assistance of, and duty to, health care consumers. Contracting consumer assistance programs shall have experience in the following areas:

(A) Assisting consumers in navigating the local health care system.

(B) Advising consumers regarding their health care coverage options and helping consumers enroll in and retain health care coverage.

(C) Assisting consumers with problems in accessing health care services.

(D) Serving consumers with special needs, including, but not limited to, consumers with limited-English language proficiency, consumers requiring culturally competent services, low-income consumers, consumers with disabilities, consumers with low literacy rates, and consumers with multiple health conditions, including behavioral health.

(E) Collecting and reporting data, including demographic data, source of coverage, regulator, and resolution of complaints, including timeliness of resolution.

(3) Commencing January 1, 2013, the office shall develop protocols, procedures, and training modules for organizations with which it contracts.

(4) Commencing January 1, 2013, the office shall adopt standards for organizations with which it contracts regarding confidentiality and conduct.

(5) Commencing January 1, 2013, the office may contract with consumer assistance programs to develop a series of appropriate literacy level and culturally and linguistically appropriate educational materials in all threshold languages for consumers regarding health care coverage options and how to resolve problems.

(g) Commencing January 1, 2013, the office shall develop protocols and procedures for assisting in the resolution of consumer complaints, including both of the following:

(1) A procedure for referral of complaints and grievances to the appropriate regulator or health coverage program for resolution by the relevant regulator or public program.

(2) A protocol or procedure for reporting to the appropriate regulator and health coverage program regarding complaints and grievances relevant to that agency that the office received and was able to resolve without further action or referral.

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

(1) “Consumer” or “individual” includes the individual or his or her parent, guardian, conservator, or authorized representative.

(2) “Exchange” means the California Health Benefit Exchange established pursuant to Title 22 (commencing with Section 100500) of the Government Code.

(3) "Health care" includes behavioral health, including both mental health and substance abuse treatment.

(4) "Health care service plan" has the same meaning as that set forth in subdivision (f) of Section 1345. Health care service plan includes "specialized health care service plans," including behavioral health plans.

(5) "Health coverage program" includes the Medi-Cal program, Healthy Families Program, tax subsidies and premium credits under the Exchange, the Basic Health Program, if enacted, county health coverage programs, and the Access for Infants and Mothers Program.

(6) "Health insurance" has the same meaning as set forth in Section 106 of the Insurance Code.

(7) "Health insurer" means an insurer that issues policies of health insurance.

(8) "Office" means the Office of Patient Advocate.

(9) "Threshold languages" shall have the same meaning as for Medi-Cal managed care.

SEC. 132.5. Section 395 of the Insurance Code is amended to read:

395. After a covered loss, an insurer shall provide, free of charge, a complete copy of the insured's current insurance policy or certificate within 30 calendar days of receipt of a request from the insured. The time period for providing the insurance policy or certificate may be extended by the commissioner. An insured who does not experience a covered loss shall, upon request, be entitled to one free copy of his or her current insurance policy or certificate annually. The insurance policy or certificate provided to the insured shall include, where applicable, the policy declarations page. This section shall not apply to commercial policies issued pursuant to Sections 675.5 and ~~675.6~~ *676.6*, and policies of workers' compensation insurance, as defined in Section 109.

SEC. 133. Section 676.75 of the Insurance Code is amended to read:

676.75. (a) No admitted insurer, licensed to issue and issuing homeowner's or tenant's policies, as described in Section 122, shall (1) fail or refuse to accept an application for that insurance or to issue that insurance to an applicant or (2) cancel that insurance, solely on the basis that the applicant or policyholder is

engaged in foster home activities in a certified family home, as defined in Section 1506 of the Health and Safety Code.

(b) Coverage under policies described in subdivision (a) with respect to a foster child shall be the same as that provided for a natural child. However, unless specifically provided in the policy, there shall be no coverage expressly provided in the policy for any bodily injury arising out of the operation or use of any motor vehicle, aircraft, or watercraft owned or operated by, or rented or loaned to, any foster parent.

(c) It is against public policy for a policy of homeowner's or tenant's insurance subject to this section to provide liability coverage for any of the following losses:

(1) An insurer shall not be liable, under a policy of insurance subject to this section, to any governmental agency for damage arising from occurrences peculiar to the foster care relationship and the provision of foster care services.

(2) Alienation of affection of a foster child.

(3) Any loss arising out of licentious, immoral, or sexual behavior on the part of a foster parent intended to lead to, or culminating in, any sexual act.

(4) Any loss arising out of a dishonest, fraudulent, criminal, or intentional act.

(d) There shall be no penalty for violations of this section prior to January 1, 2013.

(e) Insurers may provide a special endorsement to a homeowner's or tenant's policy covering claims related to foster care that are not excluded by subdivision (c).

(f) Insurers may provide by a separate policy for some or all of the claims related to foster care that are excluded by subdivision (c).

SEC. 134. Section 922.41 of the Insurance Code is amended to read:

922.41. (a) Credit shall be allowed a domestic insurer when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this section. Credit shall be allowed at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the

certified reinsurer by the commissioner. The security shall be in a form consistent with this section, any regulations promulgated by the commissioner, and Section 922.5.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subdivisions (f) and (g).

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner, but no less than two hundred fifty million dollars ($250,000,000) calculated in accordance with paragraph (4) of subdivision (f) of this section or Section 922.5. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars ($250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars ($250,000,000).

(3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(A) Standard & Poor's.

(B) Moody's Investors Service.

(C) Fitch Ratings.

(D) A.M. Best Company.

(E) Any other nationally recognized statistical rating organization.

(4) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner or a designated attorney in this state as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment.

(5) The assuming insurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis.

(6) The certified reinsurer shall comply with any other requirements deemed relevant by the commissioner.

(c) (1) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners (NAIC) accredited jurisdiction, the commissioner may defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction if the assuming insurer submits a properly executed Form CR-1 (as published on the department's Internet Web site), and such additional information as the commissioner requires. The commissioner, however, may perform an independent review and determination of any applicant. The assuming insurer shall then be considered to be a certified reinsurer in this state.

(2) If the commissioner defers to a certification determination by another state, any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction unless the commissioner otherwise determines. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision (h).

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with this section and Section 922.42, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(d) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (b), the reinsurer shall meet all of the following requirements:

(1) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection.

(2) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(3) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(e) (1) The commissioner shall post notice on the department's Internet Web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner shall not take final action on the application until at least 90 days after posting the notice required by this subdivision.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and has been approved as a certified reinsurer. Included in that notice shall be the rating assigned the certified reinsurer in accordance with subdivision (h). The commissioner shall publish a list of all certified reinsurers and their ratings.

(f) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure shall be exempted from disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

(1) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing those changes and the reasons for those changes.

(2) Annually, Form CR-F or CR-S, as applicable pursuant to the instructions published on the department's Internet Web site.

(3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (4).

(4) Annually, audited financial statements, (audited United States Generally Accepted Accounting Principles basis, if available, audited International Financial Reporting Standards basis statements are allowed, but must include an audited footnote reconciling equity and net income to a United States Generally Accepted Accounting Principles basis, or, with the written permission of the commissioner, audited International Financial Reporting Standards statements with reconciliation to United States Generally Accepted Accounting Principles certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor.

(5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers.

(6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level.

(7) Any other information that the commissioner may reasonably require.

(g) If the commissioner certifies a non-United States domiciled insurer, the commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in that jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(1) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the

appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate process for evaluating the qualifications of those jurisdictions. Prior to its listing, a qualified jurisdiction shall agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner, including, but not limited to, the following:

(A) The framework under which the assuming insurer is regulated.

(B) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(C) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(D) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(E) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(F) The history of performance by assuming insurers in the domiciliary jurisdiction.

(G) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction.

(H) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or a successor organization.

(I) Any other matters deemed relevant by the commissioner.

(2) The commissioner shall consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions. The commissioner may include on the list published pursuant to this section, any jurisdiction on the NAIC list of qualified jurisdictions, or on any equivalent list of the United States Treasury.

(3) If the commissioner approves a jurisdiction as qualified that does not appear on either the NAIC list of qualified jurisdictions, or the United States Treasury list, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under this section.

(4) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(5) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(h) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(1) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(A) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned shall correspond to its financial strength rating as set forth in clauses (i) to (vi), inclusive. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification.

(i) Ratings category "Secure - 1" corresponds to A.M. Best Company rating A++; Standard & Poor's rating AAA; Moody's Investors Service rating Aaa; and Fitch Ratings rating AAA.

(ii) Ratings category "Secure - 2" corresponds to A.M. Best Company rating A+; Standard & Poor's rating AA+, AA, or AA-; Moody's Investors Service rating Aa1, Aa2, or Aa3; and Fitch Ratings rating AA+, AA, or AA-.

(iii) Ratings category "Secure - 3" corresponds to A.M. Best Company rating A; Standard & Poor's rating A+ or A; Moody's Investors Service rating A1 or A2; and Fitch Ratings rating A+ or A.

(iv) Ratings category "Secure - 4" corresponds to A.M. Best Company rating A-; Standard & Poor's rating A-; Moody's Investors Service rating A3; and Fitch Ratings rating A-.

(v) Ratings category "Secure - 5" corresponds to A.M. Best Company rating B++ or B+; Standard & Poor's rating BBB+, BBB, or BBB-; Moody's Investors Service rating Baa1, Baa2, or Baa3; and Fitch Ratings rating BBB+, BBB, or BBB-.

(vi) Ratings category "Vulnerable - 6" corresponds to A.M. Best Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard & Poor's rating BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R; Moody's Investors Service rating Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, or C; and Fitch Ratings rating BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, or DD.

(B) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations.

(C) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers).

(D) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (as published on the department's Internet Web site).

(E) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention

given to obligations payable to companies that are in administrative supervision or receivership.

(F) Regulatory actions against the certified reinsurer.

(G) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (H).

(H) For certified reinsurers not domiciled in the United States, audited financial statements, (audited United States Generally Accepted Accounting Principles basis, if available, audited International Financial Reporting Standards basis statements are allowed, but must include an audited footnote reconciling equity and net income to a United States Generally Accepted Accounting Principles basis, or, with the written permission of the commissioner, audited International Financial Reporting Standards statements with reconciliation to United States Generally Accepted Accounting Principles certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commissioner shall consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor.

(I) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.

(J) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(K) Any other information deemed relevant by the commissioner.

(2) Based on the analysis conducted under subparagraph (E) of paragraph (1) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under regulations promulgated by the commissioner, if the commissioner finds either of the following:

(A) More than 15 percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed one hundred thousand dollars ($100,000) for each ceding insurer.

(B) The aggregate amount of reinsurance recoverables on paid losses that are not in dispute and that are overdue by 90 days or more exceeds fifty million dollars ($50,000,000).

(3) The assuming insurer shall submit a properly executed Form CR-1 (as published on the department's Internet Web site) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(4) (A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of this subdivision.

(B) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(D) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 922.5 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with subdivision (d) of Section 922.4, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of those funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer shall not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subdivision at a level consistent with its rating. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

Ratings security required
Secure - 1: 0%
Secure - 2: 10%
Secure - 3: 20%
Secure - 4: 50%
Secure - 5: 75%
Vulnerable - 6: 100%

(1) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 922.5, or in a multibeneficiary trust in accordance with subdivision (d) of Section 922.4, except as otherwise provided in this subdivision. In order for a domestic insurer to qualify for full financial statement credit, reinsurance contracts entered into or renewed under this section shall include a proper funding clause that requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(2) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (d) of Section 922.4, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subdivision or comparable laws of other United States jurisdictions and for its obligations subject to subdivision (d) of Section 922.4. It shall be a condition to the grant of certification under this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each of those trust accounts, to fund, upon termination of any of those trust accounts, out of the remaining surplus of those trusts any deficiency of any other of those trust accounts.

(3) The minimum trusteed surplus requirements provided in subdivision (d) of Section 922.4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that the trust shall maintain a minimum trusteed surplus of ten million dollars ($10,000,000).

(4) With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and have the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(5) For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.

(A) As used in this subdivision, the term "terminated" means revocation, suspension, voluntary surrender, and inactive status.

(B) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement shall not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) The commissioner shall require the certified reinsurer to post 100-percent security in accordance with Section 922.5, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(7) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(8) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses, as recognized by the commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner, as determined by the commissioner, in writing. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence shall be included in the deferral:

(A) Line 1: Fire.

(B) Line 2: Allied lines.

(C) Line 3: Farmowners' multiple peril.

(D) Line 4: Homeowners' multiple peril.

(E) Line 5: Commercial multiple peril.

(F) Line 9: Inland marine.

(G) Line 12: Earthquake.

(H) Line 21: Auto physical damage.

(9) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended by mutual agreement of the parties to the reinsurance contract after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(10) Nothing in this section shall be construed to prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(j) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this section, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(k) Notwithstanding this section, credit for reinsurance or deduction from liability by a domestic ceding insurer for cessions to a certified reinsurer may be disallowed upon a finding by the commissioner that the application of the literal provisions of this section does not accomplish its intent, or either the financial condition of the reinsurer or the collateral or other security provided by the reinsurer does not, in substance, satisfy the credit for reinsurance requirements in Section 922.4.

(*l*) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 135. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means an insurer that was a member insurer of the association, consistent with paragraph (11) of subdivision (c), either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction, or, in the case of the State Compensation Insurance Fund, if a finding of insolvency is made by a duly enacted legislative measure.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, that satisfy all of the following requirements:

(A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer.

(B) Which were unpaid by the insolvent insurer.

(C) Which are presented as a claim to the liquidator in the state of domicile of the insolvent insurer or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings.

(D) Which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed.

(E) For which the assets of the insolvent insurer are insufficient to discharge in full.

(F) In the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state.

(G) In the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also includes the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (A) to (G), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

(A) Life, annuity, health, or disability insurance.

(B) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(C) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(D) Credit insurance.

(E) Title insurance.

(F) Ocean marine insurance or ocean marine coverage under an insurance policy including claims arising from the following: the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or an endorsement or policy affording protection and indemnity coverage.

(G) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the liquidator, nor any obligations to a state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, a claim or legal action against the insured of the insolvent insurer for contribution, indemnity, or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy,

or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include a claim in an amount of one hundred dollars ($100) or less, nor that portion of a claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of a claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages, nor any amount awarded by the Workers' Compensation Appeals Board pursuant to Section 5814 or 5814.5 of the Labor Code because payment of compensation was unreasonably delayed or refused by the insolvent insurer.

(9) "Covered claims" does not include (A) a claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured or (B) a claim by a person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian, or other personal representative or trustee in bankruptcy, and does not include a claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) "Covered claims" does not include any obligations of the insolvent insurer arising from a policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(13) "Covered claims" shall also include obligations arising under an insurance policy written to indemnify a permissibly self-insured employer pursuant to subdivision (b) or (c) of Section

3700 of the Labor Code for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention. However, for purposes of this article, those claims shall not be considered workers' compensation claims and therefore are subject to the per-claim limit in paragraph (7), and any payments and expenses related thereto shall be allocated to category (c) for claims other than workers' compensation, homeowners, and automobile, as provided in Section 1063.5.

These provisions shall apply to obligations arising under a policy as described herein issued to a permissibly self-insured employer or group of self-insured employers pursuant to Section 3700 of the Labor Code and notwithstanding any other provision of this code, those obligations shall be governed by this provision in the event that the Self-Insurers' Security Fund is ordered to assume the liabilities of a permissibly self-insured employer or group of self-insured employers pursuant to Section 3701.5 of the Labor Code. The provisions of this paragraph apply only to insurance policies written to indemnify a permissibly self-insured employer or group of self-insured employers under subdivision (b) or (c) of Section 3700 of the Labor Code, for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention, and this paragraph does not apply to special excess workers' compensation insurance policies unless issued pursuant to authority granted in subdivision (c) of Section 3702.8 of the Labor Code, and as provided for in subparagraph (G) of paragraph (3). In addition, this paragraph does not apply to any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses as are excluded in subparagraph (G) of paragraph (3).

Each permissibly self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, shall, to the extent required by the Labor Code, be responsible for paying, adjusting, and defending each claim arising under policies of insurance covered under this section, unless the benefits paid on a claim exceed the specific or aggregate retention, in which case:

(A) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy requires the insurer to defend and adjust the claim, the California Insurance Guarantee Association (CIGA) shall be solely responsible for adjusting and defending the claim, and shall make all payments due under the

claim, subject to the limitations and exclusions of this article with regard to covered claims. As to each claim subject to this paragraph, notwithstanding any other provisions of this code or the Labor Code, and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of self-insured employers, nor the Self-Insurers' Security Fund~~,~~ shall have any obligation to pay benefits over and above the specific or aggregate retention, except as provided in this subdivision.

(B) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy does not require the insurer to defend and adjust the claim, the permissibly self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, shall not have any further payment obligations with respect to the claim, but shall continue defending and adjusting the claim, and shall have the right, but not the obligation, in any proceeding to assert all applicable statutory limitations and exclusions as contained in this article with regard to the covered claim. CIGA shall have the right, but not the obligation, to intervene in any proceeding where the self-insured employer, group of self-insured employers, or the Self-Insurers' Security Fund is defending a claim and shall be permitted to raise the appropriate statutory limitations and exclusions as contained in this article with respect to covered claims. Regardless of whether the self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, asserts the applicable statutory limitations and exclusions, or whether CIGA intervenes in a proceeding, CIGA shall be solely responsible for paying all benefits due on the claim, subject to the exclusions and limitations of this article with respect to covered claims. As to each claim subject to this paragraph, notwithstanding any other provision of the Insurance Code or the Labor Code and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of self-insured employers, nor the Self-Insurers' Security Fund, shall have an obligation to pay benefits over and above the specific or aggregate retention, except as provided in this subdivision.

(C) In the event that the benefits paid on the covered claim exceed the per-claim limit in paragraph (7), the responsibility for paying, adjusting, and defending the claim shall be returned to the

permissibly self-insured employer or group of employers, or the Self-Insurers' Security Fund.

These provisions shall apply to all pending and future insolvencies. For purposes of this paragraph, a pending insolvency is one involving a company that is currently receiving benefits from the guarantee association.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means an insured making a first party claim or a person instituting a liability claim. However, no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways,

including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium as calculated by the liquidator that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under a policy providing retroactive insurance of a known loss or return of a premium under a retrospectively rated policy or a policy subject to a contingent surcharge or a policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss ~~experience~~ *experienced* during the policy period.

SEC. 136. Section 1754 of the Insurance Code is amended to read:

1754. Transaction of travel insurance under the license of an organization holding a limited lines travel insurance agent license shall be subject to the following conditions:

(a) A limited lines travel insurance agent may authorize a travel retailer to transact travel insurance on behalf of and under its authority under the following conditions:

(1) The limited lines travel insurance agent is clearly identified on marketing materials and fulfillment packages distributed by the travel retailers to customers. The marketing materials and fulfillment packages shall include the agent's name, business address, email address, telephone number, license number, and the availability of the department's toll-free consumer hotline.

(2) The limited lines travel insurance agent, at the time of licensure and thereafter, maintains a register noting each travel retailer that transacts travel insurance on the licensee's behalf. The register shall be maintained and updated annually by the licensee in a form prescribed by, or format acceptable to, the commissioner and shall include the name and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's federal employer identification number (FEIN). The licensee shall also certify that the registered travel retailer complies with Section 1033 of Title

18 of the United States Code. The licensee shall submit the register for review and inspection upon request by the department.

(3) The limited lines travel insurance agent has designated one of its employees to be responsible for its compliance with the insurance laws, rules, and regulations of the state. The limited lines travel insurance agent and its designated responsible employees shall hold property, casualty, life-only, and accident and health agent licenses, to the extent required by this chapter, based upon the types of insurance transacted by the licensee.

(4) The employee designated by the limited lines travel insurance agent, pursuant to paragraph (3), and any of the organization's partners, members, controlling persons, officers, directors, and managers comply with the background check requirements as required by the commissioner.

(5) The limited lines travel insurance agent has paid all applicable licensing fees required under California law.

(6) The limited lines travel insurance agent uses all reasonable means at its disposal to ensure compliance by the travel retailer and the travel retailer's employees with their obligations under this article. This includes requiring each employee of the travel retailer whose duties include transacting travel insurance to receive training. The training shall be provided whenever there is a material change that requires a modification to the training materials, but in no event less frequently than every three years. Training materials used by or on behalf of the limited lines travel insurance agent to train the employees of a travel retailer shall be submitted to the department at the time the travel insurance agent applies for a license under this article, and whenever modified thereafter. The training materials, at a minimum, should contain instruction on the types of insurance offered, ethical sales practices, and disclosures to prospective insurance customers. Any changes to previously submitted training materials shall be submitted to the department with the changes highlighted 30 days prior to their use by the limited lines travel insurance agent. Training materials and changes to those materials submitted to the department pursuant to this subdivision shall be deemed approved for use by the limited lines travel insurance agent unless it is notified by the department to the contrary. Failure by a limited lines travel insurance agent to submit training materials or changes for departmental review or use of unapproved or disapproved training materials shall constitute

grounds for denial of an application for a license, nonrenewal of a license, or suspension of a license, or other action as deemed appropriate by the commissioner.

(7) The limited lines travel insurance agent or the travel retailer provides disclosure to the consumer, in either the marketing materials or fulfillment packages, that is substantively similar to the following:

This plan provides insurance coverage that only applies during the covered trip. You may have coverage from other sources that provides you with similar benefits but may be subject to different restrictions depending upon your other coverages. You may wish to compare the terms of this policy with your existing life, health, home, and automobile insurance policies. If you have any questions about your current coverage, call your insurer or insurance agent or broker.

(8) The limited lines travel insurance agent or the travel retailer makes all of the following disclosures to the prospective insured, which shall be acknowledged in writing by the purchaser or displayed by clear and conspicuous signs that are posted at every location where contracts are executed, including, but not limited to, the counter where the purchaser signs the service agreement, or provided in writing to the purchaser:

(A) That purchasing travel insurance is not required in order to purchase any other product or service offered by the travel retailer.

(B) If not individually licensed, that the travel retailer's employee is not qualified or authorized to:

(i) Answer technical questions about the benefits, exclusions, and conditions of any of the insurance offered by the travel retailer.

(ii) Evaluate the adequacy of the prospective insured's existing insurance coverage.

(b) A travel retailer that meets the requirements set forth in this section and whose activities are limited to offering and selling travel insurance on behalf of a licensed limited lines travel insurance agent is authorized to receive compensation.

(c) (1) If the commissioner determines that a travel retailer, or a travel retailer's employee, has violated any provision of this article or any other provision of this code, the commissioner may:

(A) Direct the limited lines travel insurance agent to implement a corrective action plan with the travel retailer.

(B) Direct the limited lines travel insurance agent to revoke the authorization of the travel retailer to transact travel insurance on its behalf and under its license and to remove the travel retailer's name from its register.

(2) If the commissioner determines that a travel retailer, or a travel retailer's employee, has violated any provision in this article or any other provision of this code, the commissioner, after notice and hearing, may:

(A) Suspend or revoke the license of the limited lines travel insurance agent as authorized under this code.

(B) Impose a monetary fine on the limited lines travel insurance agent.

(3) A limited lines travel insurance agent who aids and abets a travel retailer in the transaction of travel insurance, as defined in this code, or aids and abets a travel retailer in any activity concerning travel insurance after being directed to revoke the travel retailer's authorization, in addition to any other action authorized under this code, shall be subject to a monetary penalty pursuant to paragraph (3) of subdivision (a) of Section 12921.8.

(d) The conduct of employees of the travel retailer who have been designated to transact travel insurance on behalf of the licensed limited lines travel insurance agent shall be deemed the conduct of the licensed limited lines travel insurance agent for purposes of this article.

SEC. 137. Section 10113.71 of the Insurance Code is amended to read:

10113.71. (a) Each life insurance policy issued or delivered in this state shall contain a provision for a grace period of not less than 60 days from the premium due date. The 60-day grace period shall not run concurrently with the period of paid coverage. The provision shall provide that the policy shall remain in force during the grace period.

(b) (1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named policy owner, a designee named pursuant to Section 10113.72 for an individual life insurance policy, and a known assignee or other person having an interest in the individual life insurance policy, at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.

(2) This subdivision shall not apply to nonrenewal.

(3) Notice shall be given to the policy owner and to the designee by first-class United States mail within 30 days after a premium is due and unpaid. However, notices made to assignees pursuant to this section may be done electronically with the consent of the assignee.

(c) For purposes of this section, a life insurance policy includes, but is not limited to, an individual life insurance policy and a group life insurance policy, except where otherwise provided.

SEC. 138. Section 10124 of the Insurance Code is amended to read:

10124. (a) A self-insured employee welfare benefit plan delivered or issued for delivery in this state more than 120 days after the effective date of this section, which provides that coverage of a dependent child of an employee shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of an intellectual disability or physical handicap and (2) chiefly dependent upon the employee for support and maintenance, provided proof of the incapacity and dependency is furnished to the employer or employee organization providing the plan or program of benefits by the employee within 31 days of the child's attainment of the limiting age and subsequently as may be required by the employer or employee organization, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(b) As used in this section, "self-insured employee welfare benefit plan" means a plan or program of benefits provided by an employer or an employee organization, or both, for the purpose of providing hospital, medical, surgical, nursing, or dental services, or indemnification for the costs incurred for these services, to the employer's employees or their dependents.

SEC. 139. Section 10271 of the Insurance Code is amended to read:

10271. (a) Except as set forth in this section, this chapter shall not apply to, or in any way affect, provisions in life insurance, endowment, or annuity contracts, or contracts supplemental thereto, that provide additional benefits in case of death or dismemberment

or loss of sight by accident, or that operate to safeguard those contracts against lapse, as described in subdivision (a) of Section 10271.1, or give a special surrender benefit, as defined in subdivision (b) of Section 10271.1, or a special benefit, in the event that the owner, insured, or annuitant, as applicable, meets the benefit triggers specified in the life insurance or annuity contract or supplemental contract.

(b) (1) A provision or supplemental contract described in subdivision (a) shall contain all of the provisions set forth in paragraph (2). However, an insurer, at its option, may substitute for one or more of the provisions a corresponding provision of different wording approved by the commissioner that is not less favorable in any respect to the owner, insured, or annuitant, as applicable. The provisions required by paragraph (2) shall be preceded individually by the appropriate caption, or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) With respect to the benefit standards described in subdivisions (a) and (b) of Section 10271.1, the following requirements apply to the supplemental contracts with these benefits:

(A) Either the contract or supplemental contract shall provide that the contract and the supplemental contract constitute the entire insurance or annuity contract consistent with paragraph (7) of subdivision (c) of Section 2534.3 of Title 10 of the California Code of Regulations, and shall also provide that no agent has the authority to change the contract or to waive any of its provisions. This requirement applies without regard to whether the contract is a variable or nonvariable contract, or a group or individual contract. This provision shall be preceded individually by a caption stating “ENTIRE CONTRACT: CHANGES:” or other appropriate caption as the commissioner may approve.

(B) Either the contract or supplemental contract shall provide for reinstatement consistent with paragraph (3) of subdivision (c) of Section 2534.3 of Title 10 of the California Code of Regulations. This requirement applies without regard to whether the contract is a variable or nonvariable contract, or a group or individual contract. This provision shall be preceded individually by a caption stating “REINSTATEMENT:” or other appropriate caption as the commissioner may approve.

(C) Supplemental contracts subject to underwriting shall include an incontestability statement that provides that the insurer shall not contest the supplemental contract after it has been in force during the lifetime of the insured for two years from its date of issue, and may only be contested based on a statement made in the application for the supplemental contract, if the statement is attached to the contract. The statement upon which the contest is made shall be material to the risk accepted or the hazard assumed by the insurer. This provision shall be preceded individually by a caption stating "INCONTESTABLE:" or other appropriate caption as the commissioner may approve.

(D) A provision or supplemental contract described in subdivision (a) shall also include:

(i) NOTICE OF CLAIM: The insurer may require written notice of claim no less than 20 days after an occurrence covered by the provision or supplemental contract, or commencement of any loss covered by the provision or supplemental contract. Notice given by or on behalf of the insured or the beneficiary, as applicable to the insurer at the insurer's address or telephone number, or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(ii) CLAIM FORMS: The insurer, upon receipt of a notice of claim, shall furnish to the claimant such forms as are usually furnished by it for filing a proof of occurrence or a proof of loss. If the forms are not furnished within 15 days after giving notice, the claimant shall be deemed to have complied with the requirements of the provision or supplemental contract as to proof of occurrence or proof of loss upon submitting, within the time fixed in the provision or supplemental contract for filing proof of occurrence or proof of loss, written proof covering the character and the extent of the occurrence or loss.

(iii) PROOF OF LOSS: The insurer may require that the insured provide written proof of occurrence or proof of loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, within 90 days after the date of the occurrence or loss. Failure to furnish proof within the time required shall not invalidate or reduce the claim if it was not reasonably possible to give proof within the time, provided proof is furnished as soon as reasonably possible

and, except in the absence of legal capacity, no later than one year from the time proof is otherwise required.

(iv) PHYSICAL EXAMINATIONS: The insurer, at its own expense, shall have the right and opportunity to examine the person of the insured when and as often as the insurer may reasonably require during the pendency of a claim.

(c) The commissioner shall review contracts and supplemental contracts to ensure that the language can be readily understood and interpreted, and shall not approve any contract or supplemental contract for insurance or delivery in this state if the commissioner finds that the contract or supplemental contract does any of the following:

(1) Contains any provision, label, description of its contents, title, heading, backing, or other indication of its provisions that is unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the contract or supplemental contract is offered, delivered, or issued.

(2) Constitutes fraud, unfair trade practices, and insurance economically unsound to the owner, insured, or annuitant, as applicable.

(d) A provision or supplemental contract described in subdivision (a) shall not contain any title, description, or any other indication that would describe or imply that the policy or supplemental contract provides long-term care coverage.

(e) Commencing two years from the date of the issuance of the provision or supplemental contract, no claim for loss incurred or disability, as defined in the provision or supplemental contract, may be reduced or denied on the grounds that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date on the coverage of the provision or supplemental contract.

(f) With regard to benefits set forth in Section 10271.1, the provisions and supplemental contracts shall specify any applicable exclusions, which shall be limited to the following:

(1) Total disability caused or substantially contributed to by any attempt at suicide or intentionally self-inflicted injury, while sane or insane.

(2) Total disability caused or substantially contributed to by war or an act of war, as defined in the exclusion provisions of the contract.

(3) Total disability caused or substantially contributed to by active participation in a riot, insurrection, or terrorist activity.

(4) Total disability caused or substantially contributed to by committing or attempting to commit a felony.

(5) Total disability caused or substantially contributed to by voluntary intake of either:

(A) Any drug, unless prescribed or administered by a physician and taken in accordance with the physician's instructions.

(B) Poison, gas, or fumes, unless they are the direct result of an occupational accident.

(6) Total disability occurring after the policy anniversary or supplemental contract anniversary, as applicable and as defined in the policy or supplemental contract, on which the insured attains a specified age of no less than 65 years.

(7) Total disability in consequence of the insured being intoxicated, as defined by the jurisdiction where the total disability occurred.

(8) Total disability caused or materially contributed to by engaging in an illegal occupation.

(g) If the commissioner notifies the insurer, in writing, that the filed form does not comply with the requirements of law and specifies the reasons for his or her opinion, it is unlawful for an insurer to issue any policy in that form.

SEC. 140. Section 11665 of the Insurance Code is amended to read:

11665. (a) An insurer who issues a workers' compensation insurance policy to a roofing contractor holding a C-39 license from the Contractors' State License Board shall perform an annual payroll audit for the contractor. This audit shall include an in-person visit to the place of business of the roofing contractor to verify whether the number of employees reported by the contractor is accurate. The insurer may impose a surcharge on each policyholder audited under this subdivision in an amount necessary to recoup the reasonable costs of conducting the annual payroll audits.

(b) The commissioner shall direct the rating organization designated as his or her statistical agent to compile pertinent

statistical data on those holding C-39 licenses, as reported by the appropriate state entity, on an annual basis and provide a report to him or her each year. The data shall track the total annual payroll and loss data reported on those holding C-39 licenses in accordance with the standard workers' compensation insurance classifications applicable to roofing operations. The data shall include the number of employers, total payroll, total losses, and the losses per one hundred dollars ($100) of payroll by the employers' annual payroll intervals as follows:

1 to	4,999
5,000 to	9,999
10,000 to	14,999
15,000 to	19,999
20,000 to	24,999
25,000 to	29,999
30,000 to	39,999
40,000 to	49,999
50,000 to	74,999
75,000 to	99,999
100,000 to	199,999
200,000 to	299,999
300,000 to	399,999
400,000 to	499,999
500,000 to	599,999
600,000 to	699,999
700,000 to	799,999
800,000 to	899,999
900,000 to	999,999
1,000,000 to	1,099,999
1,100,000 to	1,199,999
1,200,000 to	1,299,999
1,300,000 to	1,399,999
1,400,000 to	1,499,999
1,500,000 or more	

The report shall also be provided to the Legislature by the commissioner, in compliance with Section 9795 of the Government Code.

SEC. 141. Section 12694.1 of the Insurance Code is amended to read:

12694.1. (a) Pursuant to Sections 14005.26 and 14005.27 of the Welfare and Institutions Code, subscribers enrolled in the Healthy Families Program pursuant to this part shall, no sooner than January 1, 2013, transition to the Medi-Cal program pursuant to Sections 14005.26 and 14005.27 of the Welfare and Institutions Code to the extent they are otherwise eligible. AIM-linked infants, as defined in Section 12695.03, with incomes above 250 percent of the federal poverty level are exempt from this transition.

(b) The board shall coordinate with the State Department of Health Care Services to implement Sections 14005.26 and 14005.27 of the Welfare and Institutions Code.

(c) The board's actions to coordinate with the State Department of Health Care Services to implement Sections 14005.26 and 14005.27 of the Welfare and Institutions Code, as specified in subdivision (b), shall include, but not be limited to, all of the following:

(1) Notwithstanding Section 12693.74, disenrollment of subscribers in the manner, and at the times, specified in Section 14005.27 of the Welfare and Institutions Code. The board may retain a subscriber in the program for longer than 12 months if needed to ensure a smooth transition to the Medi-Cal program.

(2) In coordination with the State Department of Health Care Services, provision of reasonable notice to applicants concerning disenrollment of subscribers consistent with Section 14005.27 of the Welfare and Institutions Code.

(3) Notwithstanding Section 12693.51, transfers of subscribers from one participating plan to another at the times and under the conditions prescribed by the board, without the obligation that the board provide an annual opportunity for subscribers to transfer from one participating plan to another.

(d) Nothing in subdivision (e) of Section 12693.43 shall be construed to require any refund or adjustment of family contributions if an applicant has paid for three months of required family contributions in advance and the subscriber for whom the applicant has paid these family contributions is disenrolled pursuant

to this section, or for any other reason, without receiving a fourth consecutive month of coverage.

(e) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the board shall, without taking any further regulatory action, implement, interpret, or make specific this section by means of business rules, program bulletins, program correspondence to subscribers and contractors, letters, or similar instructions.

(2) The board may adopt and readopt emergency regulations implementing this section. The adoption and readoption, by the board, of regulations implementing this section shall be deemed an emergency and necessary to avoid serious harm to the public peace, health, safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the board is hereby exempted from the requirement that it describe facts showing the need for immediate action and from review by the Office of Administrative Law.

(f) The Healthy Families Program, pursuant to this part, shall cease to enroll new subscribers no sooner than the date transition begins pursuant to subdivision (a), and any transition of children shall be in compliance with the implementation plan or plans as contained in Section 14005.27 of the Welfare and Institutions Code.

SEC. 142. Section 980 of the Labor Code is amended to read:

980. (a) As used in this chapter, “social media” means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(b) An employer shall not require or request an employee or applicant for employment to do any of the following:

(1) Disclose a username or password for the purpose of accessing personal social media.

(2) Access personal social media in the presence of the employer.

(3) Divulge any personal social media, except as provided in subdivision (c).

(c) Nothing in this section shall affect an employer’s existing rights and obligations to request an employee to divulge personal social media reasonably believed to be relevant to an investigation

of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

(d) Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

(e) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

SEC. 143. Section 4709 of the Labor Code is amended to read:

4709. (a) Notwithstanding any other law, a dependent of a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, or 830.6 of the Penal Code, or a Sheriff's Special Officer of the County of Orange, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100) shall be entitled to a scholarship at any qualifying institution described in subdivision (*l*) of Section 69432.7 of the Education Code. The scholarship shall be in an amount equal to the amount provided a student who has been awarded a Cal Grant scholarship as specified in Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code.

(b) A dependent of an officer or employee of the Department of Corrections and Rehabilitation or the Department of Corrections and Rehabilitation, Division of Juvenile Justice, described in Section 20403 of the Government Code, who is killed in the performance of duty, or who dies or is totally disabled as a result of an accident or an injury incurred in the performance of duty, when the death, accident, or injury is caused by the direct action of an inmate, and is compensable under this division or Division

4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(c) Notwithstanding any other law, a dependent of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or injury incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(d) Nothing in this section shall be interpreted to allow the admittance of the dependent into a college or university unless the dependent is otherwise qualified to gain admittance to the college or university.

(e) The scholarship provided for by this section shall be paid out of funds annually appropriated in the Budget Act to the Student Aid Commission established by Article 2 (commencing with Section 69510) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code.

(f) The receipt of a scholarship provided for by this section shall not preclude a dependent from receiving a Cal Grant award pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education. The receipt of a Cal Grant award pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education shall not preclude a dependent from receiving a scholarship provided for by this section.

(g) As used in this section, “dependent” means the children (natural or adopted) or spouse, at the time of the death or injury, of the peace officer, law enforcement officer, or firefighter.

(h) Eligibility for a scholarship under this section shall be limited to a person who demonstrates financial need as determined by the Student Aid Commission pursuant to Article 1.5 (commencing with Section 69503) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code. For purposes of determining financial need, the proceeds of death benefits received by the dependent, including, but not limited to, a continuation of income received

from the Public Employees' Retirement System, the proceeds from the federal Public Safety Officers' Benefits Act, life insurance policies, proceeds from Sections 4702 and 4703.5, any private scholarship where receipt is predicated upon the recipient being the survivor of a deceased public safety officer, the scholarship awarded pursuant to Section 68120 of the Education Code, and any interest received from these benefits, shall not be considered.

SEC. 144. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the appeals board, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following, provided that if an expedited hearing is requested, no other issue may be heard until the medical provider network dispute is resolved:

(1) The employee's entitlement to medical treatment pursuant to Section 4600, except for treatment issues determined pursuant to Sections 4610 and 4610.5.

(2) Whether the injured employee is required to obtain treatment within a medical provider network.

(3) A medical treatment appointment or medical-legal examination.

(4) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(5) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(6) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall establish a priority conference calendar for cases in which the employee is represented

by an attorney and the issues in dispute are employment or injury arising out of employment or in the course of employment. The conference shall be conducted by a workers' compensation administrative law judge within 30 days after the declaration of readiness to proceed. If the dispute cannot be resolved at the conference, a trial shall be set as expeditiously as possible, unless good cause is shown why discovery is not complete, in which case status conferences shall be held at regular intervals. The case shall be set for trial when discovery is complete, or when the workers' compensation administrative law judge determines that the parties have had sufficient time in which to complete reasonable discovery. A determination as to the rights of the parties shall be made and filed within 30 days after the trial.

(d) (1) In all cases, a mandatory settlement conference, except a lien conference or a mandatory settlement lien conference, shall be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing, except a lien trial, shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained

thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(e) In cases involving the Director of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this section shall not apply unless proof of service, as specified in paragraph (1) of subdivision (d) of Section 3716, has been filed with the appeals board and provided to the Director of Industrial Relations, valid jurisdiction has been established over the employer, and the fund has been joined.

(f) Except as provided in subdivision (a) and in Section 4065, the provisions of this section shall apply irrespective of the date of injury.

SEC. 145. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(1) An order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim, except through an attorney under reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) (A) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made

without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(B) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) An order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(C) An order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by

the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(D) A protective order under this paragraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. At no time shall the electronic monitoring be in place if the protective order is not in place.

(b) A person violating an order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person so held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of this code shall have precedence in enforcement over any other restraining or protective order, provided that the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of this code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided that the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) In any case in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(i) (1) In all cases in which a criminal defendant has been convicted of a crime of domestic violence as defined in Section 13700, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, “local government” means the county that has jurisdiction over the protective order.

SEC. 145.3. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempts of court is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of a court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior specified in paragraph (1) that is committed in the presence of a referee, while actually engaged in a trial or hearing, pursuant to the order of a court, or in the presence of any jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law.

(3) A breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of a court.

(6) Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.

(7) The contumacious and unlawful refusal of a person to be sworn as a witness or, when so sworn, the like refusal to answer a material question.

(8) The publication of a false or grossly inaccurate report of the proceedings of a court.

(9) Presenting to a court having power to pass sentence upon a prisoner under conviction, or to a member of the court, an affidavit, testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(10) Willful disobedience of the terms of an injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by a court, including an order pending trial.

(b) (1) A person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, or directly, and who has been previously

convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), a willful and knowing violation of a protective order or stay-away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, or elder or dependent adult abuse, as defined in Section 368, or that is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) An order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of an order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or “a credible threat” of violence, as provided in subdivisions *(b) and* (c) ~~and (d)~~ of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order, as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under ~~subdivision (g) of Section 12021~~ *Section 29825*.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with Section 1203.097.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For an order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall an order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole, or in part, by the criminal acts of his or her spouse in violation of subdivision (c), the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this

subdivision, until all separate property of the offending spouse is exhausted.

(5) A person violating an order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1 or 646.9. However, a person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. A conviction or acquittal for a substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 145.5. Section 171c of the Penal Code is amended to read:

171c. (a) (1) Any person who brings a loaded firearm into, or possesses a loaded firearm within, the State Capitol, any legislative office, any office of the Governor or other constitutional officer, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing, or upon the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of Sacramento, shall be punished by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine, or by imprisonment pursuant to subdivision (h) of Section 1170.

(2) Any person who brings or possesses, within the State Capitol, any legislative office, any hearing room in which any committee of the Senate or Assembly is conducting a hearing, the Legislative Office Building at 1020 N Street in the City of Sacramento, or upon the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of Sacramento, any of the following, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the area is posted with a statement providing reasonable notice that prosecution may result from possession of any of these items:

(A) Any firearm.

(B) Any deadly weapon described in Section ~~653k or 12020~~ *21510 or in any provision listed in Section 16590*.

(C) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(D) Any unauthorized tear gas weapon.

(E) Any stun gun, as defined in Section 244.5.

(F) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

(G) Any ammunition as defined in ~~Section 12316~~ *Sections 16150 and 16650*.

(H) Any explosive as defined in Section 12000 of the Health and Safety Code.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in ~~subdivision (a) of Section 12027~~ *Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6*, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person holding a valid license to carry the firearm pursuant to ~~Article 3 (commencing with Section 12050) of~~ Chapter ~~1~~ *4 (commencing with Section 26150) of Division 5* of Title ~~2~~ *4* of Part ~~4~~ *6*, and who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed weapon upon the premises described in subdivision (a).

(3) A person who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon upon the premises described in subdivision (a).

(c) (1) Nothing in this section shall preclude prosecution under ~~Sections 12021 and 12021.1~~ *Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code*, Section 8100 or 8103 of the

Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 145.7. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 ~~or~~, 527.8, *or 527.85* of the Code of Civil Procedure, or Section

15657.03 of the Welfare and Institutions Code, shall be punished under Section 29825.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 146. Section 289.6 of the Penal Code is amended to read:

289.6. (a) (1) An employee or officer of a public entity health facility, or an employee, officer, or agent of a private person or entity that provides a health facility or staff for a health facility under contract with a public entity, who engages in sexual activity

with a consenting adult who is confined in a health facility is guilty of a public offense. As used in this paragraph, "health facility" means a health facility as defined in subdivisions (b), (e), (g), (h), and (j) of, and subparagraph (C) of paragraph (2) of subdivision (i) of, Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

(2) An employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, a person or agent of a public or private entity under contract with a detention facility, a volunteer of a private or public entity detention facility, or a peace officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.

(3) An employee with a department, board, or authority under the Department of Corrections and Rehabilitation or a facility under contract with a department, board, or authority under the Department of Corrections and Rehabilitation, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is guilty of a public offense.

(b) As used in this section, the term "public entity" means the state, the federal government, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.

(c) As used in this section, the term "detention facility" means:

(1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.

(2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.

(3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.

(4) A vehicle used to transport confined persons during their period of confinement, including transporting a person after he or she has been arrested but has not been booked.

(5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(d) As used in this section, "sexual activity" means:

(1) Sexual intercourse.

(2) Sodomy, as defined in subdivision (a) of Section 286.

(3) Oral copulation, as defined in subdivision (a) of Section 288a.

(4) Sexual penetration, as defined in subdivision (k) of Section 289.

(5) The rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another.

(e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place, to physical contact or penetration made pursuant to a lawful search, or bona fide medical examinations or treatments, including clinical treatments.

(g) Any violation of paragraph (1) of subdivision (a), or a violation of paragraph (2) or (3) of subdivision (a) as described in paragraph (5) of subdivision (d), is a misdemeanor.

(h) Any violation of paragraph (2) or (3) of subdivision (a), as described in paragraph (1), (2), (3), or (4) of subdivision (d), shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(i) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

(j) Anyone who is convicted of a felony violation of this section who is employed by a department, board, or authority within the Department of Corrections and Rehabilitation shall be terminated in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Anyone who has been convicted of a felony violation of this section shall not be eligible to be hired or reinstated by a

department, board, or authority within the Department of Corrections and Rehabilitation.

SEC. 147. Section 496a of the Penal Code is amended to read:

496a. (a) Every person who is a dealer in or collector of junk, metals, or secondhand materials, or the agent, employee, or representative of such dealer or collector, and who buys or receives any wire, cable, copper, lead, solder, mercury, iron, or brass which he or she knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company, or a county, city, city and county, or other political subdivision of this state engaged in furnishing public utility service, without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving that property, and shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Any person who buys or receives material pursuant to subdivision (a) shall obtain evidence of his or her identity from the seller, including, but not limited to, that person's full name, signature, address, driver's license number, and vehicle license number, and the license number of the vehicle delivering the material.

(c) The record of the transaction shall include an appropriate description of the material purchased and the record shall be maintained pursuant to Section 21607 of the Business and Professions Code.

SEC. 147.3. Section 626.95 of the Penal Code is amended to read:

626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or subdivision (b), of Section 417, or *Section* 25400 or 25850, upon the grounds of or within a playground, or a public or private youth center during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, knowing that he or she is on or within those grounds, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years, or in a county jail not exceeding one year.

(b) State and local authorities are encouraged to cause signs to be posted around playgrounds and youth centers giving warning of prohibition of the possession of firearms upon the grounds of or within playgrounds or youth centers.

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

(1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city or county parks.

(2) "Youth center" means any public or private facility that is used to host recreational or social activities for minors while minors are present.

(d) It is the Legislature's intent that only an actual conviction of a felony of one of the offenses specified in this section would subject the person to firearms disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921 *et seq.*).

SEC. 147.5. Section 626.10 of the Penal Code is amended to read:

626.10. (a) (1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one

year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state

university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 16780, or a stun gun, as defined in Section 17230, upon the grounds of, or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 148. Section 781 of the Penal Code is amended to read:

781. Except as provided in Section 923, when a public offense is committed in part in one jurisdictional territory and in part in another jurisdictional territory, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory.

SEC. 149. Section 830.41 of the Penal Code is amended to read:

830.41. Notwithstanding any other provision of law, the City of Tulelake, California, is authorized to enter into a mutual aid agreement with the City of Malin, Oregon, for the purpose of permitting their police departments to provide mutual aid to each other when necessary. Before the effective date of the agreement, the agreement shall be reviewed and approved by the Commissioner of the California Highway Patrol.

SEC. 150. Section 830.55 of the Penal Code is amended to read:

830.55. (a) (1) As used in this section, a correctional officer is a peace officer, employed by a city, county, or city and county that operates a facility described in Section 2910.5 of this code or Section 1753.3 of the Welfare and Institutions Code or facilities operated by counties pursuant to Section 6241 or 6242 of this code under contract with the Department of Corrections and Rehabilitation or the Division of Juvenile Justice within the department, who has the authority and responsibility for maintaining custody of specified state prison inmates or wards, and who performs tasks related to the operation of a detention facility used for the detention of persons who have violated parole or are awaiting parole back into the community or, upon court order, either for their own safekeeping or for the specific purpose of serving a sentence therein.

(2) As used in this section, a correctional officer is also a peace officer, employed by a city, county, or city and county that operates a facility described in Section 4115.55, who has the authority and responsibility for maintaining custody of inmates sentenced to or housed in that facility, and who performs tasks related to the operation of that facility.

(b) A correctional officer shall have no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the superintendent of the facility, while engaged in transporting prisoners, guarding hospitalized prisoners, or suppressing riots, lynchings, escapes, or rescues in or about a detention facility established pursuant to Section 2910.5 or 4115.55 of this code or Section 1753.3 of the Welfare and Institutions Code.

(c) Each person described in this section as a correctional officer, within 90 days following the date of the initial assignment to that position, shall satisfactorily complete the training course specified in Section 832. In addition, each person designated as a correctional officer, within one year following the date of the initial assignment as an officer, shall have satisfactorily met the minimum selection and training standards prescribed by the Board of State and Community Corrections pursuant to Section 6035. Persons designated as correctional officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, may perform the duties of a correctional officer only while under the direct supervision of a correctional officer who has completed the training required in this section, and shall not carry or possess firearms in the performance of their prescribed duties.

(d) This section shall not be construed to confer any authority upon a correctional officer except while on duty.

(e) A correctional officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer, may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant, and may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job.

SEC. 151. Section 1001.20 of the Penal Code is amended to read:

1001.20. As used in this chapter:

(a) "Cognitive Developmental Disability" means any of the following:

(1) "Intellectual disability" means a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) "Autism" means a diagnosed condition of markedly abnormal or impaired development in social interaction, in communication, or in both, with a markedly restricted repertoire of activity and interests.

(3) Disabling conditions found to be closely related to intellectual disability or autism, or that require treatment similar to that required for individuals with intellectual disability or autism, and that would qualify an individual for services provided under the Lanterman Developmental Disabilities Services Act.

(b) "Diversion-related treatment and habilitation" means, but is not limited to, specialized services or special adaptations of generic services, directed toward the alleviation of cognitive developmental disability or toward social, personal, physical, or economic habilitation or rehabilitation of an individual with a cognitive developmental disability, and includes, but is not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with this disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, and transportation services necessary to ensure delivery of services to persons with cognitive developmental disabilities.

(c) "Regional center" means a regional center for the developmentally disabled established under the Lanterman Developmental Disabilities Services Act that is organized as a private nonprofit community agency to plan, purchase, and coordinate the delivery of services that cannot be provided by state agencies to developmentally disabled persons residing in a particular geographic catchment area, and that is licensed and funded by the State Department of Developmental Services.

(d) "Director of a regional center" means the executive director of a regional center for the developmentally disabled or his or her designee.

(e) "Agency" means the prosecutor, the probation department, and the regional center involved in a particular defendant's case.

(f) "Dual agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered jointly by the regional center and by the probation department, that is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and that includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

(g) "Single agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered solely by the regional center without involvement by the probation department, that is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and that includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

SEC. 152. Section 1170 of the Penal Code, as amended by Section 2 of Chapter 828 of the Statutes of 2012, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful

reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(2) (A) (i) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing.

(ii) Notwithstanding clause (i), this paragraph shall not apply to defendants sentenced to life without parole for an offense where the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(C) If any of the information required in subparagraph (B) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the

defendant and advise the defendant that the matter cannot be considered without the missing information.

(D) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(E) If the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(F) The factors that the court may consider when determining whether to recall and resentence include, but are not limited to, the following:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) Prior to the offense for which the sentence is being considered for recall, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(G) The court shall have the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in subparagraph (B). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(H) If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(I) In addition to the criteria in subparagraph (F), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(J) This subdivision shall have retroactive application.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within

six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing

by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) This subdivision does not prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) (i) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding

portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period that is suspended because a person has absconded shall not be credited toward the period of supervision.

(ii) The portion of a defendant's sentenced term during which time he or she is supervised by the county probation officer pursuant to this subparagraph shall be known as mandatory supervision.

(6) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(i) This section shall become operative on January 1, 2014.

SEC. 153. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) (A) A minimum payment by the defendant of five hundred dollars ($500) to be disbursed as specified in this paragraph. If,

after a hearing in open court, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee. If the court exercises its discretion to reduce or waive the fee, it shall state the reason on the record.

(B) Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(i) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(ii) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Public Health, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less

than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them

into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exists:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation

department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused, in whole or in part, by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the

program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in subparagraph (A) of paragraph (10) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or

suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived

under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke an approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) An act or omission relating to the approval of a batterer's treatment program under paragraph (5) of subdivision (c) is a discretionary act pursuant to Section 820.2 of the Government Code.

SEC. 153.5. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in ~~Section 12021.1~~ *Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6* of this code or Section 13555 of the Vehicle Code.

(b) If a defendant does not satisfy all the requirements of subdivision (a), after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interests of justice, may grant the relief available pursuant to subdivision (a) to a defendant convicted of an infraction, or of a misdemeanor and not granted probation, or both, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense, and is not under charge of commission of any crime.

(c) (1) The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing, provided that, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

(2) Dismissal of an accusatory pleading pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusatory pleading underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(d) This section applies to any conviction specified in subdivision (a) or (b) that occurred before, as well as those occurring after, the effective date of this section, except that this section does not apply to the following:

(1) A misdemeanor violation of subdivision (c) of Section 288.

(2) Any misdemeanor falling within the provisions of Section 42002.1 of the Vehicle Code.

(3) Any infraction falling within the provisions of Section 42001 of the Vehicle Code.

(e) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county and the court for the cost of services rendered at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(f) A petition for dismissal of an infraction pursuant to this section shall be by written declaration, except upon a showing of compelling need. Dismissal of an infraction shall not be granted under this section unless the prosecuting attorney has been given at least 15 days' notice of the petition for dismissal. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(g) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 154. Section 1230 of the Penal Code is amended to read:

1230. (a) Each county is hereby authorized to establish in each county treasury a Community Corrections Performance Incentives Fund (CCPIF), to receive all amounts allocated to that county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, shall be made available to the CPO of that county, within 30 days of the deposit of those moneys into the fund, for the implementation of the community corrections program authorized by this chapter.

(1) The community corrections program shall be developed and implemented by probation and advised by a local Community Corrections Partnership.

(2) The local Community Corrections Partnership shall be chaired by the CPO and comprised of the following membership:

(A) The presiding judge of the superior court, or his or her designee.

(B) A county supervisor or the chief administrative officer for the county or a designee of the board of supervisors.

(C) The district attorney.

(D) The public defender.

(E) The sheriff.

(F) A chief of police.

(G) The head of the county department of social services.

(H) The head of the county department of mental health.

(I) The head of the county department of employment.

(J) The head of the county alcohol and substance abuse program.

(K) The head of the county office of education.

(L) A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense.

(M) An individual who represents the interests of victims.

(3) Funds allocated to probation pursuant to this act shall be used to provide supervision and rehabilitative services for adult felony offenders subject to probation, and shall be spent on evidence-based community corrections practices and programs, as defined in subdivision (d) of Section 1229, which may include, but are not limited to, the following:

(A) Implementing and expanding evidence-based risk and needs assessments.

(B) Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in *a* county jail for up to 90 days.

(C) Providing more intensive probation supervision.

(D) Expanding the availability of evidence-based rehabilitation programs, including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services.

(E) Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

(4) The CPO shall have discretion to spend funds on any of the above practices and programs consistent with this act but, at a minimum, shall devote at least 5 percent of all funding received to evaluate the effectiveness of those programs and practices implemented with the funds provided pursuant to this chapter. A CPO may petition the Administrative Office of the Courts to have this restriction waived, and the Administrative Office of the Courts shall have the authority to grant such a petition, if the CPO can demonstrate that the department is already devoting sufficient funds to the evaluation of these programs and practices.

(5) Each probation department receiving funds under this chapter shall maintain a complete and accurate accounting of all funds received pursuant to this chapter.

SEC. 155. The heading of Title 4.5 (commencing with Section 13600) of Part 4 of the Penal Code, as amended by Section 7 of Chapter 136 of the Statutes of 2011, is repealed.

SEC. 156. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally

incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600).

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) (A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a

residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to another facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed, or the outpatient supervisor where the defendant is placed on outpatient status, shall make a written report to the committing court and the regional center director or a

designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

(2) A defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status, shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense

charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter

3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or a community board and care facility.

SEC. 157. Section 2602 of the Penal Code is amended to read:

2602. (a) Except as provided in subdivision (b), no person sentenced to imprisonment or housed in a state prison shall be administered any psychiatric medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d).

(c) The Department of Corrections and Rehabilitation may seek to initiate involuntary medication on a nonemergency basis only if all of the following conditions have been met:

(1) A psychiatrist has determined that the inmate has a serious mental disorder.

(2) A psychiatrist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications or is a danger to self or others.

(3) A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient.

(4) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses or is unable to consent to the administration of the medication.

(5) The inmate is provided a hearing before an administrative law judge.

(6) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive expedited access to counsel. The hearing shall be held not more than 30 days after the filing of the notice with the Office of Administrative Hearings, unless counsel for the inmate agrees to extend the date of the hearing.

(7) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive an expedited hearing. The written notice shall do all of the following:

(A) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication.

(B) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to medical treatment.

(C) Inform the inmate of his or her right to contest the finding of an administrative law judge authorizing treatment with involuntary medication by filing a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure, and his or her right to file a petition for writ of habeas corpus with respect to any decision of the Department of Corrections and Rehabilitation to continue treatment with involuntary medication after the administrative law judge has authorized treatment with involuntary medication.

(8) An administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest. Failure of the department to provide timely or adequate notice pursuant to this section shall be excused only upon a showing of good cause and the absence of prejudice to the inmate. In making this determination, the administrative law judge may consider factors, including, but not limited to, the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and, if applicable, the need for

protection of the inmate or institutional staff that would be compromised by a procedural default.

(9) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(10) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown.

(d) This section does not prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. If the Department of Corrections and Rehabilitation's clinicians identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the department shall give notice to the inmate and his or her counsel of the department's intention to seek an ex parte order to allow the continuance of medication pending the full hearing. The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c). The order may be issued ex parte upon a showing that in the absence of the medication the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist showing specific facts. The inmate and the inmate's appointed counsel shall have two business days to respond to the department's ex parte request to continue interim medication, and may present facts

supported by an affidavit in opposition to the department's request. An administrative law judge shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.

(1) The Department of Corrections and Rehabilitation shall file with the Office of Administrative Hearings, and serve on the inmate and his or her counsel, the written notice described in paragraph (7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

(B) A psychiatrist determines that the psychiatric medication is not necessary and administration of the medication is discontinued.

(2) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (5) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for an inmate agrees to a different period of time.

(3) With the exception of the timeline provisions specified in paragraphs (1) and (2) for providing notice and commencement of the hearing pursuant to the conditions specified in this subdivision, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The department shall prove the same elements supporting the involuntary administration of psychiatric medication and the administrative law judge shall be required to make the same findings described in subdivision (c).

(e) The determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent.

(f) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration

of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (g).

(g) To renew an existing order allowing involuntary medication, the department shall file with the Office of Administrative Hearings, and shall serve on the inmate and his or her counsel, a written notice indicating the department's intent to renew the existing involuntary medication order.

(1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

(2) The inmate shall be entitled to, and shall be given, the same due process protections as specified in subdivision (c).

(3) Renewal orders shall be valid for one year from the date of the hearing.

(4) An order renewing an existing order shall be granted based on clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication, and that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

(5) If the department wishes to add a basis to an existing order, the department shall give the inmate and the inmate's counsel notice in advance of the hearing via a renewal notice or supplemental petition. Within the renewal notice or supplemental petition, the department shall specify what additional basis is being alleged and what qualifying conduct within the past year supports that additional basis. The department shall prove the additional basis and conduct by clear and convincing evidence at a hearing as specified in subdivision (c).

(6) The hearing on any petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(h) Pursuant to Section 5058, the Department of Corrections and Rehabilitation shall adopt regulations to fully implement this section.

(i) In the event of a conflict between the provisions of this section and the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code), this section shall control.

SEC. 158. Section 3000.08 of the Penal Code, as amended by Section 35 of Chapter 43 of the Statutes of 2012, is amended to read:

3000.08. (a) Persons released from state prison prior to or on or after July 1, 2013, after serving a prison term or, whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes shall be subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county where the parolee is released or resides for the purpose of hearing petitions to revoke parole and impose a term of custody:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(5) Any crime where the person is required, as a condition of parole, to undergo treatment by the State Department of State Hospitals pursuant to Section 2962.

(b) Notwithstanding any other provision of law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(c) At any time during the period of parole of a person subject to this section, if any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of his or her parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person and bring him or her before the court, or the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section 1203.2.

(d) Upon review of the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated his or her conditions of parole, the supervising parole agency may impose additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and intermediate sanctions for parole violations, including flash incarceration in a county jail. Periods of "flash incarceration," as defined in subdivision (e), are encouraged as one method of punishment for violations of a parolee's conditions of parole. Nothing in this section is intended to preclude referrals to a reentry court pursuant to Section 3015.

(e) "Flash incarceration" is a period of detention in *a* county jail due to a violation of a parolee's conditions of parole. The length of the detention period can range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of a parolee's conditions of parole shall appropriately punish a parolee while preventing the disruption in a work or home establishment that typically arises from longer periods of detention.

(f) If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate, the supervising parole agency shall, pursuant to Section 1203.2, petition the court in the county in which the parolee is being supervised to revoke parole. At any point during the process initiated pursuant to this section, a parolee may waive, in writing, his or her right to counsel, admit the parole violation, waive a court hearing, and accept the proposed parole modification or revocation. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of parole, the court shall have authority to do any of the following:

(1) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.

(2) Revoke parole and order the person to confinement in a county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(g) Confinement pursuant to paragraphs (1) and (2) of subdivision (f) shall not exceed a period of 180 days in a county jail.

(h) Notwithstanding any other provision of law, in any case where Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 applies to a person who is on parole and the court determines that the person has committed a violation of law or violated his or her conditions of parole, the person on parole shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.

(i) Notwithstanding subdivision (a), any of the following persons released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater:

(1) The person is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, and was subject to a period of parole exceeding three years at the time he or she committed a felony for which he or she was convicted and subsequently sentenced to state prison.

(2) The person was subject to parole for life pursuant to Section 3000.1 at the time of the commission of the offense that resulted in a conviction and state prison sentence.

(j) Parolees subject to this section who have a pending adjudication for a parole violation on July 1, 2013, shall be subject to the jurisdiction of the Board of Parole Hearings. Parole revocation proceedings conducted by the Board of Parole Hearings prior to July 1, 2013, if reopened on or after July 1, 2013, shall be subject to the jurisdiction of the Board of Parole Hearings.

(k) Except as described in subdivision (c), any person who is convicted of a felony that requires community supervision and

who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision.

(*l*) This section shall become operative on July 1, 2013.

SEC. 159. Section 3060.7 of the Penal Code, as added by Section 48 of Chapter 43 of the Statutes of 2012, is amended to read:

3060.7. (a) (1) Notwithstanding any other law, the supervising parole agency shall notify any person released on parole or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 who has been classified by the Department of Corrections and Rehabilitation as included within the highest control or risk classification that he or she shall be required to report to his or her assigned parole officer or designated local supervising agency within two days of release from the state prison.

(2) This section shall not prohibit the supervising parole agency or local supervising agency from requiring any person released on parole or postrelease community supervision to report to his or her assigned parole officer within a time period that is less than two days from the time of release.

(b) The supervising parole agency, within 24 hours of a parolee's failure to report as required by this section, shall issue a written order suspending the parole of that parolee, pending a hearing before the Board of Parole Hearings or the court, as applicable, and shall request that a warrant be issued for the parolee's arrest pursuant to subdivision (c) of Section 3000.08.

(c) Upon the issuance of an arrest warrant for a parolee who has been classified within the highest control or risk classification, the assigned parole officer shall continue to carry the parolee on his or her regular caseload and shall continue to search for the parolee's whereabouts.

(d) With regard to any inmate subject to this section, the Department of Corrections and Rehabilitation shall release an inmate sentenced prior to June 27, 2012, one or two days before his or her scheduled release date if the inmate's release date falls on the day before a holiday or weekend.

(e) With regard to any inmate subject to this section, the Department of Corrections and Rehabilitation shall release an inmate one or two days after his or her scheduled release date if the release date falls on the day before a holiday or weekend.

(f) This section shall become operative on July 1, 2013.

SEC. 160. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, including participation in a graffiti abatement program as defined in subdivision (f) of Section 594, as approved by the sheriff or other official in charge of the correctional facilities.

(D) Performance of weed and rubbish abatement on public and private property pursuant to Chapter 13 (commencing with Section 39501) of Part 2 of Division 3 of Title 4 of the Government Code, or Part 5 (commencing with Section 14875) or Part 6 (commencing with Section 14930) of Division 12 of the Health and Safety Code, as approved by the sheriff or other official in charge of the correctional facilities.

(E) Performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to this task, the sheriff or other official shall agree upon in advance with the

senior service organization about the type of services to be rendered by the participant and the extent of contact permitted between the recipients of these services and the participant.

(F) Any person who is not able to perform manual labor as specified in this paragraph because of a medical condition, physical disability, or age, may participate in a work release program involving any other type of public sector work that is designated and approved by the sheriff or other official in charge of county correctional facilities.

(2) The sheriff or other official may permit a participant in a work release program to receive work release credit for documented participation in educational programs, vocational programs, substance abuse programs, life skills programs, or parenting programs. Participation in these programs shall be considered in lieu of performing labor in a work release program, with eight work-related hours to equal one day of custody credit.

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational,

or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, that describes with particularity the person to be retaken.

(d) This section does not require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 161. Section 4115.55 of the Penal Code is amended to read:

4115.55. (a) Upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to *a* county jail in community correctional facilities created pursuant to Article 1.5 (commencing with Section

2910) of Chapter 7 of Title 1 or Chapter 9.5 (commencing with Section 6250) of Title 7.

(b) Facilities operated pursuant to agreements entered into under subdivision (a) shall comply with the minimum standards for local detention facilities as provided by Chapter 1 (commencing with Section 3000) of Division 3 of Title 15 of the California Code of Regulations.

SEC. 162. Section 5072 of the Penal Code is amended to read:

5072. (a) Notwithstanding any other provision of law, the Department of Corrections and Rehabilitation and the State Department of Health Care Services may develop a process to maximize federal financial participation for the provision of acute inpatient hospital services rendered to individuals who, but for their institutional status as inmates, are otherwise eligible for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code or a Low Income Health Program (LIHP) pursuant to Part 3.6 (commencing with Section 15909) of Division 9 of the Welfare and Institutions Code.

(b) Federal reimbursement for acute inpatient hospital services for inmates enrolled in Medi-Cal shall occur through the State Department of Health Care Services and federal reimbursement for acute inpatient hospital services for inmates not enrolled in Medi-Cal but who are eligible for a LIHP shall occur through a county LIHP.

(c) (1) The Secretary of the Department of Corrections and Rehabilitation, in conjunction with the State Department of Health Care Services, shall develop a process to claim federal financial participation and to reimburse the Department of Corrections and Rehabilitation for the federal share of the allowable Medicaid cost provision of acute inpatient hospital services rendered to inmates according to this section and for any administrative costs incurred in support of those services.

(2) Public or community hospitals shall invoice the Department of Corrections and Rehabilitation to obtain reimbursement for acute inpatient hospital services in accordance with contracted rates of reimbursement, or if no contract is in place, the rates pursuant to Section 5023.5. The Department of Corrections and Rehabilitation shall reimburse a public or community hospital for the delivery of acute inpatient hospital services rendered to an

inmate pursuant to this section. For individuals eligible for Medi-Cal pursuant to this section, the Department of Corrections and Rehabilitation shall submit a quarterly invoice to the State Department of Health Care Services for claiming federal participation at the Medi-Cal rate for acute inpatient hospital services. For enrollees in the LIHP, the Department of Corrections and Rehabilitation shall submit a quarterly invoice to the county of last legal residence pursuant to Section 14053.7 of the Welfare and Institutions Code. The county shall submit the invoice to the State Department of Health Care Services for claiming federal financial participation for acute inpatient hospital services for individuals made eligible pursuant to this section, pursuant to Section 14053.7 of the Welfare and Institutions Code, and pursuant to the process developed in subdivision (b). The State Department of Health Care Services shall claim federal participation for eligible services for LIHP enrolled inmates at the rate paid by the Department of Corrections and Rehabilitation. The State Department of Health Care Services and counties shall remit funds received for federal participation to the Department of Corrections and Rehabilitation for allowable costs incurred as a result of delivering acute inpatient hospital services allowable under this section.

(3) The county LIHPs shall not experience any additional net expenditures of county funds due to the provision of services under this section.

(4) The Department of Corrections and Rehabilitation shall reimburse the State Department of Health Care Services and counties for administrative costs that are not reimbursed by the federal government.

(5) The Department of Corrections and Rehabilitation shall reimburse the State Department of Health Care Services for any disallowance that is required to be returned to the Centers for Medicare and Medicaid Services for any litigation costs incurred due to the implementation of this section.

(d) (1) The state shall indemnify and hold harmless participating entities that operate a LIHP, including all counties, and all counties that operate in a consortium that participates as a LIHP, against any and all losses, including, but not limited to, claims, demands, liabilities, court costs, judgments, or obligations, due to the

implementation of this section as directed by the secretary and the State Department of Health Care Services.

(2) The State Department of Health Care Services may at its discretion require a county, as a condition of participation as a LIHP, to enroll an eligible inmate into its LIHP if the county is the inmate's county of last legal residence.

(3) The county LIHPs shall be held harmless by the state for any disallowance or deferral if federal action is taken due to the implementation of this section in accord with the state's policies, directions, and requirements.

(e) (1) The Department of Corrections and Rehabilitation, in conjunction with the State Department of Health Care Services, shall develop a process to facilitate eligibility determinations for individuals who may be eligible for Medi-Cal or a LIHP pursuant to this section and Section 14053.7 of the Welfare and Institutions Code.

(2) The Department of Corrections and Rehabilitation shall assist inmates in completing either the Medi-Cal or LIHP application as appropriate and shall forward that application to the State Department of Health Care Services for processing.

(3) Notwithstanding any other state law, and only to the extent that federal law allows and federal financial participation is available, for the limited purpose of implementing this section, the department or its designee is authorized to act on behalf of an inmate for purposes of applying for or determinations of Medi-Cal or LIHP eligibility.

(f) (1) This section does not restrict or limit the eligibility or alter county responsibility for payment of any service delivered to a parolee who has been released from detention or incarceration and now resides in a county that participates in the LIHP. If otherwise eligible for the county's LIHP, the LIHP shall enroll the parolee.

(2) Notwithstanding paragraph (1), at the option of the state, for enrolled parolees who have been released from detention or incarceration and now reside in a county that participates in a LIHP, the LIHP shall reimburse providers for the delivery of services which are otherwise the responsibility of the state to provide. Payment for these medical services, including both the state and federal shares of reimbursement, shall be included as

part of the reimbursement process described in paragraph (1) of subdivision (c).

(3) Enrollment of individuals in a LIHP under this subdivision shall be subject to any enrollment limitations described in subdivision (h) of Section 15910 of the Welfare and Institutions Code.

(g) The department shall be responsible to the LIHP for the nonfederal share of any reimbursement made for the provision of acute inpatient hospital services rendered to inmates pursuant to this section.

(h) Reimbursement pursuant to this section shall be limited to those acute inpatient hospital services for which federal financial participation pursuant to Title XIX of the federal Social Security Act is allowed.

(i) This section shall have no force or effect if there is a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that limits or affects the department's authority to select the hospitals used to provide inpatient hospital services to inmates.

(j) It is the intent of the Legislature that the implementation of this section will result in state General Fund savings for the funding of acute inpatient hospital services provided to inmates along with any related administrative costs.

(k) Any agreements entered into under this section for Medi-Cal or a LIHP to provide for reimbursement of acute inpatient hospital services and administrative expenditures as described in subdivision (c) shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(*l*) This section shall be implemented in a manner that is consistent with federal Medicaid law and regulations. The Director of the State Department of Health Care Services shall seek any federal approvals necessary for the implementation of this section. This section shall be implemented only when and to the extent that any necessary federal approval is obtained, and only to the extent that existing levels of federal financial participation are not otherwise jeopardized.

(m) To the extent that the Director of the State Department of Health Care Services determines that existing levels of federal financial participation are jeopardized, this section shall no longer be implemented.

(n) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the State Department of Health Care Services may, without taking any further regulatory action, implement this section by means of all-county letters, provider bulletins, facility letters, or similar instructions.

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

(1) The term "county of last legal residence" means the county in which the inmate resided at the time of arrest that resulted in conviction and incarceration in a state prison facility.

(2) The term "inmate" means an adult who is involuntarily residing in a state prison facility operated, administered, or regulated, directly or indirectly, by the department.

(3) During the existence of the receivership established in United States District Court for the Northern District of California, Case No. ~~CO1-1351~~ *C01-1351* TEH, Plata v. Schwarzenegger, references in this section to the "secretary" shall mean the receiver appointed in that action, who shall implement portions of this section that would otherwise be within the secretary's responsibility.

SEC. 163. Section 6030 of the Penal Code is amended to read:

6030. (a) The Board of State and Community Corrections shall establish minimum standards for local correctional facilities. The board shall review those standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following areas: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training.

(c) The standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

(d) The standards shall also include requirements relating to the acquisition, storage, labeling, packaging, and dispensing of drugs.

(e) The standards shall require that inmates who are received by the facility while they are pregnant be notified, orally or in writing, of and provided all of the following:

(1) A balanced, nutritious diet approved by a doctor.

(2) Prenatal and post partum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.

(3) Information pertaining to childbirth education and infant care.

(4) A dental cleaning while in a state facility.

(f) The standards shall provide that a woman known to be pregnant or in recovery after delivery shall not be restrained, except as provided in Section 3407. The board shall develop standards regarding the restraint of pregnant women at the next biennial review of the standards after the enactment of the act amending this subdivision and shall review the individual facility's compliance with the standards.

(g) In establishing minimum standards, the board shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in correctional facilities:

The Department of Corrections and Rehabilitation, state and local juvenile justice commissions, state and local correctional officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections and Rehabilitation, state and local correctional officials, and other interested persons.

(5) For female inmates and pregnant inmates in local adult and juvenile facilities:

The California State Sheriffs' Association and Chief Probation Officers' Association of California, and other interested persons.

SEC. 164. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to

Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, “commercial film and photographic print or image processor” means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes

any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) A clinical counselor intern registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43) (A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be

subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary institutions.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 165. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make

an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call

was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church,

denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse *and* that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement

agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or material are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) A other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute

for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 166. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), a person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one year, unless the arming is an element of that offense. This additional term shall apply to a person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 30510 or ~~Section~~ 30515, or a machinegun, as defined in Section 16880, or a .50 BMG rifle, as defined in Section 30530, the additional and consecutive term described in this subdivision shall be three years imprisonment pursuant to subdivision (h) of Section 1170 whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon, machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon, machinegun, or a .50 BMG rifle.

(b) (1) A person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be in the state prison for one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) Notwithstanding the enhancement set forth in subdivision (a), a person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,

11379.5, or 11379.6 of the Health and Safety Code shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), a person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as a single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 167. Section 12022.1 of the Penal Code is amended to read:

12022.1. (a) For the purposes of this section only:

(1) "Primary offense" means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, "primary offense" also means a felony offense for which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

(2) "Secondary offense" means a felony offense alleged to have been committed while the person is released from custody for a primary offense.

(b) Any person arrested for a secondary offense that was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty

enhancement of an additional two years, which shall be served consecutive to any other term imposed by the court.

(c) The enhancement allegation provided in subdivision (b) shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law. The enhancement allegation may be pleaded in a complaint but need not be proved at the preliminary hearing or grand jury hearing.

(d) Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.

(e) If the person is convicted of a felony for the primary offense, is sentenced to state prison for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be consecutive to the primary sentence and the aggregate term shall be served in the state prison, even if the term for the secondary offense specifies imprisonment in county jail pursuant to subdivision (h) of Section 1170.

(f) If the person is convicted of a felony for the primary offense, is granted probation for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be enhanced as provided in subdivision (b).

(g) If the primary offense conviction is reversed on appeal, the enhancement shall be suspended pending retrial of that felony. Upon retrial and reconviction, the enhancement shall be reimposed. If the person is no longer in custody for the secondary offense upon reconviction of the primary offense, the court may, at its discretion, reimpose the enhancement and order him or her recommitted to custody.

SEC. 168. Section 10295.6 of the Public Contract Code is amended to read:

10295.6. Sections 10295 and 10297 do not apply to any contract entered into by the Department of Water Resources under Part 3

(commencing with Section 11100) of Division 6 or Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code for the acquisition, sale, or transmission of power, or for services to facilitate those activities.

SEC. 169. Section 20651.7 of the Public Contract Code is amended to read:

20651.7. (a) For the purposes of bid evaluation and selection pursuant to subdivision (a) of Section 20651, when a community college district determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the community college district may provide for the selection of the lowest responsible bidder on the basis of best value pursuant to policies and procedures adopted by the governing board in accordance with this section.

(b) For purposes of this section, "best value" means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the governing board, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.

(c) A community college district shall consider all of the following when adopting best value policies pursuant to subdivision (a):

(1) Price and service level proposals that reduce the district's overall operating costs, including end-of-life expenditures and impact.

(2) Equipment, services, supplies, and materials standards that support the community college district's strategic acquisition and management program direction.

(3) A procedure for protest and resolution.

(d) A community college district may consider any of the following factors if adopting policies and procedures pursuant to subdivision (c):

(1) The total cost to the community college district of its purchase, use, and consumption of equipment, supplies, and materials.

(2) The operational cost or benefit incurred by the community college district as a result of a contract award.

(3) The added value to the community college district, as defined in the request for proposal, of vendor-added services.

(4) The quality and effectiveness of equipment, supplies, materials, and services.

(5) The reliability of delivery and installation schedules.

(6) The terms and conditions of product warranties and vendor guarantees.

(7) The financial stability of the vendor.

(8) The vendor's quality assurance program.

(9) The vendor's experience with the provisions of equipment, supplies, materials, and services within the institutional marketplace.

(10) The consistency of the vendor's proposed equipment, supplies, materials, and services with the district's overall supplies and materials procurement program.

(11) The economic benefits to the local community, including, but not limited to, job creation and retention.

(12) The environmental benefits to the local community.

(e) A community college district awarding a contract under this section shall award a contract to the lowest responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district based solely on the criteria set forth in the request for proposal.

(f) The governing board of a community college district shall issue a written notice of intent to award supporting its contract award and stating in detail the basis of the award. The notice of the intent to award and the contract file must be sufficient to satisfy an external audit.

(g) The governing board of a community college district shall publicly announce its award, identifying the bidder to which the award is made, the price proposal of the contractor awarded the contract, and the overall combined rating on the request for proposal evaluation factors. The announcement shall also include the ranking of the contractor awarded the contract in relation to all other responsive bidders and their respective price proposals and summary of the rationale for the contract award.

(h) The community college district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination, as described in subdivision (e) of Section 12751.3

of the Public Utilities Code, in the award and performance of contracts does not occur.

(i) (1) If a community college district elects to purchase equipment, materials, supplies, and services by contract, let in accordance with this section, the community college district shall submit the following information to the Chancellor of the California Community Colleges on or before January 1, 2016:

(A) The community college district's policies adopted pursuant to subdivision (a).

(B) An annual list of district procurements for contracts with a brief description of the contract, the winning bid, the cost, and if the contract was done under best value acquisition policies.

(C) For a contract awarded under the best value acquisition policies, the bid announcement announcing the bidder to which the award was made, including that bidder's scoring rating compared to other bidders, the winning contractor's price proposal, the overall combined rating on the request for proposal evaluation factors, a description of the products, commodities, or services sought, and a summary of the rationale for the contract award.

(D) For each contract awarded using the best value acquisition policies at least one bid award announcement for a comparably priced contract using the traditional lowest responsible bidder process that specifies the bidder to which the contract was awarded, the amount of the award, and the request for bid for that contract that includes a description of the products, commodities, or services sought for at least one comparably sized contract, to the best value contract being let, awarded pursuant to the traditional lowest responsible bidder process including contracts awarded by the district in the three years prior to the adoption of best value acquisition policies by the district.

(E) For contracts awarded using best value, a summary of any additional economic benefit other than the price of the contract obtained, including an explanation of whether these benefits were realized as expected.

(F) The total number of bid protests or protests concerning an aspect of the solicitation, bid, or award of the agreement since the district adopted policies pursuant to subdivision (a) and the number of those protests that occurred under best value.

(G) A description of any written bid protest or protests concerning an aspect of the solicitation, bid, or award of the

agreement including the resolution of the protest for any contract submitted pursuant to this section.

(2) The Legislative Analyst shall request the chancellor to provide the information specified in paragraph (1) to the Legislative Analyst on or before July 1, 2016. On or before February 1, 2017, the Legislative Analyst shall report to the Legislature on the use of competitive means for obtaining best value procurement by community college districts. The Legislative Analyst shall use the information provided by the chancellor to report all of the following:

(A) A summary of the overall benefits of best value acquisition.

(B) A comparison of the overall cost of contracts let under best value acquisition pursuant to this section to similar contracts let under traditional low bid procurement practices.

(C) An assessment of any benefits or disadvantages of best value procurement practices as compared to bids awarded to the lowest responsible bidder.

(D) An assessment of whether the use of best value procurement has led to a difference in the number of disputes as compared to contracts awarded using the traditional lowest responsible bidder method.

(E) An assessment of the policies adopted by the community college districts pursuant to subdivision (a) as well as an assessment of the overall performance criteria used to evaluate the bids and the effectiveness of the methodology.

(F) Recommendations as to whether the best value at lowest cost acquisition procurement authority should be continued.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 170. Section 4629.5 of the Public Resources Code is amended to read:

4629.5. (a) (1) On and after January 1, 2013, there is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

(2) A retailer shall charge the person the amount of the assessment as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) The retailer shall collect the assessment from the person at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(b) The retailer shall separately state the amount of the assessment imposed under this section on the sales receipt given by the retailer to the person at the time of sale.

(c) The State Board of Equalization shall administer and collect the assessment imposed by this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) with those changes as may be necessary to conform to the provisions of this article. For purposes of this section, the references in the Fee Collection Procedures Law to "fee" shall include the assessment imposed by this section.

(d) (1) The assessment is required to be collected by a retailer and any amount unreturned to the person who paid an amount in excess of the assessment, but was collected from the person under the representation by the retailer that it was owed as an assessment, constitutes debts owed by the retailer to this state.

(2) Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid to this state, except that payment to a retailer relieves the person from further liability for the assessment. Any assessment collected from a person that has not been remitted to the State Board of Equalization shall be a debt owed to the state by the retailer required to collect and remit the assessment. Nothing in this part shall impose any obligation upon a retailer to take any legal action to enforce the collection of the assessment imposed by this section.

(e) Except as provided in paragraph (3) of subdivision (a), the State Board of Equalization may prescribe, adopt, and enforce

regulations relating to the administration and enforcement of this section, including, but not limited to, collections, reporting, refunds, and appeals.

(f) (1) The assessment imposed by this section is due and payable to the State Board of Equalization quarterly on or before the last day of the month next succeeding each quarterly period.

(2) On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods, as prescribed by the State Board of Equalization.

(g) For purposes of this section, all of the following shall apply:

(1) "Purchase" has the same meaning as that term is defined in Section 6010 of the Revenue and Taxation Code.

(2) "Retailer" has the same meaning as that term is defined in Section 6015 of the Revenue and Taxation Code.

(3) "Sales price" has the same meaning as that term is defined in Section 6011 of the Revenue and Taxation Code.

(4) "Storage" has the same meaning as that term is defined in Section 6008 of the Revenue and Taxation Code.

(5) "Use" has the same meaning as that term is defined in Section 6009 of the Revenue and Taxation Code.

(h) (1) Every person required to pay the assessment imposed under this article shall register with the State Board of Equalization. Every application for registration shall be made in a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

(2) An application for registration filed pursuant to this section may be filed using electronic media as prescribed by the State Board of Equalization.

(3) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disc, facsimile machine, or telephone.

SEC. 171. Section 4629.9 of the Public Resources Code is amended to read:

4629.9. (a) On or before January 10, 2013, and on each January 10 thereafter in conjunction with the 2014–15 Governor's Budget and each Governor's Budget thereafter, the Secretary of the Natural Resources Agency, in consultation with the Secretary for Environmental Protection, shall submit to the Joint Legislative Budget Committee a report on the activities of all state departments, agencies, and boards relating to forest and timberland regulation. This report shall include, at a minimum, all of the following:

(1) A listing, by organization, of the proposed total costs associated with the review, approval, and inspection of timber harvest plans and associated permits.

(2) The number of timber harvest plans, and acreage covered by the plans, reviewed in the 2011–12 fiscal year, or the most recent fiscal year.

(3) To the extent feasible, a listing of activities, personnel, and funding, by department, for the forest practice program for 2012–13, or the most recent fiscal year, and the preceding 10 fiscal years.

(4) The number of staff in each organization dedicated fully or partially to (A) review of timber harvest plans, and (B) other forestry-related activities, by geographical location in the state.

(5) The costs of other forestry-related activities undertaken.

(6) A summary of any process improvements identified by the administration as part of ongoing review of the timber harvest process, including data and technology improvement needs.

(7) Workload analysis for the forest practice program in each organization.

(8) In order to assess efficiencies in the program and the effectiveness of spending, a set of measures for, and a plan for collection of data on, the program, including, but not limited to:

(A) The number of timber harvest plans reviewed.

(B) Average time for plan review.

(C) Number of field inspections per inspector.

(D) Number of acres under active plans.

(E) Number of violations.

(F) Evaluating ecological performance.

(b) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 172. Section 6224.5 of the Public Resources Code is amended to read:

6224.5. (a) If, as of January 1, 2013, a person is in violation of subdivision (a) of Section 6224.3, that person shall not be subject to a penalty pursuant to that section, if the person, on or before July 1, 2013, remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs. The remedy may include, but is not limited to, entering into an appropriate lease with the commission or adequately removing the structure or facility.

(b) A person shall not be subject to a penalty or order pursuant to Section 6224.3, if the person submits a notice to the commission that a structure or facility owned by that person is potentially in violation of subdivision (a) of Section 6224.3 and the person, within six months from the date the notice is received by the commission, remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs. This subdivision shall apply only if the potential violator submits a notice to the commission before the commission otherwise receives notice or information regarding the potential violation, or takes action against the violator.

(c) If any pole, conduit, cable, wire, pipeline, or associated appurtenance that is owned by an electrical corporation, as defined in Section 218 of the Public Utilities Code, or a gas corporation, as defined in Section 222 of the Public Utilities Code, violates subdivision (a) of Section 6224.3, and the electrical or gas corporation can demonstrate that it has not received actual notice that it does not have adequate existing land rights for its structure or facility located on land under the commission's jurisdiction, the electrical or gas corporation shall not be subject to a penalty or order pursuant to Section 6224.3 if the electrical or gas corporation remedies the violation or submits to the commission a completed lease application, including the payment of all fees and costs, or files with a court of competent jurisdiction a motion to perfect a prescriptive easement within six months from the date the violation is reported or the mistake is discovered.

(d) The commission may adopt regulations necessary or useful to carry out this section and Sections 6224.3 and 6224.4.

SEC. 173. Section 21080.37 of the Public Resources Code is amended to read:

21080.37. (a) This division does not apply to a project or an activity to repair, maintain, or make minor alterations to an existing roadway if all of the following conditions are met:

(1) The project is carried out by a city or county with a population of less than 100,000 persons to improve public safety.

(2) (A) The project does not cross a waterway.

(B) For purposes of ~~the~~ *this* paragraph, "waterway" means a bay, estuary, lake, pond, river, slough, or a perennial, intermittent, or ephemeral stream, lake, or estuarine-marine shoreline.

(3) The project involves negligible or no expansion of an existing use beyond that existing at the time of the lead agency's determination.

(4) The roadway is not a state roadway.

(5) (A) The site of the project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance.

(B) For the purposes of this paragraph:

(i) "Riparian areas" mean those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Significant value as a wildlife habitat" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of

1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(iii) "Wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(iv) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(6) The project does not impact cultural resources.

(7) The roadway does not affect scenic resources, as provided pursuant to subdivision (c) of Section 21084.

(b) Prior to determining that a project is exempt pursuant to this section, the lead agency shall do both of the following:

(1) Include measures in the project to mitigate potential vehicular traffic and safety impacts and bicycle and pedestrian safety impacts.

(2) Hold a noticed public hearing on the project to hear and respond to public comments. The hearing on the project may be conducted with another noticed lead agency public hearing. Publication of the notice shall be no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area.

(c) For purposes of this section, "roadway" means a roadway as defined pursuant to Section 530 of the Vehicle Code and the previously graded and maintained shoulder that is within a roadway right-of-way of no more than five feet from the edge of the roadway.

(d) Whenever a local agency determines that a project is not subject to this division pursuant to this section, and it approves or determines to carry out that project, the local agency shall file a notice with the Office of Planning and Research, and with the county clerk in the county in which the project will be located in the manner specified in subdivisions (b) and (c) of Section 21152.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 174. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to a person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or a person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance

with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry may not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, a proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review may not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) An action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) (1) An action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In an action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, a county agricultural commissioner is a state agency.

(j) For purposes of this section, an air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

(k) (1) The secretary, by July 1, 2004, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs.

(2) The secretary may update the protocol, and may update the report provided to the legislative committees pursuant to paragraph (1) and provide, in compliance with Section 9795 of the Government Code, the updated report to those committees if additional statutory authority is needed.

(3) The secretary shall provide a significant opportunity for public participation in developing or updating the protocol described in paragraph (1) or (2), including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior to the meeting to a person who files a written request for a notice with the agency and to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources.

SEC. 175. Section 21084 of the Public Resources Code is amended to read:

21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations.

(c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(d) A project located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code shall not be exempted from this division pursuant to subdivision (a).

(e) A project that may cause a substantial adverse change in the significance of a historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

SEC. 176. Section 72410 of the Public Resources Code is amended to read:

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) "Board" means the State Water Resources Control Board.

(c) "Commission" means the State Lands Commission.

(d) “Graywater” means drainage from dishwasher, shower, laundry, bath, and washbasin drains, but does not include drainage from toilets, urinals, hospitals, or cargo spaces.

(e) “Hazardous waste” has the meaning set forth in Section 25117 of the Health and Safety Code, but does not include sewage.

(f) “Large passenger vessel” or “vessel” means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(3) Oceangoing ships, as defined in subdivision (j).

(g) “Marine waters of the state” means waters within the area bounded by the mean high tide line to the three-mile state waters limit, from the Oregon border to the Mexican border.

(h) “Marine sanctuary” means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(i) “Medical waste” means medical waste subject to regulation pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(j) “Oceangoing ship” means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places.

(k) “Oil” has the meaning set forth in Section 8750.

(*l*) “Oily bilgewater” includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(m) “Operator” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(n) “Other waste” means photography laboratory chemicals, dry cleaning chemicals, or medical waste.

(o) “Owner” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(p) “Release” means discharging or disposing of wastes into the environment.

(q) "Sewage" has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, including material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the federal Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

(r) "Sewage sludge" has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

(s) "Sufficient holding tank capacity" means a holding tank of sufficient capacity to contain sewage and graywater while the oceangoing ship is within the marine waters of the state.

(t) "Waste" means hazardous waste and other waste.

SEC. 177. Section 2827.10 of the Public Utilities Code is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) "Electrical corporation" means an electrical corporation, as defined in Section 218.

(2) "Eligible fuel cell electrical generating facility" means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) (A) "Eligible fuel cell customer-generator" means a customer of an electrical corporation that meets all the following criteria:

(i) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electrical grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(ii) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(iii) Uses technology the commission has determined will achieve reductions in emissions of greenhouse gases pursuant to

subdivision (b), and meets the emission requirements for eligibility for funding set forth in subdivision (c), of Section 379.6.

(B) For purposes of this paragraph, a person or entity is a customer of the electrical corporation if the customer is physically located within the service territory of the electrical corporation and receives bundled service, distribution service, or transmission service from the electrical corporation.

(4) "Net energy metering" means measuring the difference between the electricity supplied through the electrical grid and the difference between the electricity generated by an eligible fuel cell electrical generating facility and fed back to the electrical grid over a 12-month period as described in subdivision (e). Net energy metering shall be accomplished using a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible fuel cell customer-generator is not capable of measuring the flow of electricity in two directions, the eligible fuel cell customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a time-of-use meter.

(b) (1) Every electrical corporation, not later than March 1, 2004, shall file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Subject to the limitation in subdivision (f), every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff reaches a level equal to its proportionate share of a statewide limitation of 500 megawatts cumulative rated generation capacity served under this section. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

(2) To continue the growth of the market for onsite electrical generation using fuel cells, the commission may review and incrementally raise the limitation established in paragraph (1) on the total cumulative rated generating capacity of the eligible fuel

cell electrical generating facilities receiving service pursuant to the tariff in paragraph (1).

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical corporation's service territory, preference shall be given to facilities that, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) (1) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting this section, and may not form a part of net energy metering tariffs.

(2) The commission shall authorize an electrical corporation to charge a fuel cell customer-generator a fee based on the cost to the utility associated with providing interconnection inspection services for that fuel cell customer-generator.

(e) The net metering calculation shall be made by measuring the difference between the electricity supplied to the eligible fuel cell customer-generator and the electricity generated by the eligible fuel cell customer-generator and fed back to the electrical grid over a 12-month period. The following rules shall apply to the annualized metering calculation:

(1) The eligible fuel cell customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible fuel cell electrical generating facility with an electrical corporation, and at each anniversary date thereafter, be billed for electricity used during that period. The electrical corporation shall determine if the eligible fuel cell customer-generator was a net consumer or a net producer of

electricity during that period. For purposes of determining if the eligible fuel cell customer-generator was a net consumer or a net producer of electricity during that period, the electrical corporation shall aggregate the electrical load of the meters located on the property where the eligible fuel cell electrical generating facility is located and on all property adjacent or contiguous to the property on which the facility is located, if those properties are solely owned, leased, or rented by the eligible fuel cell customer-generator. Each aggregated account shall be billed and measured according to a time-of-use rate schedule.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electrical corporation exceeds the electricity generated by the eligible fuel cell customer-generator during that same period, the eligible fuel cell customer-generator is a net electricity consumer and the electrical corporation shall be owed compensation for the eligible fuel cell customer-generator's net kilowatthour consumption over that same period. The compensation owed for the eligible fuel cell customer-generator's consumption shall be calculated as follows:

(A) The generation charges for any net monthly consumption of electricity shall be calculated according to the terms of the tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible fuel cell customer-generator. When the eligible fuel cell customer-generator is a net generator during any discrete time-of-use period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electrical corporation would charge for retail kilowatthour sales for generation, exclusive of any surcharges, during that same time-of-use period. If the eligible fuel cell customer-generator's time-of-use electrical meter is unable to measure the flow of electricity in two directions, paragraph (4) of subdivision (a) shall apply. All other charges, other than generation charges, shall be calculated in accordance with the eligible fuel cell customer-generator's applicable tariff and based on the total kilowatthours delivered by the electrical corporation to the eligible fuel cell customer-generator. To the extent that charges for transmission and distribution services are recovered through demand charges in any particular month, no standby reservation charges shall apply in that monthly billing cycle.

(B) The net balance of moneys owed shall be paid in accordance with the electrical corporation's normal billing cycle.

(3) At the end of each 12-month period, where the electricity generated by the eligible fuel cell customer-generator during the 12-month period exceeds the electricity supplied by the electrical corporation during that same period, the eligible fuel cell customer-generator is a net electricity producer and the electrical corporation shall retain any excess kilowatthours generated during the prior 12-month period. The eligible fuel cell customer-generator shall not be owed any compensation for those excess kilowatthours.

(4) If an eligible fuel cell customer-generator terminates service with the electrical corporation, the electrical corporation shall reconcile the eligible fuel cell customer-generator's consumption and production of electricity during any 12-month period.

(f) No fuel cell electrical generating facility shall be eligible for the tariff unless it commences operation prior to January 1, 2015, unless a later enacted statute, that is chaptered before January 1, 2015, extends this eligibility commencement date. The tariff shall remain in effect for an eligible fuel cell electrical generating facility that commences operation pursuant to the tariff prior to January 1, 2015. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

SEC. 178. Section 2862 of the Public Utilities Code is amended to read:

2862. The Legislature finds and declares all of the following:

(a) California is heavily dependent on natural gas, importing more than 80 percent of the natural gas it consumes.

(b) Rising worldwide demand for natural gas and a shrinking supply create rising and unstable prices that can harm California consumers and the economy.

(c) Natural gas is a fossil fuel and a major source of global warming pollution and the pollutants that cause air pollution, including smog.

(d) California's growing population and economy will put a strain on energy supplies and threaten the ability of the state to meet its global warming goals unless specific steps are taken to reduce demand and generate energy cleanly and efficiently.

(e) Water heating for domestic and industrial use relies almost entirely on natural gas and accounts for a significant percentage of the state's natural gas consumption.

(f) Solar water heating systems represent the largest untapped natural gas saving potential remaining in California.

(g) In addition to financial and energy savings, solar water heating systems can help protect against future gas and electricity shortages and reduce our dependence on foreign sources of energy.

(h) Solar water heating systems can also help preserve the environment and protect public health by reducing air pollution, including carbon dioxide, a leading global warming gas, and nitrogen oxide, a precursor to smog.

(i) Growing demand for these technologies will create jobs in California as well as promote greater energy independence, protect consumers from rising energy costs, and result in cleaner air.

(j) It is in the interest of the State of California to promote solar water heating systems and other technologies that directly reduce demand for natural gas in homes and businesses.

(k) It is the intent of the Legislature to build a mainstream market for solar water heating systems that directly reduces demand for natural gas in homes, businesses, schools, nonprofit, and government buildings. Toward that end, it is the goal of this article to install at least 200,000 solar water heating systems on homes, businesses, and other buildings or facilities of eligible customer classes throughout the state by 2017, thereby lowering prices and creating a self-sufficient market that will sustain itself beyond the life of this program.

(*l*) It is the intent of the Legislature that the solar water heating system incentives created by this article should be a cost-effective investment by gas customers. Gas customers will recoup the cost of their investment through lower prices as a result of avoiding purchases of natural gas.

(m) It is the intent of the Legislature that this article will encourage the cost-effective deployment of solar heating systems in both residential and commercial markets and in each end-use application sector in a balanced manner. It is the intent of the Legislature that the commission monitor and adjust incentives created by this article so that they are cost-effective investments sufficient to significantly increase markets and promote market transformation. It is the intent of the Legislature that the

commission ensure that increased, uniform growth in each market sector is achieved through program incentives or structure adjustments that prevent overutilization of program resources by any single sector.

SEC. 179. Section 5142 of the Public Utilities Code is amended to read:

5142. (a) Except as provided in Section 5133, a household goods carrier in compliance with this chapter has a lien on used household goods and personal effects to secure payment of the amount specified in subdivision (b) for transportation and additional services ordered by the consignor. A lien does not attach to food, medicine, or medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child.

(b) (1) The amount secured by the lien is the maximum total dollar amount for the transportation of the household goods and personal effects and any additional services (including any bona fide change order permitted under the commission's tariffs) that is set forth clearly and conspicuously in writing adjacent to the space reserved for the signature of the consignor and that is agreed to by the consignor before any goods or personal effects are moved from their location or any additional services are performed.

(2) The dollar amount for the transportation of household goods and personal effects and additional services may not be preprinted on any form, shall be just and reasonable, and shall be established in good faith by the household goods carrier based on the specific circumstances of the services to be performed.

(c) Upon tender to the household goods carrier of the amount specified in subdivision (b), the lien is extinguished, and the household goods carrier shall release all household goods and personal effects to the consignee.

(d) A household goods carrier may enforce the lien on household goods and personal effects provided in this section except as to any goods that the carrier voluntarily delivers or unjustifiably refuses to deliver. The lien shall be enforced in the manner provided in this section and Chapter 6 (commencing with Section 9601) of Division 9 of the Commercial Code for the enforcement of a security interest in consumer goods in a consumer transaction. To the extent of any conflict between this section and that Chapter 6, this section shall prevail. Every act required in connection with

enforcing the lien shall be performed in good faith and in a commercially reasonable manner.

(e) The household goods carrier shall provide a notification of disposition at least 30 days prior to any disposition to each consignor and consignee by personal delivery, or in the alternative, by first-class and certified mail, postage prepaid and return receipt requested, at the address last known by the carrier and at the destination address, and by electronic mail if an electronic mail address is known to the carrier. If any of the required recipients of notice are married to each other, and according to the carrier's records, reside at the same address, one notice addressed to both shall be sufficient. Within 14 days after a disposition, the carrier shall provide to the consignors any surplus funds from the disposition and an accounting, without charge, of the proceeds of the disposition.

(f) Any person having possession or control of household goods or personal effects, who knows, or through the exercise of reasonable care should know, that the household goods carrier has been tendered the amount specified in subdivision (b), shall release the household goods and personal effects to the consignor or consignee, upon the request of the consignor or consignee. If the person fails to release the household goods and personal effects to the consignor or consignee, any peace officer, as defined in subdivision (c) of Section 5133, may take custody of the household goods and personal effects and release them to the consignor or consignee.

(g) This section shall not affect any rights, if any, of a household goods carrier to claim additional amounts, on an unsecured basis, or of a consignor or consignee to make or contest any claim, and tender of payment of the amount specified in subdivision (b) is not a waiver of claims by the consignor or consignee.

(h) Any person injured by a violation of this section may bring an action for the recovery of the greater of one thousand dollars ($1,000) or actual damages, injunctive or other equitable relief, reasonable attorney's fees and costs, and exemplary damages of not less than three times the amount of actual damages for a willful violation.

(i) Any waiver of this section shall be void and unenforceable.

(j) Notwithstanding any other law, this section exclusively establishes and provides for a household goods carrier's lien on

used household goods and personal effects to secure payment for transportation and additional services ordered by the consignor.

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

(1) "Consignor" means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

(2) "Consignee" means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person's agent.

(*l*) Any document required by this section may be in an electronic form, if agreed upon by the carrier and the customer.

SEC. 180. Section 5143 of the Public Utilities Code is amended to read:

5143. (a) For purposes of this section, the following terms have the following meanings:

(1) "Consignor" means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

(2) "Consignee" means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person's agent.

(b) Any household goods carrier engaged in the business of transportation of used household goods and personal effects by motor vehicle over any public highway in this state shall provide each consignor with a completed copy of the notice set forth in this section. The notice shall be printed in at least 12-point type, except the title and first two paragraphs which shall be printed in boldface type, and provided to each consignor at least three days prior to the date scheduled for the transportation of household goods or personal effects. If the consignor requests services on a date that is less than three days before the scheduled date for transportation of the household goods or personal effects, the carrier shall provide the notice as soon as practicable, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice. The carrier shall obtain sufficient information from the consignor to fill out the form and shall include the correct maximum amount and a

sufficient description of services that will be performed. The carrier shall retain a copy of the notice, signed by the ~~cosignor~~ *consignor*, for at least three years from the date the notice was signed by the ~~cosignor~~ *consignor*.

(c) Any waiver of the requirements of this section is void and unenforceable.

(d) The "Not To Exceed" amount set forth in the notice and the agreement between the household goods carrier and the consignor shall be the maximum total dollar amount for which the consignor may be liable for the transportation of household goods and personal effects and any additional services ordered by the consignor (including any bona fide change order permitted under the commission's rules and tariffs) and agreed to by the consignor before any goods or personal effects are moved from their location or any other services are performed.

(e) A household goods carrier may provide the notice set forth in this section either as a separate document or by including it as the centerfold of the informational booklet that the household goods carrier is required to provide the consignor under the commission's tariffs. If the household goods carrier provides the notice as part of the informational booklet, the booklet shall contain a tab that extends beyond the edge of the booklet at the place where the notice is included. The statement "Important Notice" shall be printed on the tab in at least 12-point boldface type. In addition, the statement "Customer Must Read And Sign The Important Notice In The Middle Of This Booklet Before A Move Can Begin" shall be set forth in 14-point boldface type on the front cover of the booklet.

(f) The notice provided the consignor shall be in the following form:

"IMPORTANT NOTICE ABOUT YOUR MOVE

"IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A "NOT TO EXCEED" AMOUNT THAT YOU THINK IS A PROPER AND REASONABLE FEE FOR THE SERVICES YOU ARE REQUESTING. THE "NOT TO EXCEED" AMOUNT THIS MOVER IS REQUESTING IS $_____ to perform the following services:

_____

_____
_____.

"IF YOU DO NOT AGREE TO THE "NOT TO EXCEED" AMOUNT LISTED OR THE DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER'S SERVICE AT NO CHARGE TO YOU.

"If you request additional or different services at the time of the move, you may be asked to complete a Change Order which will set forth your agreement to pay for additional fees for those newly requested services. If you agree to the additional charges on that Change Order, those charges may be added to the "NOT TO EXCEED" amount set forth above. If you do not agree to the amounts listed in the Change Order, you should not sign it and may refuse the mover's services.

"A mover cannot refuse to release your goods once you have paid the "NOT TO EXCEED" amount for the transportation of your goods and personal effects and any additional services that you have agreed to in writing. The "NOT TO EXCEED" amount must be reasonable.

"A mover cannot, under any circumstances, withhold food, medicine, medical devices, items to treat or assist a disabled person, or items used for care of a minor child. An unlicensed mover has no right to withhold your goods for any reason including claims that you have not adequately paid for services rendered.

"For additional information or to confirm whether a mover is licensed by the California Public Utilities Commission, please call the Public Utilities Commission toll free at:

_____ .
insert toll-free number

"I have completed this form and provided the consumer (shipper) with a copy of this notice.

"Signed _____Dated_____

"I have been provided with a copy of this form.

"Signed _____Dated_____"

(g) Any document required by this section may be in an electronic form, if agreed upon by the carrier and the customer.

SEC. 181. Section 9506 of the Public Utilities Code is amended to read:

9506. (a) A local publicly owned electric utility shall report to the Energy Commission regarding the energy storage system procurement targets and policies adopted by the governing board pursuant to paragraph (2) of, and report any modifications made to those targets as a result of a reevaluation undertaken pursuant to paragraph (3) of subdivision (b) of Section 2836.

(b) By January 1, 2017, a local publicly owned electric utility shall submit a report to the Energy Commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the governing board pursuant to subdivision (b) of Section 2836.

(c) By January 1, 2021, a local publicly owned electric utility shall submit a report to the Energy Commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the governing board pursuant to subdivision (b) of Section 2836.

(d) The Energy Commission shall ensure that a copy of each report or plan required by subdivisions (b) and (c), with any confidential information redacted, is available on the Energy Commission's Internet Web site, or on an Internet Web site maintained by the local publicly owned electric utility that can be accessed from the Energy Commission's Internet Web site.

(e) A summary of the reports required by this section shall be included as part of each integrated energy policy report required pursuant to Section 25302 of the Public Resources Code.

SEC. 182. Section 185035 of the Public Utilities Code is amended to read:

185035. (a) The authority shall establish an independent peer review group for the purpose of reviewing the planning, engineering, financing, and other elements of the authority's plans and issuing an analysis of *the* appropriateness and accuracy of the authority's assumptions and an analysis of the viability of the authority's financing plan, including the funding plan for each corridor required pursuant to subdivision (c) of Section 2704.08 of the Streets and Highways Code.

(b) The peer review group shall include all of the following:

(1) Two individuals with experience in the construction or operation of high-speed trains in Europe, Asia, or both, designated by the Treasurer.

(2) Two individuals, one with experience in engineering and construction of high-speed trains and one with experience in project finance, designated by the Controller.

(3) One representative from a financial services or financial consulting firm who shall not have been a contractor or subcontractor of the authority for the previous three years, designated by the Director of Finance.

(4) One representative with experience in environmental planning, designated by the Secretary of Business, Transportation and Housing.

(5) Two expert representatives from agencies providing intercity or commuter passenger train services in California, designated by the Secretary of Business, Transportation and Housing.

(c) The peer review group shall evaluate the authority's funding plans and prepare its independent judgment as to the feasibility and reasonableness of the plans, appropriateness of assumptions, analyses, and estimates, and any other observations or evaluations it deems necessary.

(d) The authority shall provide the peer review group any and all information that the peer review group may request to carry out its responsibilities.

(e) The peer review group shall report its findings and conclusions to the Legislature no later than 60 days after receiving the plans.

SEC. 183. Section 2188.6 of the Revenue and Taxation Code, as amended by Section 79 of Chapter 181 of the Statutes of 2012, is amended to read:

2188.6. (a) Unless a request for exemption has been recorded pursuant to subdivision (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code, the county assessor may separately assess each individual unit which is shown on the condominium plan of a proposed condominium project when all of the following documents have been recorded as required by law:

(1) A subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code.

(2) A condominium plan, as defined in Section 4120 of the Civil Code.

(3) A declaration, as defined in Section 4135 of the Civil Code.

(b) The tax due on each individual unit shall constitute a lien solely on that unit.

(c) The lien created pursuant to this section shall be a lien on an undivided interest in a portion of real property coupled with a separate interest in space called a unit as described in Section 4125 of the Civil Code.

(d) The record owner of the real property may record with the condominium plan a request that the real property be exempt from separate assessment pursuant to this section. If a request for exemption is recorded, separate assessment of a condominium unit shall be made only in accordance with Section 2188.3.

(e) This section shall become operative on January 1, 1990, and shall apply to condominium projects for which a condominium plan is recorded after that date.

SEC. 184. Section 7285.3 of the Revenue and Taxation Code is amended to read:

7285.3. The combined rate of all taxes imposed in any county pursuant to this chapter and pursuant to Part 1.6 (commencing with Section 7251) shall not exceed the rate specified in Section 7251.1.

SEC. 185. Section 17276.20 of the Revenue and Taxation Code is amended to read:

17276.20. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback

to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or "S" corporation paragraphs (1) and (2) shall be applied to the partnership or "S" corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the

aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1).

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 186. Section 18152.5 of the Revenue and Taxation Code is amended to read:

18152.5. (a) For purposes of this part, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than five years.

(b) (1) If the taxpayer has eligible gain for the taxable year from one or more dispositions of stock issued by any corporation, the aggregate amount of the gain from dispositions of stock issued by the corporation which may be taken into account under subdivision (a) for the taxable year shall not exceed the greater of either of the following:

(A) Ten million dollars ($10,000,000) reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subdivision (a) for prior taxable years and attributable to dispositions of stock issued by the corporation.

(B) Ten times the aggregate adjusted bases of qualified small business stock issued by the corporation and disposed of by the taxpayer during the taxable year. For purposes of this subparagraph, the adjusted basis of any stock shall be determined without regard to any addition to *the* basis after the date on which the stock was originally issued.

(2) For purposes of this subdivision, the term “eligible gain” means any gain from the sale or exchange of qualified small business stock held for more than five years.

(3) (A) In the case of a married individual filing a separate return, subparagraph (A) of paragraph (1) shall be applied by substituting five million dollars ($5,000,000) for ten million dollars ($10,000,000).

(B) In the case of a married taxpayer filing a joint return, the amount of gain taken into account under subdivision (a) shall be allocated equally between the spouses for purposes of applying this subdivision to subsequent taxable years.

(C) For purposes of this subdivision, marital status shall be determined under Section 7703 of the Internal Revenue Code.

(c) For purposes of this section:

(1) Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a C corporation which is originally issued after August 10, 1993, if both of the following apply:

(A) As of the date of issuance, the corporation is a qualified small business.

(B) Except as provided in subdivisions (f) and (h), the stock is acquired by the taxpayer at its original issue (directly or through an underwriter) in either of the following manners:

(i) In exchange for money or other property (not including stock).

(ii) As compensation for services provided to the corporation (other than services performed as an underwriter of the stock).

(2) (A) Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for the stock, the corporation meets the active business requirements of subdivision (e) and the corporation is a C corporation.

(B) (i) Notwithstanding subdivision (e), a corporation shall be treated as meeting the active business requirements of subdivision (e) for any period during which the corporation qualifies as a specialized small business investment company.

(ii) For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in paragraph (4) of subdivision (e)) that is licensed to operate under former Section 301(d) of the federal Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) (A) Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the four-year period beginning on the date two years before the issuance of the stock, the corporation issuing the stock purchased (directly or indirectly) any of its stock from the taxpayer or from a related person (within the meaning of Section 267(b) or 707(b)) to the taxpayer.

(B) Stock issued by a corporation shall not be treated as qualified small business stock if, during the two-year period beginning on the date one year before the issuance of the stock, the corporation

made one or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of the two-year period.

(C) If any transaction is treated under Section 304(a) of the Internal Revenue Code as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), the corporation shall be treated as purchasing an amount of its stock equal to the amount treated as a distribution in redemption of the stock of the corporation under Section 304(a) of the Internal Revenue Code.

(d) For purposes of this section:

(1) The term "qualified small business" means any domestic corporation (as defined in Section 7701(a)(4) of the Internal Revenue Code) which is a C corporation if all of the following apply:

(A) The aggregate gross assets of the corporation (or any predecessor thereof) at all times on or after July 1, 1993, and before the issuance did not exceed fifty million dollars ($50,000,000).

(B) The aggregate gross assets of the corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed fifty million dollars ($50,000,000).

(C) At least 80 percent of the corporation's payroll, as measured by total dollar value, is attributable to employment located within California.

(D) The corporation agrees to submit those reports to the Franchise Tax Board and to shareholders as the Franchise Tax Board may require to carry out the purposes of this section.

(2) (A) For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted basis of other property held by the corporation.

(B) For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation immediately after the contribution was equal to its fair market value as of the time of the contribution.

(3) (A) All corporations which are members of the same parent-subsidiary controlled group shall be treated as one corporation for purposes of this subdivision.

(B) For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any controlled group of corporations as defined in Section 1563(a)(1) of the Internal Revenue Code, except that both of the following shall apply:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) Section 1563(a)(4) of the Internal Revenue Code shall not apply.

(e) (1) For purposes of paragraph (2) of subdivision (c), the requirements of this subdivision are met by a corporation for any period if during that period both of the following apply:

(A) At least 80 percent (by value) of the assets of the corporation are used by the corporation in the active conduct of one or more qualified trades or businesses in California.

(B) The corporation is an eligible corporation.

(2) For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in:

(A) Startup activities described in Section 195(c)(1)(A) of the Internal Revenue Code,

(B) Activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code, or

(C) Activities with respect to in-house research expenses described in Section 41(b)(2) of the Internal Revenue Code, then assets used in those activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from those activities at the time of the determination.

(3) For purposes of this subdivision, the term "qualified trade or business" means any trade or business other than any of the following:

(A) Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the

principal asset of the trade or business is the reputation or skill of one or more of its employees.

(B) Any banking, insurance, financing, leasing, investing, or similar business.

(C) Any farming business (including the business of raising or harvesting trees).

(D) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under Section 613 or 613A of the Internal Revenue Code.

(E) Any business of operating a hotel, motel, restaurant, or similar business.

(4) For purposes of this subdivision, the term "eligible corporation" means any domestic corporation, except that the term shall not include any of the following:

(A) A DISC or former DISC.

(B) A corporation with respect to which an election under Section 936 of the Internal Revenue Code is in effect or which has a direct or indirect subsidiary with respect to which the election is in effect.

(C) A regulated investment company, real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

(D) A cooperative.

(5) (A) For purposes of this subdivision, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of the corporation (other than assets described in paragraph (6)).

(C) For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of the corporation.

(6) For purposes of subparagraph (A) of paragraph (1), the following assets shall be treated as used in the active conduct of a qualified trade or business:

(A) Assets that are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation.

(B) Assets that are held for investment and are reasonably expected to be used within two years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business. For periods after the corporation has been in existence for at least two years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property that is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of, real property shall not be treated as the active conduct of a qualified trade or business.

(8) For purposes of paragraph (1), rights to computer software that produces active business computer software royalties (within the meaning of Section 543(d)(1) of the Internal Revenue Code) shall be treated as an asset used in the active conduct of a trade or business.

(9) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 20 percent of the corporation's total payroll expense is attributable to employment located outside of California.

(f) If any stock in a corporation is acquired solely through the conversion of other stock in the corporation that is qualified small business stock in the hands of the taxpayer, both of the following shall apply:

(1) The stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer.

(2) The stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) (1) If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2), then both of the following shall apply:

(A) The amount shall be treated as gain described in subdivision (a).

(B) For purposes of applying subdivision (b), the amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in the stock shall be taken into account.

(2) An amount meets the requirements of this paragraph if both of the following apply:

(A) The amount is attributable to gain on the sale or exchange by the pass-thru entity of stock that is qualified small business stock in the hands of the entity (determined by treating the entity as an individual) and that was held by that entity for more than five years.

(B) The amount is includable in the gross income of the taxpayer by reason of the holding of an interest in the entity that was held by the taxpayer on the date on which the pass-thru entity acquired the stock and at all times thereafter before the disposition of the stock by the pass-thru entity.

(3) Paragraph (1) shall not apply to any amount to the extent the amount exceeds the amount to which paragraph (1) would have applied if the amount was determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) For purposes of this subdivision, the term "pass-through entity" means any of the following:

(A) Any partnership.

(B) Any S corporation.

(C) Any regulated investment company.

(D) Any common trust fund.

(h) For purposes of this section:

(1) In the case of a transfer described in paragraph (2), the transferee shall be treated as meeting both of the following:

(A) Having acquired the stock in the same manner as the transferor.

(B) Having held the stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subdivision) by the transferor.

(2) A transfer is described in this subdivision if the transfer is any of the following:

(A) By gift.

(B) At death.

(C) From a partnership to a partner of stock with respect to which requirements similar to the requirements of subdivision (g) are met at the time of the transfer (without regard to the five-year holding period requirement).

(3) Rules similar to the rules of Section 1244(d)(2) of the Internal Revenue Code shall apply for purposes of this section.

(4) (A) In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if qualified small business stock is exchanged for other stock that would not qualify as qualified small business stock but for this subparagraph, the other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain that would have been recognized at the time of the transfer described in subparagraph (A) if Section 351 or 368 of the Internal Revenue Code had not applied at that time. The preceding sentence shall not apply if the stock that is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation that (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which the limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) In the case of a transaction described in Section 351 of the Internal Revenue Code, this paragraph shall apply only if immediately after the transaction the corporation issuing the stock owns directly or indirectly stock representing control (within the

meaning of Section 368(c) of the Internal Revenue Code) of the corporation whose stock was exchanged.

(i) For purposes of this section:

(1) In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in the corporation, both of the following shall apply:

(A) The stock shall be treated as having been acquired by the taxpayer on the date of the exchange.

(B) The basis of the stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which the stock was originally issued, in determining the amount of the adjustment by reason of the contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) (1) If the taxpayer has an offsetting short position with respect to any qualified small business stock, subdivision (a) shall not apply to any gain from the sale or exchange of the stock unless both of the following apply:

(A) The stock was held by the taxpayer for more than five years as of the first day on which there was such a short position.

(B) The taxpayer elects to recognize gain as if the stock was sold on that first day for its fair market value.

(2) For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if any of the following apply:

(A) The taxpayer has made a short sale of substantially identical property.

(B) The taxpayer has acquired an option to sell substantially identical property at a fixed price.

(C) To the extent provided in regulations, the taxpayer has entered into any other transaction that substantially reduces the risk of loss from holding the qualified small business stock. For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code) to the taxpayer.

(k) The Franchise Tax Board may prescribe those regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise.

(*l*) It is the intent of the Legislature that, in construing this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 1202(k) of the Internal Revenue Code shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

SEC. 187. Section 18738 of the Revenue and Taxation Code, as added by Section 1 of Chapter 228 of the Statutes of 2012, is amended to read:

18738. (a) All moneys transferred to the California YMCA Youth and Government Fund pursuant to Section 18736, upon appropriation by the Legislature, shall be allocated as follows:

(1) To the Franchise Tax Board, the Controller, and the State Department of Education for reimbursement of all costs incurred by the Franchise Tax Board, the Controller, and the State Department of Education in connection with their duties under this article.

(2) The balance to the State Department of Education for distribution as follows:

(A) If the California YMCA Youth and Government Fund collects contributions of less than three hundred thousand dollars ($300,000), all funds shall be distributed to the California YMCA Youth and Government Program.

(B) If the California YMCA Youth and Government Fund collects contributions in excess of three hundred thousand dollars ($300,000), the balance of the fund shall be distributed as follows:

(i) To provide an annual grant of ten thousand dollars ($10,000) to each of the following nonprofit civic youth organizations in order to operate civic education and mock legislative programs:

(I) African American Leaders for Tomorrow Program.

(II) Asian Pacific Youth Leadership Project.

(III) Chicano Latino Youth Leadership Project.

(ii) (I) All remaining funds shall be distributed to the California YMCA Youth and Government Program.

(II) The California YMCA Youth and Government Board of Directors may award additional nonprofit civic youth organizations a grant of up to ten thousand dollars ($10,000) each in order to operate civic education and mock legislative programs. Grants shall be administered by the California YMCA Youth and Government Board of Directors, who shall be responsible for developing criteria, evaluating applications, and awarding grants to eligible organizations.

(b) All moneys allocated pursuant to subdivision (a) may be carried over from the year in which they were received.

(c) Funds distributed to the California YMCA Youth and Government Program, the African American Leaders for Tomorrow Program, the Asian Pacific Youth Leadership Project, the Chicano Latino Youth Leadership Project, and any other nonprofit civic youth organizations awarded a grant pursuant to clause (i) of subparagraph (B) of paragraph (2) of subdivision (a) shall be used to support program participation by underserved students and for direct program-related expenses.

(d) The funds distributed to the California YMCA Youth and Government Program by the State Department of Education shall be used exclusively for program-related expenses.

SEC. 188. Section 23685 of the Revenue and Taxation Code is amended to read:

23685. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the "tax," as defined in Section 23036, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.

(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).

(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:

(A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California.

(B) Twenty-five percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California or an independent film.

(b) For purposes of this section:

(1) "Ancillary product" means any article for sale to the public that contains a portion of, or any element of, the qualified motion picture.

(2) "Budget" means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall be the same budget used by the qualified taxpayer and production company for all qualified motion picture purposes.

(3) "Clip use" means a use of any portion of a motion picture, other than the qualified motion picture, used in the qualified motion picture.

(4) "Credit certificate" means the certificate issued by the California Film Commission pursuant to subparagraph (C) of paragraph (2) of subdivision (g).

(5) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified taxpayer involved in the production of the qualified motion picture, exclusive of any amounts contributed by employees, for any year during the production period with respect to any of the following:

(i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.

(ii) Employer-provided coverage under any accident or health plan for employees.

(iii) The employer's cost of life or disability insurance provided to employees.

(B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (18) shall not be taken into account under this paragraph.

(6) "Independent film" means a motion picture with a minimum budget of one million dollars ($1,000,000) and a maximum budget of ten million dollars ($10,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not

own, directly or indirectly, more than 25 percent of the producing company.

(7) "Licensing" means any grant of rights to distribute the qualified motion picture, in whole or in part.

(8) "New use" means any use of a motion picture in a medium other than the medium for which it was initially created.

(9) (A) "Postproduction" means the final activities in a qualified motion picture's production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, soundmixing, film-to-tape transfers, encoding, and color correction.

(B) "Postproduction" does not include the manufacture or shipping of release prints.

(10) "Preproduction" means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.

(11) "Principal photography" means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.

(12) "Production period" means the period beginning with preproduction and ending upon completion of postproduction.

(13) "Qualified entity" means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.

(14) (A) "Qualified individual" means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.

(B) "Qualified individual" shall not include either of the following:

(i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.

(15) (A) "Qualified motion picture" means a motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:

(i) A feature with a minimum production budget of one million dollars ($1,000,000) and a maximum production budget of seventy-five million dollars ($75,000,000).

(ii) A movie of the week or miniseries with a minimum production budget of five hundred thousand dollars ($500,000).

(iii) A new television series produced in California with a minimum production budget of one million dollars ($1,000,000) licensed for original distribution on basic cable.

(iv) An independent film.

(v) A television series that relocated to California.

(B) To qualify as a "qualified motion picture," all of the following conditions shall be satisfied:

(i) At least 75 percent of the production days occur wholly in California or 75 percent of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state.

(ii) Production of the qualified motion picture is completed within 30 months from the date on which the qualified taxpayer's application is approved by the California Film Commission. For purposes of this section, a qualified motion picture is "completed" when the process of postproduction has been finished.

(iii) The copyright for the motion picture is registered with the United States Copyright Office pursuant to Title 17 of the United States Code.

(iv) Principal photography of the qualified motion picture commences after the date on which the application is approved by the California Film Commission, but no later than 180 days after the date of that approval.

(C) For the purposes of subparagraph (A), in computing the total wages paid or incurred for the production of a qualified motion picture, all amounts paid or incurred by all persons or entities that share in the costs of the qualified motion picture shall be aggregated.

(D) "Qualified motion picture" shall not include commercial advertising, music videos, a motion picture produced for private noncommercial use, such as weddings, graduations, or as part of an educational course and made by students, a news program,

current events or public events program, talk show, game show, sporting event or activity, awards show, telethon or other production that solicits funds, reality television program, clip-based programming if more than 50 percent of the content is comprised of licensed footage, documentaries, variety programs, daytime dramas, strip shows, one-half hour (air time) episodic television shows, or any production that falls within the recordkeeping requirements of Section 2257 of Title 18 of the United States Code.

(16) "Qualified expenditures" means amounts paid or incurred to purchase or lease tangible personal property used within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.

(17) (A) "Qualified taxpayer" means a taxpayer who has paid or incurred qualified expenditures and has been issued a credit certificate by the California Film Commission pursuant to subdivision (g).

(B) (i) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, "pass-thru entity" means any entity taxed as a partnership or "S" corporation.

(ii) In the case of an "S" corporation, the credit allowed under this section shall not be used by an "S" corporation as a credit against a tax imposed under Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2.

(18) (A) "Qualified wages" means all of the following:

(i) Any wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within this state.

(ii) The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion

picture that are properly allocable to qualified wage amounts described in clause (i).

(iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (14).

(iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

(B) "Qualified wages" shall not include any of the following:

(i) Expenses, including wages, related to new use, reuse, clip use, licensing, secondary markets, or residual compensation, or the creation of any ancillary product, including, but not limited to, a soundtrack album, toy, game, trailer, or teaser.

(ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.

(iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

(iv) Expenses, including wages, paid per person per qualified motion picture for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

(19) "Residual compensation" means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made during production.

(20) "Reuse" means any use of a qualified motion picture in the same medium for which it was created, following the initial use in that medium.

(21) "Secondary markets" means media in which a qualified motion picture is exhibited following the initial media in which it is exhibited.

(22) "Television series that relocated to California" means a television series, without regard to episode length or initial media exhibition, that filmed all of its prior season or seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.

(c) (1) Notwithstanding subdivision (i) of Section 23036, in the case where the credit allowed by this section exceeds the taxpayer's tax liability computed under this part, a qualified

taxpayer may elect to assign any portion of the credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, and "voting common stock" is substituted for "voting stock" wherever it appears in the section.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the qualified taxpayer that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the qualified taxpayer and the qualified taxpayer's affiliated corporations that assign and receive the credits.

(D) Shall be reported to the Franchise Tax Board, in the form and manner specified by the Franchise Tax Board, along with all required information regarding the assignment of the credit, including the corporation number, the federal employer identification number, or other taxpayer identification number of the assignee, and the amount of the credit assigned.

(3) (A) Notwithstanding any other law, a qualified taxpayer may sell any credit allowed under this section that is attributable to an independent film, as defined in paragraph (6) of subdivision (b), to an unrelated party.

(B) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

(4) In the case where the credit allowed under this section exceeds the "tax," the excess credit may be carried over to reduce

the "tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

(6) A party that has been assigned or acquired tax credits under this paragraph shall be subject to the requirements of this section.

(7) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(8) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(10) Subdivision (i) of Section 23036 shall not apply to any credit sold pursuant to this subdivision.

(11) For purposes of this subdivision:

(A) An affiliated corporation or corporations that are assigned a credit pursuant to paragraph (1) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(B) The unrelated party or parties that purchase a credit pursuant to paragraph (3) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(1) Identification of each qualified individual.

(2) The specific start and end dates of production.

(3) The total wages paid.

(4) The amount of qualified wages paid to each qualified individual.

(5) The copyright registration number, as reflected on the certificate of registration issued under the authority of Section 410

of Title 17 of the United States Code, relating to registration of claim and issuance of certificate. The registration number shall be provided on the return claiming the credit.

(6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.

(7) Information to substantiate its qualified expenditures.

(8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.

(e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.

(f) If the qualified taxpayer fails to provide the copyright registration number as required in paragraph (5) of subdivision (d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

(g) For purposes of this section, the California Film Commission shall do the following:

(1) On or after July 1, 2009, and before July 1, 2017, allocate tax credits to applicants.

(A) Establish a procedure for applicants to file with the California Film Commission a written application, on a form jointly prescribed by the California Film Commission and the Franchise Tax Board for the allocation of the tax credit. The application shall include, but not be limited to, the following information:

(i) The budget for the motion picture production.

(ii) The number of production days.

(iii) A financing plan for the production.

(iv) The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.

(v) All members of a combined reporting group, if known at the time of the application.

(vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements

of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(viii) Detailed narratives, for use only by the Legislative Analyst's Office in conducting a study of the effectiveness of this credit, that describe the extent to which the credit is expected to influence or affect filming and other business location decisions, hiring decisions, salary decisions, and any other financial matters of the applicant.

(ix) Any other information deemed relevant by the California Film Commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.

(C) Determine and designate applicants who meet the requirements of this section.

(D) Process and approve, or reject, all applications on a first-come-first-served basis.

(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 17053.85, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (1) of subdivision (g).

(B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.

(C) (i) Establish a procedure for a qualified taxpayer to report to the California Film Commission, prior to the issuance of a credit certificate, the following information:

(I) If readily available, a list of the states, provinces, or other jurisdictions in which any member of the applicant's combined reporting group in the same business unit as the qualified taxpayer that, in the preceding calendar year, has produced a qualified motion picture intended for release in the United States market. For purposes of this clause, "qualified motion picture" shall not include any episodes of a television series that were complete or in production prior to July 1, 2009.

(II) Whether a qualified motion picture described in subclause (I) was awarded any financial incentive by the state, province, or other jurisdiction that was predicated on the performance of primary principal photography or postproduction in that location.

(ii) The California Film Commission may provide that the report required by this subparagraph be filed in a single report provided on a calendar year basis for those qualified taxpayers that receive multiple credit certificates in a calendar year.

(D) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.

(3) Obtain, when possible, the following information from applicants that do not receive an allocation of credit:

(A) Whether the qualified motion picture that was the subject of the application was completed.

(B) If completed, in which state or foreign jurisdiction was the primary principal photography completed.

(C) Whether the applicant received any financial incentives from the state or foreign jurisdiction to make the qualified motion picture in that location.

(4) Provide the Legislative Analyst's Office, upon request, any or all application materials or any other materials received from, or submitted by, the applicants, in electronic format when available, including, but not limited to, information provided pursuant to clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

(5) The information provided to the California Film Commission pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.

(h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(2) (A) Notwithstanding paragraph (5) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:

(i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.

(ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.

(B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.

(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 17053.85 shall be an amount equal to the sum of all of the following:

(A) One hundred million dollars ($100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the 2016–17 fiscal year.

(B) The unused allocation credit amount, if any, for the preceding fiscal year.

(C) The amount of previously allocated credits not certified.

(2) If the amount of credits applied for in any particular fiscal year exceeds the aggregate amount of tax credits authorized to be allocated under this section, such excess shall be treated as having been applied for on the first day of the subsequent fiscal year. However, credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

(3) Notwithstanding the foregoing, the California Film Commission shall set aside up to ten million dollars ($10,000,000) of tax credits each fiscal year for independent films allocated in accordance with rules and regulations developed pursuant to subdivision (e).

(4) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.

(j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

SEC. 189. Section 24416.20 of the Revenue and Taxation Code is amended to read:

24416.20. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section

25110 had been in effect for the taxable year in which the loss was incurred.

(d) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “five taxable years” in lieu of “20 years” except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any income year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the income year.

(2) Except as provided in subdivision (g), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an "S" corporation, paragraphs (1) and (2) shall be applied to the partnership or "S" corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are

any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1).

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce

commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 190. Section 24900 of the Revenue and Taxation Code is amended and renumbered to read:

24452. (a) The Franchise Tax Board may include in the gross income of the taxpayer (or a member of the taxpayer's combined reporting group) in that taxable year the taxpayer's pro rata share (or the pro rata share of a member of the taxpayer's combined reporting group) of any of those insurers' current earnings and profits in that taxable year, but not to exceed an amount equal to the specific insurer's net income attributable to investment income for that year minus that insurer's net written premiums received in that same taxable year, if all of the following apply:

(1) For any taxable year an insurer is a member of a taxpayer's commonly controlled group.

(2) The ratio of the five-year average net written premiums to the five-year average total income of all insurers in the commonly controlled group is equal to or less than 0.10 (or, for taxable years beginning on or after January 1, 2008, 0.15).

(3) The accumulation of earnings and profits of the insurers in the commonly controlled group had a substantial purpose of avoidance of taxes on, according to, or measured by income, of this state or any other state.

The amount so included shall be treated as a dividend received from an insurance company during the taxable year, and to the extent applicable, Section 24410 shall apply to that amount.

(b) If the insurer members of the commonly controlled group constitute a predominantly captive insurance group (as defined in paragraph (6) of subdivision (e)), then the ratio described in subdivision (a) shall be 0.40.

(c) To the extent that amounts are included in the gross income of a taxpayer (or a member of the taxpayer's combined reporting group) pursuant to subdivision (a), those amounts shall not again be considered as investment income in the application of the ratio described in paragraph (2) of subdivision (a).

(d) The amounts included in gross income under subdivision (a) shall not again be included in gross income when subsequent distributions are made to the taxpayer (or a member of the taxpayer's combined reporting group), or another taxpayer that acquires an interest in the stock of the taxpayer (or a member of the taxpayer's combined reporting group with respect to which subdivision (a) was applied), or any successor or assign of the respective taxpayers (or a member of the taxpayer's combined reporting group) described in this subdivision. For purposes of applying this subdivision, distributions from an insurer shall be considered first made from amounts included under subdivision (a).

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

(1) Except as otherwise provided, the phrases "net written premiums," "five-year average net written premiums" and the "five-year average total income" shall each have the same meaning, respectively, as applicable for purposes of subdivision (c) of Section 24410, whether or not a dividend is actually received from

any insurer member of the taxpayer's commonly controlled group in that taxable year.

(2) "Net income attributable to investment income" means net income of the insurer multiplied by a ratio, the numerator of which is the insurer's gross investment income from interest, dividends (other than dividends from members of the taxpayer's commonly controlled group), rent, and realized gains or losses, and the denominator of which is the insurer's gross income (other than dividends from members of the taxpayer's commonly controlled group) from all sources. In the application of the preceding sentence, if an insurer is required to file a Statutory Annual Statement pursuant to the Annual Statement Instructions and Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners, "net income" means net income required to be reported in the insurer's Statutory Annual Statement.

(3) An insurer is any insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California.

(4) The phrase "commonly controlled group" shall have the same meaning as that phrase has under Section 25105.

(5) The phrase "combined reporting group" means those corporations whose income is required to be included in the same combined report pursuant to Section 25101 or 25110.

(6) A "predominantly captive insurance group" means the insurer members of a commonly controlled group where the insurers receive more than 50 percent of their net written premiums (without regard to the weighting factors in paragraph (1) of subdivision (e) of Section 24410) from members of the commonly controlled group or the ratios in clause (i) or clause (ii) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 24410 is greater than 50 percent. The provisions of paragraph (4) of subdivision (d) of Section 24410 shall apply for purposes of this paragraph.

(7) (A) The taxpayer's "pro rata share" of the current earnings and profits of an insurer member of a commonly controlled group is the amount that would have been received as a dividend by the taxpayer (or a member of the taxpayer's combined reporting group) if both of the following apply:

(i) The insurer had directly distributed its current earnings and profits with respect to its stock held by the taxpayer (or member of the taxpayer's combined reporting group).

(ii) In the case of an insurer holding the stock of another insurer, all other insurer members of the taxpayer's commonly controlled group had distributed the same current earnings and profits with respect to their stock, in the same taxable year, until amounts were received as a dividend by the taxpayer (or a member of the taxpayer's combined reporting group) from an insurer member of the commonly controlled group.

(B) In the application of this section, amounts treated as a dividend received by a partnership shall be considered a dividend received by each partner that is a member of the commonly controlled group, either directly or through a series of tiered partnerships.

(f) The Franchise Tax Board may prescribe those regulations that are appropriate to describe conditions under which the accumulation of earnings and profits of those insurers described in paragraph (2) of subdivision (a) do not have the substantial purpose of avoidance of taxes on, according to, or measured by income, of this state or any other state.

(g) If this section or any portion of this section is held invalid, or the application of this section to any person or circumstance is held invalid, that invalidity shall not affect other provisions of the act adding this section, or the provisions of this section that are severable.

SEC. 191. Section 1755 of the Unemployment Insurance Code is amended to read:

1755. (a) If any person or employing unit is delinquent in the payment of any contributions, penalties, or interest provided for in this division, the director may, not later than three years after the payment became delinquent or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, collect the delinquency or enforce any liens by levy served either personally or by first-class mail, to all persons having in their possession or under their control any credits or personal property belonging to the delinquent person or employing unit, or owing any debts to the person or employing unit at the time of the receipt

of the notice of levy or coming into their possession or under their control for the period of one year from the time of receipt of the notice of levy. Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent person or employing unit or owing any debts to the person or employing unit at the time of the receipt of the levy or coming into his or her possession or under his or her control for the period of one year from the time of receipt of the notice of levy, shall surrender the credits or personal property to the director or pay to the director the amount of any debt owing the delinquent employer within five days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent employer coming into his or her possession or under his or her control within one year of receipt of the notice of levy within five days of the date of coming into possession or control of the credits or personal property, or the amount of any debt owing to the delinquent employer is incurred. Any person in possession of any credits or personal property or owing any debts to the delinquent person or employing unit who surrenders the credits or personal property or pays the debts owing the delinquent person or employing unit shall be discharged from any obligation or liability to the delinquent person or employing unit with respect to the credits or personal property surrendered or debts paid to the director.

(b) (1) If the levy is made on a deposit or credits or personal property in the possession or under the control of a financial institution, the notice of levy shall be served on that financial institution at the same location as legal process is required to be served pursuant to Section 684.115 of the Code of Civil Procedure, and the levy will apply to all credits or personal property in the deposit account only at the time that notice of levy is received by the financial institution.

(2) For purposes of this section:

(A) "Deposit account" has the same meaning as in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

(B) "Financial institution" has the same meaning as in Section 481.113 of the Code of Civil Procedure.

(C) "Legal process" has the same meaning as in Section 482.070 of the Code of Civil Procedure.

SEC. 192. Section 14211 of the Unemployment Insurance Code is amended to read:

14211. (a) (1) Beginning program year 2012, an amount equal to at least 25 percent of funds available under Title I of the federal Workforce Investment Act of 1998 (Public Law 105-220) provided to local workforce investment boards for adults and dislocated workers shall be spent on workforce training programs. This minimum may be met either by spending 25 percent of those base formula funds on training or by combining a portion of those base formula funds with leveraged funds as specified in subdivision (b).

(2) Beginning program year 2016, an amount equal to at least 30 percent of funds available under Title I of the federal Workforce Investment Act of 1998 (Public Law 105-220) provided to local workforce investment boards for adults and dislocated workers shall be spent on workforce training programs. This minimum may be met either by spending 30 percent of those base formula funds on training or by combining a portion of those base formula funds with leveraged funds as specified in subdivision (b).

(3) Expenditures that shall count toward the minimum percentage of funds shall include only training services as defined in Section 2864(d)(4)(D) of Title 29 of the United States Code and Sections 663.300 and 663.508 of Title 20 of the Code of Federal Regulations, including all of the following:

(A) Occupational skills training, including training for nontraditional employment.

(B) On-the-job training.

(C) Programs that combine workplace training with related instruction, which may include cooperative education programs.

(D) Training programs operated by the private sector.

(E) Skill upgrading and retraining.

(F) Entrepreneurial training.

(G) Job readiness training.

(H) Adult education and literacy activities provided in combination with services described in any of subparagraphs (A) to (G), inclusive.

(I) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

(b) (1) Local workforce investment boards may receive a credit of up to 10 percent of their adult and dislocated worker formula fund base allocations for public education and training funds and private resources from industry and from joint labor-management trusts that are leveraged by a local workforce investment board for training services described in paragraph (3) of subdivision (a). This credit may be applied toward the minimum training requirements in paragraphs (1) and (2) of subdivision (a).

(A) Leveraged funds that may be applied toward the credit allowed by this subdivision shall only include the following:

(i) Federal Pell Grants established under Title IV of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).

(ii) Programs authorized by the federal Workforce Investment Act of 1998 (Public Law 105-220).

(iii) Trade adjustment assistance.

(iv) Department of Labor National Emergency Grants.

(v) Match funds from employers, industry, and industry associations.

(vi) Match funds from joint labor-management trusts.

(vii) Employment training panel grants.

(B) Credit for leveraged funds shall only be given if the local workforce investment board keeps records of all training expenditures it chooses to apply to the credit. Training expenditures may only be applied to the credit if the relevant training costs can be independently verified by the Employment Development Department and training participants must be coenrolled in the federal Workforce Investment Act of 1998 performance monitoring system.

(2) The use of leveraged funds to partially meet the training requirements specified in paragraphs (1) and (2) of subdivision (a) is the prerogative of a local workforce investment board. Costs arising from the recordkeeping required to demonstrate compliance with the leveraging requirements of this subdivision are the responsibility of the board.

(c) Beginning program year 2012, the Employment Development Department shall calculate for each local workforce investment board, within six months after the end of the second program year of the two-year period of availability for expenditure of federal Workforce Investment Act of 1998 funds, whether the local workforce investment board met the requirements of subdivision

(a). The Employment Development Department shall provide to each local workforce investment board its individual calculations with respect to the expenditure requirements of subdivision (a).

(d) A local workforce investment area that does not meet the requirements of subdivision (a) shall submit a corrective action plan to the Employment Development Department that provides reasons for not meeting the requirements and describes actions taken to address the identified expenditure deficiencies. A local workforce investment area shall provide a corrective action plan to the Employment Development Department pursuant to this section within 90 days of receiving the calculations described in subdivision (c).

(e) For the purpose of this section, "program year" has the same meaning as provided in Section 667.100 of Title 20 of the Code of Federal Regulations.

SEC. 193. Section 11205 of the Vehicle Code, as amended by Section 456 of Chapter 931 of the Statutes of 1998, is amended to read:

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal court and to each superior court in a county in which there is no municipal court, with a sufficient number of copies to allow the courts to provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a

person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

SEC. 194. Section 12804.11 of the Vehicle Code is amended to read:

12804.11. (a) To operate firefighting equipment, a driver, including a tiller operator, is required to do either of the following:

(1) Obtain and maintain a firefighter endorsement issued by the department and obtain and maintain a class C license as described in Section 12804.9, a restricted class A license as described in Section 12804.12, or a noncommercial class B license as described in Section 12804.10.

(2) Obtain and maintain a class A or B license as described in Section 12804.9 and, as appropriate, for the size and configuration of the firefighting equipment operated.

(b) To qualify for a firefighter endorsement the driver shall do all of the following:

(1) (A) Provide to the department proof of current employment as a firefighter or registration as a volunteer firefighter with a fire department and evidence of fire equipment operation training by providing a letter or other indication from the chief of the fire department or his or her designee.

(B) For purposes of this section, evidence of fire equipment operation training means the applicant has successfully completed Fire Apparatus Driver/Operator 1A taught by an instructor

registered with the Office of the State Fire Marshal or fire department driver training that meets all of the following requirements:

(i) Meets or exceeds the standards outlined in NFPA 1002, Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator 1A course adopted by the Office of the State Fire Marshal.

(ii) Prepares the applicant to safely operate the department's fire equipment that the applicant will be authorized to operate.

(iii) Includes a classroom (cognitive) portion of at least 16 hours.

(iv) Includes a manipulative portion of at least 14 hours, which includes directly supervised behind-the-wheel driver training.

(C) Driver training shall be conducted by a person who is registered with the Office of the State Fire Marshal to instruct a Fire Apparatus Driver/Operator 1A course or a person who meets all of the following criteria:

(i) Possesses a minimum of five years of fire service experience as an emergency vehicle operator, three of which must be at the rank of engineer or higher.

(ii) Possesses a valid California class A or B license or a class A or B license restricted to the operation of firefighting equipment.

(iii) Is certified as a qualified training instructor or training officer by the State of California, the federal government, or a county training officers' association.

(2) Pass the written firefighter examination developed by the department with the cooperation of the Office of the State Fire Marshal.

(3) Upon application and every two years thereafter, submit medical information on a form approved by the department.

(c) There shall be no additional charge for adding a firefighter endorsement to an original license or when renewing a license. To add a firefighter endorsement to an existing license when not renewing the license, the applicant shall pay the fee for a duplicate license pursuant to Section 14901.

(d) (1) A driver of firefighting equipment is subject to the requirements of subdivision (a) if both of the following conditions exist:

(A) The equipment is operated by a person employed as a firefighter by a federal or state agency, by a regularly organized fire department of a city, county, city and county, or district, or by a tribal fire department or registered as a volunteer member of a

regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located, or of a tribal fire department.

(B) The motor vehicle is used to travel to and from the scene of an emergency situation, or to transport equipment used in the control of an emergency situation, and which is owned, leased, or rented by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located, or a tribal fire department.

(2) A driver of firefighting equipment is not required to obtain and maintain a firefighter endorsement pursuant to paragraph (1) of subdivision (a) if the driver is operating the firefighting equipment for training purposes, during a nonemergency, while under the direct supervision of a fire department employee who is properly licensed to operate the equipment and is authorized by the fire department to provide training.

(e) For purposes of this section, a tiller operator is the driver of the rear free-axle portion of a ladder truck.

(f) For purposes of this section, "firefighting equipment" means a motor vehicle, that meets the definition of a class A or class B vehicle described in subdivision (b) of Section 12804.9, that is used to travel to and from the scene of an emergency situation, or to transport equipment used in the control of an emergency situation, and that is owned, leased, or rented by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) Notwithstanding paragraph (1) of subdivision (a), a regularly organized fire department, having official recognition of the city, county, city and county, or district in which the department is located, may require an employee or a volunteer of the fire department who is a driver or operator of firefighting equipment to hold a class A or B license.

(h) This section applies to a person hired by a fire department, or to a person renewing a driver's license, on or after January 1, 2011.

SEC. 195. Section 16028 of the Vehicle Code is amended to read:

16028. (a) Upon the demand of a peace officer pursuant to subdivision (b) or upon the demand of a peace officer or traffic collision investigator pursuant to subdivision (c), every person who drives a motor vehicle upon a highway shall provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made. The evidence of financial responsibility may be provided using a mobile electronic device. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision.

(b) If a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant to that chapter, the cited driver shall furnish written evidence of financial responsibility or may provide electronic verification of evidence of financial responsibility using a mobile electronic device upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except when the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(c) If a peace officer, or a regularly employed and salaried employee of a city or county who has been trained as a traffic collision investigator, is summoned to the scene of an accident described in Section 16000, the driver of a motor vehicle that is in any manner involved in the accident shall furnish written evidence of financial responsibility or may provide electronic verification of evidence of financial responsibility using a mobile electronic device upon the request of the peace officer or traffic collision investigator. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of this subdivision.

A traffic collision investigator may cause a notice to appear to be issued for a violation of this subdivision, upon review of that citation by a peace officer.

(d) (1) If, at the time a notice to appear for a violation of subdivision (a) is issued, the person is driving a motor vehicle owned or leased by the driver's employer, and the vehicle is being driven with the permission of the employer, this section shall apply to the employer rather than the driver. In that case, a notice to appear shall be issued to the employer rather than the driver, and the driver may sign the notice on behalf of the employer.

(2) The driver shall notify the employer of the receipt of the notice issued pursuant to paragraph (1) not later than five days after receipt.

(e) A person issued a notice to appear for a violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16020, showing that the driver was in compliance with that section at the time the notice to appear for violating subdivision (a) was issued. In lieu of the personal appearance, the person may submit by mail to the court written evidence of having had financial responsibility at the time the notice to appear was issued. Upon receipt by the clerk of that written evidence of financial responsibility in a form consistent with Section 16020, further proceedings on the notice to appear for the violation of subdivision (a) shall be dismissed.

(f) For the purposes of this section, "mobile electronic device" means a portable computing and communication device that has a display screen with touch input or a miniature keyboard.

(g) For the purposes of this section, when a person provides evidence of financial responsibility using a mobile electronic device to a peace officer, the peace officer shall only view the evidence of financial responsibility and is prohibited from viewing any other content on the mobile electronic device.

(h) If a person presents a mobile electronic device pursuant to this section, that person assumes all liability for any damage to the mobile electronic device.

SEC. 196. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his

or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153 of this code, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153 of this code, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any

combination of those convictions, administrative suspensions, or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The officer shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood or breath, the person has the choice of those tests, including a urine test, that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether

he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) A person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) A person who is afflicted with hemophilia is exempt from the blood test required by this section, but shall submit to, and complete, a urine test.

(c) A person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section, but shall submit to, and complete, a urine test.

(d) (1) A person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's

privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of all driver's licenses issued by this state that are held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) (1) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(2) (A) Notwithstanding any other law, a document containing data prepared and maintained in the governmental forensic laboratory computerized database system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In addition, any other official record that is maintained in the governmental forensic laboratory, relates to a chemical test analysis prepared and maintained in the governmental forensic laboratory computerized database system, and is electronically transmitted and retrieved through a public or private computer network to or by the department is admissible as evidence in the department's administrative proceedings. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was received or retrieved directly from the computerized database system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

(B) Notwithstanding any other law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

SEC. 197. Section 34510.5 of the Vehicle Code is amended to read:

34510.5. (a) (1) A broker of construction trucking services, as defined in Section 3322 of the Civil Code, shall not furnish construction transportation services to any construction project unless it has secured a surety bond of not less than fifteen thousand dollars ($15,000) executed by an admitted surety insurer. The surety bond shall ensure the payment of the claims of a contracted motor carrier of property in dump truck equipment if the broker fails to pay the contracted motor carrier within the time period specified in paragraph (1) of subdivision (a) of Section 3322 of the Civil Code.

(2) (A) A broker of construction trucking services annually shall provide written evidence of the broker's valid surety bond to a third-party nonprofit organization that is related to the industry and regularly maintains a published database of bonded brokers or post a current copy of the surety bond on the broker's Internet Web site.

(B) When a copy of a surety bond is provided to a third-party nonprofit organization, the broker shall notify the third-party

nonprofit organization if at any time the surety bond is cancelled or expired. When a copy of the surety bond is posted on the broker's Internet Web site, the broker shall remove the copy of the surety bond from his or her Internet Web site if at any time the surety bond is cancelled or expired.

(C) A third-party nonprofit organization shall not charge a broker for posting evidence of a valid surety bond or limit the posting of the bond only to the organization's members.

(D) A third-party nonprofit organization shall not be liable for any damages caused by the publication of any information provided pursuant to this paragraph that is erroneous or outdated.

(b) A broker of construction trucking services shall not hire, or otherwise engage the services of, a motor carrier of property to furnish construction transportation services unless the broker provides, prior to the commencement of work each calendar year, written evidence of the broker's valid surety bond to any person that hires, or otherwise engages the services of, the broker to furnish construction transportation services and also to the hired motor carrier of property.

(c) A broker of construction trucking services who furnishes construction transportation services in violation of this section is guilty of a misdemeanor and subject to a fine of up to five thousand dollars ($5,000).

(d) In any civil action brought against a broker of construction trucking services by a motor carrier of property in dump truck equipment with whom the broker contracted during any period of time in which the broker did not have a surety bond in violation of this section, the failure to have the bond shall create a rebuttable presumption that the broker failed to pay to the motor carrier the amount due and owing.

(e) For purposes of this section, "a broker of construction trucking services" does not include a facility that meets all the following requirements:

(1) Arranges for transportation services of its product.

(2) Primarily handles raw materials to produce a new product.

(3) Is a rock product operation (such as an "aggregate" operation), a hot mixing asphalt plant, or a concrete, concrete product, or Portland cement product manufacturing facility.

(4) Does not accept a fee for the arrangement.

(f) For the purposes of this section, "written evidence of the broker's valid surety bond" includes a copy of the surety bond, a certificate of insurance, a continuation certificate, or other similar documentation originally issued from the surety that includes the surety's and broker's name, the bond number, and the effective and expiration dates of the bond.

SEC. 198. Section 40000.20 of the Vehicle Code is amended to read:

40000.20. A third or subsequent violation of Section 23225, relating to the storage of an opened container of an alcoholic beverage, or Section 23223, relating to the possession of an open container of an alcoholic beverage, by a driver of a vehicle used to provide transportation services on a prearranged basis, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

SEC. 199. Section 85057.5 of the Water Code is amended to read:

85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(4) A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization pursuant to Section 65080 of the Government Code has determined is consistent with either a sustainable communities

strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) A plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) A project within the secondary zone, as defined pursuant to Section 29731 of the Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) A project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) A project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) A project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft

Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(8) Leases approved by a special district if all of the following apply:

(A) The uses proposed by the lease are authorized by the applicable general plan and zoning ordinances of the city where the special district is located.

(B) The uses proposed by the lease are approved by the city where the special district is located and the city complies with Chapter 3 (commencing with Section 85225) of Part 3, if applicable, prior to approval of the lease by the special district.

(C) The special district complies with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving the lease.

(9) (A) Routine dredging activities that are necessary for maintenance of facilities operated by a special district.

(B) For purposes of this paragraph, "routine dredging activities" are limited to the following:

(i) Dredging to maintain the Stockton Deep Water Ship Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile 39.3 to river mile 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet of overdredge from river mile 35 to river mile 43.

(ii) Dredging designed to maintain the Sacramento Deep Water Ship Channel at a depth of 30 feet plus two feet of overdredge from river mile 0.0 to river mile 30, and at a depth of 35 feet from river mile 35 to river mile 43.

(C) Except as provided by this subdivision, it is the intent of the Legislature that this exemption shall not be interpreted or treated as changing or modifying current substantive and procedural regulations applicable to the decision to approve dredging operations.

(c) For purposes of this section, "special district" means the Port of Stockton or the Port of West Sacramento.

(d) This section shall not be interpreted to authorize the abrogation of a vested right whether created by statute or by common law.

SEC. 200. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child.

The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the

criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal or is a

member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interests of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interests of each child to schedule a hearing pursuant to Section 366.26 within 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The

court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Regardless of whether the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has

been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, and the court determines either that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian.

(3) For purposes of paragraph (2), in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court must find all of the following:

(A) The parent or legal guardian has consistently and regularly contacted and visited with the child, taking into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's arrest and receipt of an immigration hold, detention by the United States Department of Homeland Security, or deportation.

(B) The parent or legal guardian has made significant progress in resolving the problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity or ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

(4) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

(5) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a

compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency that adoption is not in the best interests of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests. When the court orders a termination of reunification services to the parent or legal guardian, it shall also order that the child's caregiver receive the child's birth

certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court orders a termination of reunification services to the parent or legal guardian, it shall order, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents or legal guardians.

(B) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a

statement from the child concerning placement and the adoption or guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange within the state or out of the state.

(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(H) In the case of an Indian child, in addition to subparagraphs (A) to (G), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a tribal customary adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement

pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 201. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) or (2) of subdivision (g) of Section 366.21, the

permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall

make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child, and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interests of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or

provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(1) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration, institutionalization, or detention, or following deportation to his or her country of origin and his or her return to the United States, and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the subsequent permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents.

(B) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including

screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or legal guardianship, a statement from the child concerning placement and the adoption or legal guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a tribal customary adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(d) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(e) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(f) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 202. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent's or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall

make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have

been offered or provided to the parent or legal guardian. For purposes of this paragraph, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(C) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents.

(B) A review of the amount of, and nature of, any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, “extended family” for the purposes of this paragraph shall include, but not be limited to, the child’s siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, the duration and character of the

relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or legal guardianship, a statement from the child concerning placement and the adoption or legal guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a tribal customary adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement

pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 203. Section 4141 of the Welfare and Institutions Code is amended to read:

4141. (a) (1) Each state hospital shall update its injury and illness prevention plan at least once a year to include necessary safeguards to prevent workplace safety hazards in connection with workplace violence associated with patient assaults on employees.

(2) Updated injury and illness prevention plans shall address, but shall not be limited to, all of the following:

(A) Control of physical access throughout the hospital and grounds.

(B) Alarm systems.

(C) Presence of security personnel.

(D) Training.

(E) Buddy systems.

(F) Communication.

(G) Emergency responses.

(3) (A) The department shall submit the updated injury and illness prevention plans to the Legislature every two years.

(B) (i) The requirement for submitting the updated injury and illness prevention plans imposed pursuant to subparagraph (A) is inoperative four years after the date the first report is due, pursuant to Section 10231.5 of the Government Code.

(ii) Updated injury and illness prevention plans submitted pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(b) Each state hospital shall establish an injury and illness prevention committee comprised of hospital management and employees designated by the hospital's director in consultation with the employee bargaining units. The committee shall be responsible for providing recommendations to the hospital director for updates to the injury and illness prevention plan. The committee shall meet at least four times per year.

(c) Each state hospital shall develop an incident reporting procedure that can be used, at a minimum, to develop reports of patient assaults on employees and assist the hospital in identifying risks of patient assaults on employees. Data obtained from the incident reporting procedures shall be accessible to staff. The incident reporting procedure shall be designed to provide hospital management with immediate notification of reported incidents. The hospital shall provide for timely and efficient responses and investigations to incident reports made under the incident reporting procedure. Incident reports shall also be forwarded to the injury and illness prevention committee established pursuant to subdivision (b).

SEC. 204. Section 4427.5 of the Welfare and Institutions Code is amended to read:

4427.5. (a) (1) A developmental center shall immediately report the following incidents involving a resident to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident:

(A) A death.

(B) A sexual assault, as defined in Section 15610.63.

(C) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the developmental center.

(D) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.

(E) An injury to the genitals when the cause of the injury is undetermined.

(F) A broken bone when the cause of the break is undetermined.

(2) If the incident is reported to the law enforcement agency by telephone, a written report of the incident shall also be submitted to the agency, within two working days.

(3) The reporting requirements of this subdivision are in addition to, and do not substitute for, the reporting requirements of mandated reporters, and any other reporting and investigative duties of the developmental center and the department as required by law.

(4) This subdivision does not prevent the developmental center from reporting any other criminal act constituting a danger to the health or safety of the residents of the developmental center to the local law enforcement agency.

(b) (1) The department shall report to the agency described in subdivision (i) of Section 4900 any of the following incidents involving a resident of a developmental center:

(A) Any unexpected or suspicious death, regardless of whether the cause is immediately known.

(B) Any allegation of sexual assault, as defined in Section 15610.63, in which the alleged perpetrator is a developmental center or department employee or contractor.

(C) Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined in Section 15610.63, in which a staff member is implicated.

(2) A report pursuant to this subdivision shall be made no later than the close of the first business day following the discovery of the reportable incident.

(c) The department shall do both of the following:

(1) Annually provide written information to every developmental center employee regarding all of the following:

(A) The statutory and departmental requirements for mandatory reporting of suspected or known abuse.

(B) The rights and protections afforded to individuals' reporting of suspected or known abuse.

(C) The penalties for failure to report suspected or known abuse.

(D) The telephone numbers for reporting suspected or known abuse or neglect to designated investigators of the department and to local law enforcement agencies.

(2) On or before August 1, 2001, in consultation with employee organizations, advocates, consumers, and family members, develop a poster that encourages staff, residents, and visitors to report suspected or known abuse and provides information on how to make these reports.

SEC. 205. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or

conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center.

(D) A regional center may vendorize a licensed facility for exclusive services to persons with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. A facility already licensed on January 1, 1999, shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity.

(E) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not newly vendor a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds, unless the facility qualifies for receipt of federal funds under the Medicaid Program.

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of

payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

(5) In order to ensure the maximum flexibility and availability of appropriate services and supports for persons with developmental disabilities, the department shall establish and maintain an equitable system of payment to providers of services and supports identified as necessary to the implementation of a ~~consumers'~~ *consumer's* individual program plan. The system of payment shall include provision for a rate to ensure that the provider can meet the special needs of consumers and provide quality services and supports in the least restrictive setting as required by law.

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation

shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumer's choice of providers, or, where appropriate, the consumer's ~~parent's~~ *parents'*, legal guardian's, authorized representative's, or conservator's choice of providers.

(7) No service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, when appropriate, the person's parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

(9) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. In considering appropriate placement alternatives for children with developmental disabilities, approval by the child's parent or guardian shall be obtained before placement is made.

(B) Effective July 1, 2012, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase residential services from a State Department of Social Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds. This prohibition on regional center purchase of residential services shall not apply to any of the following:

(i) A residential facility with a licensed capacity of 16 or more beds that has been approved to participate in the department's

Home and Community Based Services Waiver or another existing waiver program or certified to participate in the Medi-Cal program.

(ii) A residential facility service provider that has a written agreement and specific plan prior to July 1, 2012, with the vendoring regional center to downsize the existing facility by transitioning its residential services to living arrangements of 15 beds or less or restructure the large facility to meet federal Medicaid eligibility requirements on or before June 30, 2013.

(iii) A residential facility licensed as a mental health rehabilitation center by the State Department of Mental Health or successor agency under any of the following circumstances:

(I) The facility is eligible for Medicaid reimbursement.

(II) The facility has a department-approved plan in place by June 30, 2013, to transition to a program structure eligible for federal Medicaid funding, and this transition will be completed by June 30, 2014. The department may grant an extension for the date by which the transition will be completed if the facility demonstrates that it has made significant progress toward transition, and states with specificity the timeframe by which the transition will be completed and the specified steps that will be taken to accomplish the transition. A regional center may pay for the costs of care and treatment of a consumer residing in the facility on June 30, 2012, until June 30, 2013, inclusive, and, if the facility has a department-approved plan in place by June 30, 2013, may continue to pay the costs under this subparagraph until June 30, 2014, or until the end of any period during which the department has granted an extension.

(III) There is an emergency circumstance in which the regional center determines that it cannot locate alternate federally eligible services to meet the consumer's needs. Under such an emergency circumstance, an assessment shall be completed by the regional center as soon as possible and within 30 days of admission. An individual program plan meeting shall be convened immediately following the assessment to determine the services and supports needed for stabilization and to develop a plan to transition the consumer from the facility into the community. If transition is not expected within 90 days of admission, an individual program plan meeting shall be held to discuss the status of transition and to determine if the consumer is still in need of placement in the facility. Commencing October 1, 2012, this determination shall

be made after also considering resource options identified by the statewide specialized resource service. If it is determined that emergency services continue to be necessary, the regional center shall submit an updated transition plan that can cover a period of up to 90 days. In no event shall placements under these emergency circumstances exceed 180 days.

(C) (i) Effective July 1, 2012, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase new residential services from institutions for mental disease, as described in Part 5 (commencing with Section 5900) of Division 5, for which federal Medicaid funding is not available.

(ii) The prohibition described in clause (i) shall not apply to emergencies, as determined by the regional center, when a regional center cannot locate alternate federally eligible services to meet the consumer's needs. As soon as possible within 30 days of admission due to an emergency, an assessment shall be completed by the regional center. An individual program plan meeting shall be convened immediately following the assessment, to determine the services and supports needed for stabilization and to develop a plan to transition the consumer from the facility to the community. If transition is not expected within 90 days of admission, an emergency individual program plan meeting shall be held to discuss the status of transition and to determine if the consumer is still in need of placement in the facility. If emergency services continue to be necessary, the regional center shall submit an updated transition plan to the department for an extension of up to 90 days. Placement shall not exceed 180 days.

(iii) Regional centers shall complete a comprehensive assessment of any consumer residing in an institution for mental disease as of July 1, 2012, for which federal Medicaid funding is not available. The comprehensive assessment shall be completed prior to the consumer's next scheduled individual program plan meeting and shall include identification of the services and supports needed and the timeline for identifying or developing those services needed to transition the consumer back to the community. Effective October 1, 2012, the regional center shall also consider resource options identified by the statewide specialized resource service. For each individual program plan meeting convened pursuant to this subparagraph, the clients' rights advocate for the regional

center shall be notified of the meeting and may participate in the meeting unless the consumer objects on his or her own behalf.

(D) Each person with developmental disabilities placed by the regional center in a community living arrangement shall have the rights specified in this division. These rights shall be brought to the person's attention by any means necessary to reasonably communicate these rights to each resident, provided that, at a minimum, the Director of Developmental Services ~~prepare, provide, and require~~ *prepares, provides, and requires* to be clearly posted in all residential facilities and day programs a poster using simplified language and pictures that is designed to be more understandable by persons with cognitive disabilities and that the rights information shall also be available through the regional center to each residential facility and day program in alternative formats, including, but not limited to, other languages, braille, and audio tapes, when necessary to meet the communication needs of consumers.

(E) Consumers are eligible to receive supplemental services, including, but not limited to, additional staffing, pursuant to the process described in subdivision (d) of Section 4646. Necessary additional staffing that is not specifically included in the rates paid to the service provider may be purchased by the regional center if the additional staff are in excess of the amount required by regulation and the individual's planning team determines the additional services are consistent with the provisions of the individual program plan. Additional staff should be periodically reviewed by the planning team for consistency with the individual program plan objectives in order to determine if continued use of the additional staff is necessary and appropriate and if the service is producing outcomes consistent with the individual program plan. Regional centers shall monitor programs to ensure that the additional staff is being provided and utilized appropriately.

(10) Emergency and crisis intervention services, including, but not limited to, mental health services and behavior modification services, may be provided, as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice. Crisis services shall first be provided without disrupting a person's living arrangement. If crisis intervention services are unsuccessful, emergency housing shall be available in the person's home community. If dislocation cannot be avoided, every effort

shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible.

(11) Among other service and support options, planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.

(12) When facilitation as specified in an individual program plan requires the services of an individual, the facilitator shall be of the consumer's choosing.

(13) The community support may be provided to assist individuals with developmental disabilities to fully participate in community and civic life, including, but not limited to, programs, services, work opportunities, business, and activities available to persons without disabilities. This facilitation shall include, but not be limited to, any of the following:

(A) Outreach and education to programs and services within the community.

(B) Direct support to individuals which would enable them to more fully participate in their community.

(C) Developing unpaid natural supports when possible.

(14) When feasible and recommended by the individual program planning team, for purposes of facilitating better and cost-effective services for consumers or family members, technology, including telecommunication technology, may be used in conjunction with other services and supports. Technology in lieu of a consumer's in-person appearances at judicial proceedings or administrative due process hearings may be used only if the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, gives informed consent. Technology may be used in lieu of, or in conjunction with, in-person training for providers, as appropriate.

(15) Other services and supports may be provided as set forth in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

(16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include

experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009.

(b) (1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

(c) The regional center may assist consumers and families directly, or through a provider, in identifying and building circles of support within the community.

(d) In order to increase the quality of community services and protect consumers, the regional center shall, when appropriate, take either of the following actions:

(1) Identify services and supports that are ineffective or of poor quality and provide or secure consultation, training, or technical assistance services for any agency or individual provider to assist that agency or individual provider in upgrading the quality of services or supports.

(2) Identify providers of services or supports that may not be in compliance with local, state, and federal statutes and regulations and notify the appropriate licensing or regulatory authority, or request the area board to investigate the possible noncompliance.

(e) When necessary to expand the availability of needed services of good quality, a regional center may take actions that include, but are not limited to, the following:

(1) Soliciting an individual or agency by requests for proposals or other means, to provide needed services or supports not presently available.

(2) Requesting funds from the Program Development Fund, pursuant to Section 4677, or community placement plan funds

designated from that fund, to reimburse the startup costs needed to initiate a new program of services and supports.

(3) Using creative and innovative service delivery models, including, but not limited to, natural supports.

(f) Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain those services for its consumers.

(g) Where there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department may provide the services and supports directly.

(h) At least annually, regional centers shall provide the consumer, his or her parents, legal guardian, conservator, or authorized representative a statement of services and supports the regional center purchased for the purpose of ensuring that they are delivered. The statement shall include the type, unit, month, and cost of services and supports purchased.

SEC. 206. Section 4684.53 of the Welfare and Institutions Code is amended to read:

4684.53. (a) The State Department of Developmental Services and the State Department of Social Services shall jointly implement a licensing program to provide special health care and intensive support services to adults in homelike community settings.

(b) The program shall be implemented through approved community placement plans, as follows:

(1) For closure of Agnews Developmental Center, through the following regional centers:

(A) The San Andreas Regional Center.

(B) The Regional Center of the East Bay.

(C) The Golden Gate Regional Center.

(2) All regional centers involved in the closure of the Lanterman Developmental Center, as determined by the State Department of Developmental Services.

(3) All regional centers transitioning developmental center residents to placements in the community.

(c) Each ARFPSHN shall possess a community care facility license issued pursuant to Article 9 (commencing with Section 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code,

and shall be subject to the requirements of Chapter 1 (commencing with Section 80000) of Division 6 of Title 22 of the California Code of Regulations, except for Article 8 (commencing with Section 80090).

(d) For purposes of this article, a health facility licensed pursuant to subdivision (e) or (h) of Section 1250 of the Health and Safety Code may place its licensed bed capacity in voluntary suspension for the purpose of licensing the facility to operate an ARFPSHN if the facility is selected to participate pursuant to Section 4684.58. Consistent with subdivision (a) of Section 4684.50, any facility licensed pursuant to this section shall serve up to five adults. A facility's bed capacity shall not be placed in voluntary suspension until all consumers residing in the facility under the license to be suspended have been relocated. A consumer shall not be relocated unless it is reflected in the consumer's individual program plan developed pursuant to Sections 4646 and 4646.5.

(e) Each ARFPSHN is subject to the requirements of Subchapters 5 to 9, inclusive, of Chapter 1 of, and Subchapters 2 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code of Regulations.

(f) Each ARFPSHN shall ensure that an operable automatic fire sprinkler system is installed and maintained.

(g) Each ARFPSHN shall have an operable automatic fire sprinkler system that is approved by the State Fire Marshal and that meets the National Fire Protection Association (NFPA) 13D standard for the installation of sprinkler systems in single- and two-family dwellings and manufactured homes. A local jurisdiction shall not require a sprinkler system exceeding this standard by amending the standard or by applying standards other than NFPA 13D. A public water agency shall not interpret this section as changing the status of a facility from a residence entitled to residential water rates, nor shall a new meter or larger connection pipe be required of the facility.

(h) Each ARFPSHN shall provide an alternative power source to operate all functions of the facility for a minimum of six hours in the event the primary power source is interrupted. The alternative power source shall comply with the manufacturer's recommendations for installation and operation. The alternative power source shall be maintained in safe operating condition, and shall be tested every 14 days under the full load condition for a

minimum of 10 minutes. Written records of inspection, performance, exercising period, and repair of the alternative power source shall be regularly maintained on the premises and available for inspection by the State Department of Developmental Services.

SEC. 207. Section 4792.1 of the Welfare and Institutions Code is repealed.

SEC. 208. Section 5008 of the Welfare and Institutions Code is amended to read:

5008. Unless the context otherwise requires, the following definitions shall govern the construction of this part:

(a) "Evaluation" consists of multidisciplinary professional analyses of a person's medical, psychological, educational, social, financial, and legal conditions as may appear to constitute a problem. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an agency providing evaluation services or may be part-time employees or may be employed on a contractual basis.

(b) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Article 2 (commencing with Section 5200) or by a court pursuant to Article 3 (commencing with Section 5225) of Chapter 2.

(c) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities qualifying for reimbursement under the California Medical Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, or under Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. Nothing in this part shall be construed to prohibit an intensive treatment facility from also providing 72-hour treatment and evaluation.

(d) "Referral" is referral of persons by each agency or facility providing intensive treatment or evaluation services to other agencies or individuals. The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person's behalf, discussing the person's problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal

escort and transportation when necessary. Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services. All persons shall be advised of available precare services which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. These services may be provided through county welfare departments, the State Department of State Hospitals, Short-Doyle programs, or other local agencies.

Each agency or facility providing evaluation services shall maintain a current and comprehensive file of all community services, both public and private. These files shall contain current agreements with agencies or individuals accepting referrals, as well as appraisals of the results of past referrals.

(e) "Crisis intervention" consists of an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services.

(f) "Prepetition screening" is a screening of all petitions for court-ordered evaluation as provided in Article 2 (commencing with Section 5200) of Chapter 2, consisting of a professional review of all petitions; an interview with the petitioner and, whenever possible, the person alleged, as a result of mental disorder, to be a danger to others, or to himself or herself, or to be gravely disabled, to assess the problem and explain the petition; when indicated, efforts to persuade the person to receive, on a voluntary basis, comprehensive evaluation, crisis intervention, referral, and other services specified in this part.

(g) "Conservatorship investigation" means investigation by an agency appointed or designated by the governing body of cases in which conservatorship is recommended pursuant to Chapter 3 (commencing with Section 5350).

(h) (1) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4

(commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means either of the following:

(A) A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(B) A condition in which a person~~,~~ has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of *a* mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.

(2) For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250), of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(3) The term "gravely disabled" does not include ~~mentally retarded~~ *intellectually disabled* persons by reason of being ~~mentally retarded~~ *intellectually disabled* alone.

(i) "Peace officer" means a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting in relation to cases for which he or she has a legally mandated responsibility.

(j) "Postcertification treatment" means an additional period of treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2.

(k) "Court," unless otherwise specified, means a court of record.

(*l*) "Antipsychotic medication" means any medication customarily prescribed for the treatment of symptoms of psychoses and other severe mental and emotional disorders.

(m) "Emergency" means a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.

SEC. 209. Section 5328.03 of the Welfare and Institutions Code is amended to read:

5328.03. (a) (1) Notwithstanding Section 5328 of this code, Section 3025 of the Family Code, or paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not release mental health records of the minor patient and shall not disclose mental health information about that minor patient based upon an authorization to release those records or the information signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records or information after finding that such an order would not be detrimental to the minor patient.

(2) Notwithstanding Section 5328 of this code or Section 3025 of the Family Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

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

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) (1) When the juvenile court has issued an order described in paragraph (1) of subdivision (a), the parent or guardian seeking the release of the minor's mental health records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

(2) When the juvenile court has issued an order described in paragraph (2) of subdivision (a), the parent or guardian seeking to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions (a) and (b) of Section 123110 of the Health and Safety Code before the parent or guardian is allowed to inspect or obtain copies of the mental health records of the minor patient.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient, or to inspect or obtain copies of the minor patient's health records. Liability for a psychotherapist's decision not to release records, not to disclose information about the minor patient, or not to allow the parent or guardian to inspect or obtain copies of the mental health records pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 when a parent or guardian presents the minor's psychotherapist with an order authorizing the parent or

guardian to sign an authorization for the release of information or the mental health records regarding the minor patient or authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient.

SEC. 210. Section 6254 of the Welfare and Institutions Code is amended to read:

6254. Wherever provision is made in this code for an order of commitment by a superior court, the order of commitment shall be in substantially the following form:

In the Superior Court of the State of California
For the County of ____

_____ The People For the Best Interest and Protection of _____ as a _____, and Concerning _____ and _____, Respondents _____	Order for Care, Hospitalization, or Commitment

The petition dated _____, alleging that _____, having been presented to this court on the _____ day of _____, 20__, and an order of detention issued thereon by a judge of the superior court of this county, and a return of the said order:

And it further appearing that the provisions of Sections 6250 to 6254, inclusive, of the Welfare and Institutions Code have been complied with;

And it further appearing that Dr. _____ and Dr. _____, two regularly appointed and qualified medical examiners of this county, have made a personal examination of the alleged _____, and have made and signed the certificate of the medical examiners, which certificate is attached hereto and made a part hereof;

Now therefore, after examination and certificate made as aforesaid, the court is satisfied and believes that _____ is a _____ and is so _____.

It is ordered, adjudged, and decreed:

That _____ is a _____ and that _he

* (a) Be cared for and detained in _____, a county psychiatric hospital, a community mental health service, or a licensed sanitarium or hospital for the care of the mentally disordered until the further order of the court, or

* (b) Be cared for at _____, until the further order of the court, or

* (c) Be committed to the State Department of State Hospitals for placement in a state hospital, or

* (d) Be committed to a facility of the Department of Veterans Affairs or other agency of the United States, to wit: _____ at _____.

It is further ordered and directed that _____ of this county, take, convey, and deliver _____ to the proper authorities of the hospital or establishment designated herein to be cared for as provided by law.

Dated this _____ day of _____, 20__.

_____

Judge of the Superior Court

* Strike out when not applicable.

SEC. 211. Section 7295 of the Welfare and Institutions Code is amended to read:

7295. (a) To ensure its safety and security, a state hospital that is under the jurisdiction of the State Department of State Hospitals, as listed in Section 4100, may develop a list of items that are deemed contraband and prohibited on hospital grounds and control and eliminate contraband on hospital grounds.

(b) The State Department of State Hospitals shall develop a list of items that shall be deemed contraband at every state hospital.

(c) A state hospital shall form a contraband committee, comprised of hospital management and employees designated by the hospital's director, to develop the list of contraband items. The committee shall develop the list with the participation of patient representatives, or the patient government of the hospital, if one is available, and the Office of Patients' Rights.

(d) Each hospital's list of contraband items developed pursuant to subdivision (a), and the statewide list of contraband items developed pursuant to subdivision (b), are subject to review and approval by the Director of State Hospitals or his or her designee.

(e) A list of contraband items developed pursuant to subdivision (a) shall be updated and subject to review and approval by the director of the department, or his or her designee, no less often than every six months.

(f) If an item presents an emergent danger to the safety and security of a facility, the item may be placed immediately on a contraband list by the Director of State Hospitals or the executive director of the state hospital, but this placement shall be reviewed by the contraband committee, if applicable, and approved by the Director of State Hospitals or his or her designee within six weeks.

(g) The lists of contraband items developed pursuant to this section shall be posted prominently in every unit of the hospital and throughout the hospital, and provided to a patient upon request.

(h) The lists of contraband items developed pursuant to this section shall be posted on the hospital's Internet Web site.

(i) For the purposes of this section, "contraband" means materials, articles, or goods that a patient is prohibited from having in his or her possession because the materials, articles, or goods present a risk to the safety and security of the facility.

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the hospital and the department may implement, interpret, or make specific this section without taking regulatory action.

SEC. 212. Section 12306 of the Welfare and Institutions Code, as amended by Section 36 of Chapter 439 of the Statutes of 2012, is amended to read:

12306. (a) The state and counties shall share the annual cost of providing services under this article as specified in this section.

(b) Except as provided in subdivisions (c) and (d), the state shall pay to each county, from the General Fund and any federal funds received under Title XX of the federal Social Security Act available for that purpose, 65 percent of the cost of providing services under this article, and each county shall pay 35 percent of the cost of providing those services.

(c) For services eligible for federal funding pursuant to Title XIX of the federal Social Security Act under the Medi-Cal program and, except as provided in subdivisions (b) and (d), the state shall pay to each county, from the General Fund and any funds available for that purpose, 65 percent of the nonfederal cost of providing services under this article, and each county shall pay 35 percent of the nonfederal cost of providing those services.

(d) (1) For the period of July 1, 1992, to June 30, 1994, inclusive, the state's share of the cost of providing services under

this article shall be limited to the amount appropriated for that purpose in the annual Budget Act.

(2) The department shall restore the funding reductions required by subdivision (c) of Section 12301, fully or in part, as soon as administratively practicable, if the amount appropriated from the General Fund for the 1992–93 fiscal year under this article is projected to exceed the sum of the General Fund expenditures under Section 14132.95 and the actual General Fund expenditures under this article for the 1992–93 fiscal year. The entire amount of the excess shall be applied to the restoration. Services shall not be restored under this paragraph until the Department of Finance has determined that the restoration of services would result in no additional costs to the state or to the counties relative to the combined state appropriation and county matching funds for in-home supportive services under this article in the 1992–93 fiscal year.

(e) This section shall become operative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

SEC. 213. Section 12306 of the Welfare and Institutions Code, as amended by Section 37 of Chapter 439 of the Statutes of 2012, is amended to read:

12306. (a) The state and counties shall share the annual cost of providing services under this article as specified in this section.

(b) Except as provided in subdivisions (c) and (d), the state shall pay to each county, from the General Fund and any federal funds received under Title XX of the federal Social Security Act available for that purpose, 65 percent of the cost of providing services under this article, and each county shall pay 35 percent of the cost of providing those services.

(c) For services eligible for federal funding pursuant to Title XIX of the federal Social Security Act under the Medi-Cal program and, except as provided in subdivisions (b) and (d), the state shall pay to each county, from the General Fund and any funds available for that purpose, 65 percent of the nonfederal cost of providing services under this article, and each county shall pay 35 percent of the nonfederal cost of providing those services.

(d) (1) For the period of July 1, 1992, to June 30, 1994, inclusive, the state's share of the cost of providing services under

this article shall be limited to the amount appropriated for that purpose in the annual Budget Act.

(2) The department shall restore the funding reductions required by subdivision (c) of Section 12301, fully or in part, as soon as administratively practicable, if the amount appropriated from the General Fund for the 1992–93 fiscal year under this article is projected to exceed the sum of the General Fund expenditures under Section 14132.95 and the actual General Fund expenditures under this article for the 1992–93 fiscal year. The entire amount of the excess shall be applied to the restoration. Services shall not be restored under this paragraph until the Department of Finance has determined that the restoration of services would result in no additional costs to the state or to the counties relative to the combined state appropriation and county matching funds for in-home supportive services under this article in the 1992–93 fiscal year.

(e) For the period during which Section 12306.15 is operative, each county's share of the costs of providing services pursuant to this article specified in subdivisions (b) and (c) shall remain, but the County IHSS Maintenance of Effort pursuant to Section 12306.15 shall be in lieu of that share.

(f) This section shall become inoperative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

SEC. 214. Section 14005.27 of the Welfare and Institutions Code is amended to read:

14005.27. (a) Individuals enrolled in the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code on June 27, 2012, and who are determined eligible to receive benefits pursuant to subdivisions (a) and (b) of Section 14005.26, shall be transitioned into Medi-Cal, pursuant to this section.

(b) To the extent necessary and for the purposes of carrying out the provisions of this section, in performing initial eligibility determinations for children enrolled in the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, the department shall adopt the option pursuant to Section 1902(e)(13) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(13)) to allow the department or county human services departments to rely upon findings made

by the Managed Risk Medical Insurance Board (MRMIB) regarding one or more components of eligibility. The department shall seek federal approval of a state plan amendment to implement this subdivision.

(c) To the extent necessary, the department shall seek federal approval of a state plan amendment or a waiver to provide presumptive eligibility for the optional targeted low-income category of eligibility pursuant to Section 14005.26 for individuals presumptively eligible for or enrolled in the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code. The presumptive eligibility shall be based upon the most recent information contained in the individual's Healthy Families Program file. The timeframe for the presumptive eligibility shall begin no sooner than January 1, 2013, and shall continue until a determination of Medi-Cal eligibility is made, which determination shall be performed within one year of the individual's Healthy Families Program annual review date.

(d) (1) The California Health and Human Services Agency, in consultation with the Managed Risk Medical Insurance Board, the State Department of Health Care Services, the Department of Managed Health Care, and diverse stakeholders groups, shall provide the fiscal and policy committees of the Legislature with a strategic plan for the transition of the Healthy Families Program pursuant to this section by no later than October 1, 2012. This strategic plan shall, at a minimum, address all of the following:

(A) State, county, and local administrative components which facilitate a successful subscriber transition such as communication and outreach to subscribers and applicants, eligibility processing, enrollment, communication, and linkage with health plan providers, payments of applicable premiums, and overall systems operation functions.

(B) Methods and processes for diverse stakeholder engagement throughout the entire transition, including all phases of the transition.

(C) State monitoring of managed care health plans' performance and accountability for provision of services, and initial quality indicators for children and adolescents transitioning to Medi-Cal.

(D) Health care and dental delivery system components such as standards for informing and enrollment materials, network adequacy, performance measures and metrics, fiscal solvency, and

related factors that ensure timely access to quality health and dental care for children and adolescents transitioning to Medi-Cal.

(E) Inclusion of applicable operational steps, timelines, and key milestones.

(F) A time certain for the transfer of the Healthy Families Advisory Board, as described in Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, to the State Department of Health Care Services.

(2) The intent of this strategic plan is to serve as an overall guide for the development of each plan for each phase of this transition, pursuant to paragraphs (1) to (8), inclusive, of subdivision (e), to ensure clarity and consistency in approach and subscriber continuity of care. This strategic plan may also be updated by the California Health and Human Services Agency as applicable and provided to the Legislature upon completion.

(e) (1) The department shall transition individuals from the Healthy Families Program to the Medi-Cal program in four phases, as follows:

(A) Phase 1. Individuals enrolled in a Healthy Families Program health plan that is a Medi-Cal managed care health plan shall be enrolled in the same plan no earlier than January 1, 2013, pursuant to the requirements of this section and Section 14011.6, and to the extent the individual is otherwise eligible under this chapter and Chapter 8 (commencing with Section 14200).

(B) Phase 2. Individuals enrolled in a Healthy Families Program managed care health plan that is a subcontractor of a Medi-Cal managed health care plan, to the extent possible, shall be enrolled into a Medi-Cal managed health care plan that includes the individuals' current plan pursuant to the requirements of this section and Section 14011.6, and to the extent the individuals are otherwise eligible under this chapter and Chapter 8 (commencing with Section 14200). The transition of individuals described in this subparagraph shall begin no earlier than April 1, 2013.

(C) Phase 3. Individuals enrolled in a Healthy Families Program plan that is not a Medi-Cal managed care plan and does not contract or subcontract with a Medi-Cal managed care plan shall be enrolled in a Medi-Cal managed care plan in that county. Enrollment shall include consideration of the individuals' primary care providers pursuant to the requirements of this section and Section 14011.6, and to the extent the individuals are otherwise eligible under this

chapter and Chapter 8 (commencing with Section 14200). The transition of individuals described in this subparagraph shall begin no earlier than August 1, 2013.

(D) Phase 4.

(i) Individuals residing in a county that is not a Medi-Cal managed care county shall be provided services under the Medi-Cal fee-for-service delivery system, subject to clause (ii). The transition of individuals described in this subparagraph shall begin no earlier than September 1, 2013.

(ii) In the event the department creates a managed health care system in the counties described in clause (i), individuals residing in those counties shall be enrolled in managed health care plans pursuant to this chapter and Chapter 8 (commencing with Section 14200).

(2) For the transition of individuals pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1), implementation plans shall be developed to ensure state and county systems readiness, health plan network adequacy, and continuity of care with the goal of ensuring there is no disruption of service and there is continued access to coverage for all transitioning individuals. If an individual is not retained with his or her current primary care provider, the implementation plan shall require the managed care plan to report to the department as to how continuity of care is being provided. Transition of individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not occur until 90 days after the department has submitted an implementation plan to the fiscal and policy committees of the Legislature. The implementation plans shall include, but not be limited to, information on health and dental plan network adequacy, continuity of care, eligibility and enrollment requirements, consumer protections, and family notifications.

(3) The following requirements shall be in place prior to implementation of Phase 1, and shall be required for all phases of the transition:

(A) Managed care plan performance measures shall be integrated and coordinated with the Healthy Families Program performance standards including, but not limited to, child-only Healthcare Effectiveness Data and Information Set (HEDIS) measures, and measures indicative of performance in serving children and adolescents. These performance measures shall also be in

compliance with all performance requirements under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and existing Medi-Cal managed care performance measurements and standards as set forth in this chapter and Chapter 8 (commencing with Section 14200)~~,~~ *of* Title 22 of the California Code of Regulations, and all-plan letters, including, but not limited to, network adequacy and linguistic services, and shall be met prior to the transition of individuals pursuant to Phase 1.

(B) Medi-Cal managed care health plans shall allow enrollees to remain with their current primary care provider. If an individual does not remain with the current primary care provider, the plan shall report to the department as to how continuity of care is being provided.

(4) (A) As individuals are transitioned pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1), for individuals residing in all counties except the Counties of Sacramento and Los Angeles, their dental coverage shall transition to fee-for-service dental coverage and may be provided by their current provider if the provider is a Medi-Cal fee-for-service dental provider.

(B) For individuals residing in the County of Sacramento, their dental coverage shall continue to be provided by their current dental managed care plan if their plan is a Medi-Cal dental managed care plan. If their plan is not a Medi-Cal dental managed care plan, they shall select a Medi-Cal dental managed care plan. If they do not choose a Medi-Cal dental managed care plan, they shall be assigned to a plan with preference to a plan with which their current provider is a contracted provider. Any children in the Healthy Families Program transitioned into Medi-Cal dental managed care plans shall also have access to the beneficiary dental exception process, pursuant to Section 14089.09. Further, the Sacramento advisory committee, established pursuant to Section 14089.08, shall be consulted regarding the transition of children in the Healthy Families Program into Medi-Cal dental managed care plans.

(C) (i) For individuals residing in the County of Los Angeles, for purposes of continuity of care, their dental coverage shall continue to be provided by their current dental managed care plan if that plan is a Medi-Cal dental managed care plan. If their plan

is not a Medi-Cal dental managed care plan, they may select a Medi-Cal dental managed care plan or choose to move into Medi-Cal fee-for-service dental coverage.

(ii) It is the intent of the Legislature that children transitioning to Medi-Cal under this section have a choice in dental coverage, as provided under existing law.

(5) Dental health plan performance measures and benchmarks shall be in accordance with Section 14459.6.

(6) Medi-Cal managed care health and dental plans shall report to the department, as frequently as specified by the department, specified information pertaining to transition implementation, enrollees, and providers, including, but not limited to, grievances related to access to care, continuity of care requests and outcomes, and changes to provider networks, including provider enrollment and disenrollment changes. The plans shall report this information by county, and in the format requested by the department.

(7) The department may develop supplemental implementation plans to separately account for the transition of individuals from the Healthy Families Program to specific Medi-Cal delivery systems.

(8) The department shall consult with the Legislature and stakeholders, including, but not limited to, consumers, families, consumer advocates, counties, providers, and health and dental plans, in the development of implementation plans described in paragraph (3) for individuals who are transitioned to Medi-Cal in Phase 2, Phase 3, and Phase 4, as described in subparagraphs (B), (C), and (D) of paragraph (1).

(9) (A) The department shall consult and collaborate with the Department of Managed Health Care in assessing Medi-Cal managed care health plan network adequacy in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) for purposes of the developed transition plans pursuant to paragraph (2) for each of the phases.

(B) For purposes of individuals transitioning in Phase 1, as described in subparagraph (A) of paragraph (1), network adequacy shall be assessed as described in this paragraph and findings from this assessment shall be provided to the fiscal and appropriate policy committees of the Legislature 60 days prior to the effective date of implementing this transition.

(10) The department shall provide monthly status reports to the fiscal and policy committees of the Legislature on the transition commencing no later than February 15, 2013. This monthly status transition report shall include, but not be limited to, information on health plan grievances related to access to care, continuity of care requests and outcomes, changes to provider networks, including provider enrollment and disenrollment changes, and eligibility performance standards pursuant to subdivision (n). A final comprehensive report shall be provided within 90 days after completion of the last phase of transition.

(f) (1) The department and MRMIB shall work collaboratively in the development of notices for individuals transitioned pursuant to paragraph (1) of subdivision (e).

(2) The state shall provide written notice to individuals enrolled in the Healthy Families Program of their transition to the Medi-Cal program at least 60 days prior to the transition of individuals in Phase 1, as described in subparagraph (A) of paragraph (1) of subdivision (e), and at least 90 days prior to transition of individuals in Phases 2, 3, and 4, as described in subparagraphs (B), (C), and (D) of paragraph (1) of subdivision (e).

(3) Notices developed pursuant to this subdivision shall ensure individuals are informed regarding the transition, including, but not limited to, how individuals' systems of care may change, when the changes will occur, and whom they can contact for assistance when choosing a Medi-Cal managed care plan, if applicable, including a toll-free telephone number, and with problems they may encounter. The department shall consult with stakeholders regarding notices developed pursuant to this subdivision. These notices shall be developed using plain language, and written translation of the notices shall be available for those who are limited English proficient or non-English speaking in all Medi-Cal threshold languages.

(4) The department shall designate department liaisons responsible for the coordination of the Healthy Families Program and may establish a children's-focused section for this purpose and to facilitate the provision of health care services for children enrolled in Medi-Cal.

(5) The department shall provide a process for ongoing stakeholder consultation and make information publicly available,

including the achievement of benchmarks, enrollment data, utilization data, and quality measures.

(g) (1) In order to aid the transition of Healthy Families Program enrollees, MRMIB, on the effective date of the act that added this section and continuing through the completion of the transition of Healthy Families Program enrollees to the Medi-Cal program, shall begin requesting and collecting from health plans contracting with MRMIB pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, information about each health plan's provider network, including, but not limited to, the primary care and all specialty care providers assigned to individuals enrolled in the health plan. MRMIB shall obtain this information in a manner that coincides with the transition activities described in subdivision (d), and shall provide all of the collected information to the department within 60 days of the department's request for this information to ensure timely transitions of ~~the~~ Healthy Family ~~Programs~~ *Program* enrollees.

(2) The department shall analyze the existing Healthy Families Program delivery system network and the Medi-Cal fee-for-service provider networks, including, but not limited to, Medi-Cal dental providers, to determine overlaps of the provider networks in each county for which there are no Medi-Cal managed care plans or dental managed care plans. To the extent there is a lack of existing Medi-Cal fee-for-service providers available to serve the Healthy Families Program enrollees, the department shall work with the Healthy Families Program provider community to encourage participation of those providers in the Medi-Cal program, and develop a streamlined process to enroll them as Medi-Cal providers.

(3) (A) MRMIB, within 60 days of a request by the department, shall provide the department any data, information, or record concerning the Healthy Families Program as is necessary to implement the transition of enrollment required pursuant to this section.

(B) Notwithstanding any other provision of law, all of the following shall apply:

(i) The term "data, information, or record" shall include, but is not limited to, personal information as defined in Section 1798.3 of the Civil Code.

(ii) Any data, information, or record shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and any other law, to the same extent that it was exempt from disclosure or privileged prior to the provision of the data, information, or record to the department.

(iii) The provision of any such data, information, or record to the department shall not constitute a waiver of any evidentiary privilege or exemption from disclosure.

(iv) The department shall keep all data, information, or records provided by MRMIB confidential to the full extent permitted by law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and consistent with MRMIB's contractual obligations to keep the data, information, or records confidential.

(h) This section shall be implemented only to the extent that all necessary federal approvals and waivers have been obtained and the enhanced rate of federal financial participation under Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) is available for targeted low-income children pursuant to that act.

(i) (1) The department shall exercise the option pursuant to Section 1916A of the federal Social Security Act (42 U.S.C. Sec. 1396o-1) to impose premiums for individuals described in subdivision (a) of Section 14005.26 whose family income has been determined to be above 150 percent and up to and including 200 percent of the federal poverty level, after application of the income disregard pursuant to subdivision (b) of Section 14005.26. The department shall not impose premiums under this subdivision for individuals described in subdivision (a) of Section 14005.26 whose family income has been determined to be at or below 150 percent of the federal poverty level, after application of the income disregard pursuant to subdivision (b) of Section 14005.26. The department shall obtain federal approval for the implementation of this subdivision.

(2) All premiums imposed under this section shall equal the family contributions described in paragraph (2) of subdivision (d) of Section 12693.43 of the Insurance Code and shall be reduced in conformity with subdivisions (e) and (f) of Section 12693.43 of the Insurance Code.

(j) The department shall not enroll targeted low-income children described in this section in the Medi-Cal program until all necessary federal approvals and waivers have been obtained, or no sooner than January 1, 2013.

(k) (1) To the extent the new budget methodology pursuant to paragraph (6) of subdivision (a) of Section 14154 is not fully operational, for the purposes of implementing this section, for individuals described in subdivision (a) whose family income has been determined to be at or below 150 percent of the federal poverty level, as determined pursuant to subdivision (b), the department shall utilize the budgeting methodology for this population as contained in the November 2011 Medi-Cal Local Assistance Estimate for Medi-Cal county administration costs for eligibility operations.

(2) For purposes of implementing this section, the department shall include in the Medi-Cal Local Assistance Estimate an amount for Medi-Cal eligibility operations associated with the transfer of Healthy Families Program enrollees eligible pursuant to subdivision (a) of Section 14005.26 and whose family income is determined to be above 150 percent and up to and including 200 percent of the federal poverty level, after application of the income disregard pursuant to subdivision (b) of Section 14005.26. In developing an estimate for this activity, the department shall consider the projected number of final eligibility determinations each county will process and projected county costs. Within 60 days of the passage of the annual Budget Act, the department shall notify each county of their allocation for this activity based upon the amount allotted in the annual Budget Act for this purpose.

(*l*) When the new budget methodology pursuant to paragraph (6) of subdivision (a) of Section 14154 is fully operational, the new budget methodology shall be utilized to reimburse counties for eligibility determinations made for individuals pursuant to this section.

(m) Except as provided in subdivision (b), eligibility determinations and annual redeterminations made pursuant to this section shall be performed by county eligibility workers.

(n) In conducting the eligibility determinations for individuals pursuant to this section and Section 14005.26, the following reporting and performance standards shall apply to all counties:

(1) Counties shall report to the department, in a manner and for a time period determined by the department, in consultation with the County Welfare Directors Association, the number of applications processed on a monthly basis, a breakout of the applications based on income using the federal percentage of poverty levels, the final disposition of each application, including information on the approved Medi-Cal program, if applicable, and the average number of days it took to make the final eligibility determination for applications submitted directly to the county and from the single point of entry (SPE).

(2) Notwithstanding any other law, the following performance standards shall be applied to counties for eligibility determinations for individuals eligible pursuant to this section:

(A) For children whose applications are received by the county human services department from the SPE, the following standards shall apply:

(i) Applications for children who are granted accelerated enrollment by the SPE shall be processed according to the timeframes specified in subdivision (d) of Section 14154.

(ii) Applications for children who are not granted accelerated enrollment by the SPE due to the existence of an already active Medi-Cal case shall be processed according to the timeframes specified in subdivision (d) of Section 14154.

(iii) For applications for children who are not described in clause (i) or (ii), 90 percent shall be processed within 10 working days of being received, complete and without client errors.

(iv) If an application described in this section also contains adults, and the adult applicants are required to submit additional information beyond the information provided for the children, the county shall process the eligibility for the child or children without delay, consistent with this section while gathering the necessary information to process eligibility for the adults.

(B) The department, in consultation with the County Welfare Directors Association, shall develop reporting requirements for the counties to provide regular data to the state regarding the timeliness and outcomes of applications processed by the counties that are received from the SPE.

(C) Performance thresholds and corrective action standards as set forth in Section 14154 shall apply.

(D) For applications received directly ~~into~~ *by* the county, these applications shall be processed by the counties in accordance with the performance standards established under subdivision (d) of Section 14154.

(3) This subdivision shall be implemented no sooner than January 1, 2013.

(4) Twelve months after implementation of this section pursuant to subdivision (e), the department shall provide enrollment information regarding individuals determined eligible pursuant to subdivision (a) to the fiscal and appropriate policy committees of the Legislature.

(o) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for purposes of this transition, the department, without taking any further regulatory action, shall implement, interpret, or make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions until the time regulations are adopted. It is the intent of the Legislature that the department be allowed temporary authority as necessary to implement program changes until completion of the regulatory process.

(2) To the extent otherwise required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall adopt emergency regulations implementing this section no later than July 1, 2014. The department may thereafter readopt the emergency regulations pursuant to that chapter. The adoption and readoption, by the department, of regulations implementing this section shall be deemed to be an emergency and necessary to avoid serious harm to the public peace, health, safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe facts showing the need for immediate action and from review by the Office of Administrative Law.

(p) To implement this section, the department may enter into and continue contracts with the Healthy Families Program administrative vendor, for the purposes of implementing and maintaining the necessary systems and activities for providing health care coverage to optional targeted low-income children in the Medi-Cal program for purposes of accelerated enrollment

application processing by single point of entry, noneligibility-related case maintenance and premium collection, maintenance of the Health-E-App Web portal, call center staffing and operations, certified application assistant services, and reporting capabilities. To further implement this section, the department may also enter into a contract with the Health Care Options Broker of the department for purposes of managed care enrollment activities. The contracts entered into or amended under this section may initially be completed on a noncompetitive bid basis and are exempt from the Public Contract Code. Contracts thereafter shall be entered into or amended on a competitive bid basis and shall be subject to the Public Contract Code.

(q) (1) If at any time the director determines that this section or any part of this section may jeopardize the state's ability to receive federal financial participation under the federal Patient Protection and Affordable Care Act (Public Law 111-148), or any amendment or extension of that act, or any additional federal funds that the director, in consultation with the Department of Finance, determines would be advantageous to the state, the director shall give notice to the fiscal and policy committees of the Legislature and to the Department of Finance. After giving notice, this section or any part of this section shall become inoperative on the date that the director executes a declaration stating that the department has determined, in consultation with the Department of Finance, that it is necessary to cease to implement this section or a part or parts thereof in order to receive federal financial participation, any increase in the federal medical assistance percentage available on or after October 1, 2008, or any additional federal funds that the director, in consultation with the Department of Finance, has determined would be advantageous to the state.

(2) The director shall retain the declaration described in paragraph (1), shall provide a copy of the declaration to the Secretary of the State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel, and shall post the declaration on the department's Internet Web site.

(3) In the event that the director makes a determination under paragraph (1) and this section ceases to be implemented, the children shall be enrolled back into the Healthy Families Program.

SEC. 215. Section 14043.25 of the Welfare and Institutions Code, as added by Section 8 of Chapter 797 of the Statutes of 2012, is amended to read:

14043.25. (a) The application form for enrollment, the provider agreement, and all attachments or changes to either, shall be signed under penalty of perjury.

(b) The department may require that the application form for enrollment, the provider agreement, and all attachments or changes to either, submitted by an applicant or provider licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, be notarized.

(c) Application forms for enrollment, provider agreements, and all attachments or changes to either, submitted by an applicant or provider not subject to subdivision (b) shall be notarized. This subdivision shall not apply with respect to providers under the In-Home Supportive Services program.

(d) The department shall collect an application fee for enrollment, including enrollment at a new location or a change in location. The application fee shall not be collected from individual physicians or nonphysician practitioners, from providers that are enrolled in Medicare or another state's Medicaid program or Children's Health Insurance Program, from providers that submit proof that they have paid the applicable fee to a Medicare contractor or to another state's Medicaid program, or pursuant to an exemption or waiver pursuant to federal law. The application fee collected shall be in the amount calculated by the federal Centers for Medicare and Medicaid Services in effect for the calendar year during which the application for enrollment is received by the department.

(e) (1) This section shall become operative on the effective date of the state plan amendment necessary to implement this section, as stated in the declaration executed by the director pursuant to paragraph (2).

(2) Upon approval of the state plan amendment necessary to implement this section, the director shall execute a declaration, to be retained by the director and posted on the department's Internet Web site, that states this approval has been obtained and the effective date of the state plan amendment. The department shall transmit a copy of the declaration to the Legislature.

SEC. 216. Section 14043.7 of the Welfare and Institutions Code, as amended by Section 21 of Chapter 797 of the Statutes of 2012, is amended to read:

14043.7. (a) The department may make unannounced visits to an applicant or to a provider for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, or as necessary for the administration of the Medi-Cal program. At the time of the visit, the applicant or provider shall be required to demonstrate an established place of business appropriate and adequate for the services billed or claimed to the Medi-Cal program, as relevant to his or her scope of practice, as indicated by, but not limited to, the following:

(1) Being open and available to the general public.

(2) Having regularly established and posted business hours.

(3) Having adequate supplies in stock on the premises.

(4) Meeting all local laws and ordinances regarding business licensing and operations.

(5) Having the necessary equipment and facilities to carry out day-to-day business for his or her practice.

(b) An unannounced visit pursuant to subdivision (a) shall be prohibited with respect to clinics licensed under Section 1204 of the Health and Safety Code, clinics exempt from licensure under Section 1206 of the Health and Safety Code, health facilities licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, and natural persons licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, unless the department has reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program.

(c) Failure to remediate significant discrepancies in information provided to the department by the provider or significant discrepancies that are discovered as a result of an announced or unannounced visit to a provider, for purposes of enrollment, continued enrollment, or certification pursuant to subdivision (a) shall make the provider subject to temporary suspension from the Medi-Cal program, which shall include temporary deactivation of the provider's number, including all business addresses used by the provider to obtain reimbursement from the Medi-Cal program.

The director shall notify in writing the provider of the temporary suspension and deactivation of provider numbers, which shall take effect 15 days from the date of the notification. Notwithstanding Section 100171 of the Health and Safety Code, proceedings after the imposition of sanctions in this subdivision shall be in accordance with Section 14043.65.

(d) This section shall become inoperative on the effective date of the necessary state plan amendment, as stated in the declaration executed by the director pursuant to Section 14043.7 as added by Section 22 of the act that added this subdivision, and is repealed on the January 1 of the following year. The department shall post the declaration on its Internet Web site and transmit a copy of the declaration to the Legislature.

SEC. 217. Section 14043.7 of the Welfare and Institutions Code, as added by Section 22 of Chapter 797 of the Statutes of 2012, is amended to read:

14043.7. (a) The department may make unannounced visits to an applicant or to a provider for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, or as necessary for the administration of the Medi-Cal program. If an unannounced site visit is conducted by the department for any enrolled provider, the provider shall permit access to any and all of their provider locations. If a provider fails to permit access for any site visit, the application shall be denied and the provider shall be subject to deactivation. At the time of the visit, the applicant or provider shall be required to demonstrate an established place of business appropriate and adequate for the services billed or claimed to the Medi-Cal program, as relevant to his or her scope of practice, as indicated by, but not limited to, the following:

(1) Being open and available to the general public.

(2) Having regularly established and posted business hours.

(3) Having adequate supplies in stock on the premises.

(4) Meeting all local laws and ordinances regarding business licensing and operations.

(5) Having the necessary equipment and facilities to carry out day-to-day business for his or her practice.

(b) An unannounced visit pursuant to subdivision (a) shall be prohibited with respect to clinics licensed under Section 1204 of the Health and Safety Code, clinics exempt from licensure under

Section 1206 of the Health and Safety Code, health facilities licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, and natural persons licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, unless the department has reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program.

(c) Failure to remediate significant discrepancies in information provided to the department by the provider or significant discrepancies that are discovered as a result of an announced or unannounced visit to a provider, for purposes of enrollment, continued enrollment, or certification pursuant to subdivision (a) shall make the provider subject to temporary suspension from the Medi-Cal program, which shall include temporary deactivation of the provider's number, including all business addresses used by the provider to obtain reimbursement from the Medi-Cal program. The director shall notify in writing the provider of the temporary suspension and deactivation of provider numbers, which shall take effect 15 days from the date of the notification. Notwithstanding Section 100171 of the Health and Safety Code, proceedings after the imposition of sanctions in this subdivision shall be in accordance with Section 14043.65.

(d) (1) This section shall become operative on the effective date of the state plan amendment necessary to implement this section, as stated in the declaration executed by the director pursuant to paragraph (2).

(2) Upon approval of the state plan amendment necessary to implement this section under Section 455.416 of Title 42 of the Code of Federal Regulations, the director shall execute a declaration, to be retained by the director and posted on the department's Internet Web site, that states that this approval has been obtained and the effective date of the state plan amendment. The department shall transmit a copy of the declaration to the Legislature.

SEC. 218. Section 14132.275 of the Welfare and Institutions Code is amended to read:

14132.275. (a) The department shall seek federal approval to establish the demonstration project described in this section

pursuant to a Medicare or a Medicaid demonstration project or waiver, or a combination thereof. Under a Medicare demonstration, the department may contract with the federal Centers for Medicare and Medicaid Services (CMS) and demonstration sites to operate the Medicare and Medicaid benefits in a demonstration project that is overseen by the state as a delegated Medicare benefit administrator, and may enter into financing arrangements with CMS to share in any Medicare program savings generated by the demonstration project.

(b) After federal approval is obtained, the department shall establish the demonstration project that enables dual eligible beneficiaries to receive a continuum of services that maximizes access to, and coordination of, benefits between the Medi-Cal and Medicare programs and access to the continuum of long-term services and supports and behavioral health services, including mental health and substance use disorder treatment services. The purpose of the demonstration project is to integrate services authorized under the federal Medicaid Program (Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.)) and the federal Medicare Program (Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.)). The demonstration project may also include additional services as approved through a demonstration project or waiver, or a combination thereof.

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

(1) "Behavioral health" means Medi-Cal services provided pursuant to Section 51341 of Title 22 of the California Code of Regulations and Drug Medi-Cal substance abuse services provided pursuant to Section 51341.1 of Title 22 of the California Code of Regulations, and any mental health benefits available under the Medicare Program.

(2) "Capitated payment model" means an agreement entered into between CMS, the state, and a managed care health plan, in which the managed care health plan receives a capitation payment for the comprehensive, coordinated provision of Medi-Cal services and benefits under Medicare Part C (42 U.S.C. Sec. 1395w-21 et seq.) and Medicare Part D (42 U.S.C. Sec. 1395w-101 et seq.), and CMS shares the savings with the state from *the* improved provision of Medi-Cal and Medicare services that reduces the cost of those services. Medi-Cal services include long-term services

and supports as defined in Section 14186.1, behavioral health services, and any additional services offered by the demonstration site.

(3) "Demonstration site" means a managed care health plan that is selected to participate in the demonstration project under the capitated payment model.

(4) "Dual eligible beneficiary" means an individual 21 years of age or older who is enrolled for benefits under Medicare Part A (42 U.S.C. Sec. 1395c et seq.) and Medicare Part B (42 U.S.C. Sec. 1395j et seq.) and is eligible for medical assistance under the Medi-Cal State Plan.

(d) No sooner than March 1, 2011, the department shall identify health care models that may be included in the demonstration project, shall develop a timeline and process for selecting, financing, monitoring, and evaluating the demonstration sites, and shall provide this timeline and process to the appropriate fiscal and policy committees of the Legislature. The department may implement these demonstration sites in phases.

(e) The department shall provide the fiscal and appropriate policy committees of the Legislature with a copy of any report submitted to CMS to meet the requirements under the demonstration project.

(f) Goals for the demonstration project shall include all of the following:

(1) Coordinate Medi-Cal and Medicare benefits across health care settings and improve the continuity of care across acute care, long-term care, behavioral health, including mental health and substance use disorder services, and home- and community-based services settings using a person-centered approach.

(2) Coordinate access to acute and long-term care services for dual eligible beneficiaries.

(3) Maximize the ability of dual eligible beneficiaries to remain in their homes and communities with appropriate services and supports in lieu of institutional care.

(4) Increase the availability of and access to home- and community-based services.

(5) Coordinate access to necessary and appropriate behavioral health services, including mental health and substance use disorder services.

(6) Improve the quality of care for dual eligible beneficiaries.

(7) Promote a system that is both sustainable and person and family centered by providing dual eligible beneficiaries with timely access to appropriate, coordinated health care services and community resources that enable them to attain or maintain personal health goals.

(g) No sooner than March 1, 2013, demonstration sites shall be established in up to eight counties, and shall include at least one county that provides Medi-Cal services via a two-plan model pursuant to Article 2.7 (commencing with Section 14087.3) and at least one county that provides Medi-Cal services under a county-organized health system pursuant to Article 2.8 (commencing with Section 14087.5). The director shall consult with the Legislature, CMS, and stakeholders when determining the implementation date for this section. In determining the counties in which to establish a demonstration site, the director shall consider the following:

(1) Local support for integrating medical care, long-term care, and home- and community-based services networks.

(2) A local stakeholder process that includes health plans, providers, mental health representatives, community programs, consumers, designated representatives of in-home supportive services personnel, and other interested stakeholders in the development, implementation, and continued operation of the demonstration site.

(h) In developing the process for selecting, financing, monitoring, and evaluating the health care models for the demonstration project, the department shall enter into a memorandum of understanding with CMS. Upon completion, the memorandum of understanding shall be provided to the fiscal and appropriate policy committees of the Legislature and posted on the department's Internet Web site.

(i) The department shall negotiate the terms and conditions of the memorandum of understanding, which shall address, but are not limited to, the following:

(1) Reimbursement methods for a capitated payment model. Under the capitated payment model, the demonstration sites shall meet all of the following requirements:

(A) Have Medi-Cal managed care health plan and Medicare dual eligible-special needs plan contract experience, or evidence of the ability to meet these contracting requirements.

(B) Be in good financial standing and meet licensure requirements under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), except for county-organized health system plans that are exempt from licensure pursuant to Section 14087.95.

(C) Meet quality measures, which may include Medi-Cal and Medicare Healthcare Effectiveness Data and Information Set measures and other quality measures determined or developed by the department or CMS.

(D) Demonstrate a local stakeholder process that includes dual eligible beneficiaries, managed care health plans, providers, mental health representatives, county health and human services agencies, designated representatives of in-home supportive services personnel, and other interested stakeholders that advise and consult with the demonstration site in the development, implementation, and continued operation of the demonstration project.

(E) Pay providers reimbursement rates sufficient to maintain an adequate provider network and ensure access to care for beneficiaries.

(F) Follow final policy guidance determined by CMS and the department with regard to reimbursement rates for providers pursuant to paragraphs (4) to (7), inclusive, of subdivision (o).

(G) To the extent permitted under the demonstration, pay noncontracted hospitals prevailing Medicare fee-for-service rates for traditionally ~~Medicare covered~~ *Medicare-covered* benefits and prevailing Medi-Cal fee-for-service rates for traditionally ~~Medi-Cal covered~~ *Medi-Cal-covered* benefits.

(2) Encounter data reporting requirements for both Medi-Cal and Medicare services provided to beneficiaries enrolling in the demonstration project.

(3) Quality assurance withholding from the demonstration site payment, to be paid only if quality measures developed as part of the memorandum of understanding and plan contracts are met.

(4) Provider network adequacy standards developed by the department and CMS, in consultation with the Department of Managed Health Care, the demonstration site, and stakeholders.

(5) Medicare and Medi-Cal appeals and hearing ~~process~~ *processes*.

(6) Unified marketing requirements and combined review process by the department and CMS.

(7) Combined quality management and consolidated reporting process by the department and CMS.

(8) Procedures related to combined federal and state contract management to ensure access, quality, program integrity, and financial solvency of the demonstration site.

(9) To the extent permissible under federal requirements, implementation of the provisions of Sections 14182.16 and 14182.17 that are applicable to beneficiaries simultaneously eligible for full-scope benefits under Medi-Cal and the Medicare Program.

(10) (A) In consultation with the hospital industry, CMS approval to ensure that Medicare supplemental payments for direct graduate medical education and Medicare add-on payments, including indirect medical education and disproportionate share hospital adjustments continue to be made available to hospitals for services provided under the demonstration.

(B) The department shall seek CMS approval for CMS to continue these payments either outside the capitation rates or, if contained within the capitation rates, and to the extent permitted under the demonstration project, shall require demonstration sites to provide this reimbursement to hospitals.

(11) To the extent permitted under the demonstration project, the default rate for noncontracting providers of physician services shall be the prevailing Medicare fee schedule for services covered by the Medicare Program and the prevailing Medi-Cal fee schedule for services covered by the Medi-Cal program.

(j) (1) The department shall comply with and enforce the terms and conditions of the memorandum of understanding with CMS, as specified in subdivision (i). To the extent that the terms and conditions do not address the specific selection, financing, monitoring, and evaluation criteria listed in subdivision (i), the department:

(A) Shall require the demonstration site to do all of the following:

(i) Comply with additional site readiness criteria specified by the department.

(ii) Comply with long-term services and ~~supports~~ *support* requirements in accordance with Article 5.7 (commencing with Section 14186).

(iii) To the extent permissible under federal requirements, comply with the provisions of Sections 14182.16 and 14182.17 that are applicable to beneficiaries simultaneously eligible for full-scope benefits under both Medi-Cal and the Medicare Program.

(iv) Comply with all transition of care requirements for Medicare Part D benefits as described in Chapters 6 and 14 of the Medicare Managed Care Manual, published by CMS, including transition timeframes, notices, and emergency supplies.

(B) May require the demonstration site to forgo charging premiums, coinsurance, copayments, and deductibles for Medicare Part C and Medicare Part D services.

(2) The department shall notify the Legislature within 30 days of the implementation of each provision in paragraph (1).

(k) The director may enter into exclusive or nonexclusive contracts on a bid or negotiated basis and may amend existing managed care contracts to provide or arrange for services provided under this section. Contracts entered into or amended pursuant to this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code.

(*l*) (1) (A) Except for the exemptions provided for in this section, the department shall enroll dual eligible beneficiaries into a demonstration site unless the beneficiary makes an affirmative choice to opt out of enrollment or is already enrolled on or before June 1, 2013, in a managed care organization licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) that has previously contracted with the department as a primary care case management plan pursuant to Article 2.9 (commencing with Section 14088) to provide services to beneficiaries who are HIV positive or who have been diagnosed with AIDS or in any entity with a contract with the department pursuant to Chapter 8.75 (commencing with Section 14591).

(B) Dual eligible beneficiaries who opt out of enrollment into a demonstration site may choose to remain enrolled in fee-for-service Medicare or a Medicare Advantage plan for their Medicare benefits, but shall be mandatorily enrolled into a

Medi-Cal managed care health plan pursuant to Section 14182.16, except as exempted under subdivision (c) of Section 14182.16.

(C) (i) Persons meeting requirements for the Program of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter 8.75 (commencing with Section 14591) or a managed care organization licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) that has previously contracted with the department as a primary care case management plan pursuant to Article 2.9 (commencing with Section 14088) to provide services to beneficiaries who are HIV positive or who have been diagnosed with AIDS, may select either of these managed care health plans for their Medicare and Medi-Cal benefits if one is available in that county.

(ii) In areas where a PACE plan is available, the PACE plan shall be presented as an enrollment option, included in all enrollment materials, enrollment assistance programs, and outreach programs related to the demonstration project, and made available to beneficiaries whenever enrollment choices and options are presented. Persons meeting the age qualifications for PACE and who choose PACE shall remain in the fee-for-service Medi-Cal and Medicare programs, and shall not be assigned to a managed care health plan for the lesser of 60 days or until they are assessed for eligibility for PACE and determined not to be eligible for a PACE plan. Persons enrolled in a PACE plan shall receive all Medicare and Medi-Cal services from the PACE program pursuant to the three-way agreement between the PACE program, the department, and the federal Centers for Medicare and Medicaid Services.

(2) To the extent that federal approval is obtained, the department may require that any beneficiary, upon enrollment in a demonstration site, remain enrolled in the Medicare portion of the demonstration project on a mandatory basis for six months from the date of initial enrollment. After the sixth month, a dual eligible beneficiary may elect to enroll in a different demonstration site, a different Medicare Advantage plan, fee-for-service Medicare, PACE, or a managed care organization licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) that has previously contracted with the department

as a primary care case management plan pursuant to Article 2.9 (commencing with Section 14088) to provide services to beneficiaries who are HIV positive or who have been diagnosed with AIDS, for his or her Medicare benefits.

(A) During the six-month mandatory enrollment in a demonstration site, a beneficiary may continue receiving services from an out-of-network Medicare provider for primary and specialty care services only if all of the following criteria are met:

(i) The dual eligible beneficiary demonstrates an existing relationship with the provider prior to enrollment in a demonstration site.

(ii) The provider is willing to accept payment from the demonstration site based on the current Medicare fee schedule.

(iii) The demonstration site would not otherwise exclude the provider from its provider network due to documented quality of care concerns.

(B) The department shall develop a process to inform providers and beneficiaries of the availability of continuity of services from an existing provider and ensure that the beneficiary continues to receive services without interruption.

(3) (A) Notwithstanding subparagraph (A) of paragraph (1), a dual eligible beneficiary shall be excluded from enrollment in the demonstration project if the beneficiary meets any of the following:

(i) The beneficiary has a prior diagnosis of end-stage renal disease. This clause shall not apply to beneficiaries diagnosed with end-stage renal disease subsequent to enrollment in the demonstration project. The director may, with stakeholder input and federal approval, authorize beneficiaries with a prior diagnosis of end-stage renal disease in specified counties to voluntarily enroll in the demonstration project.

(ii) The beneficiary has other health coverage, as defined in paragraph (4) of subdivision (b) of Section 14182.16.

(iii) The beneficiary is enrolled in a home- and community-based waiver that is a Medi-Cal benefit under Section 1915(c) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)), except for persons enrolled in Multipurpose Senior Services Program services.

(iv) The beneficiary is receiving services through a regional center or state developmental center.

(v) The beneficiary resides in a geographic area or ZIP Code not included in managed care, as determined by the department and CMS.

(vi) The beneficiary resides in one of the Veterans' Homes of California, as described in Chapter 1 (commencing with Section 1010) of Division 5 of the Military and Veterans Code.

(B) (i) Beneficiaries who have been diagnosed with HIV/AIDS may opt out of the demonstration project at the beginning of any month. The State Department of Public Health may share relevant data relating to a beneficiary's enrollment in the AIDS Drug Assistance Program with the department, and the department may share relevant data relating to HIV-positive beneficiaries with the State Department of Public Health.

(ii) The information provided by the State Department of Public Health pursuant to this subparagraph shall not be further disclosed by the State Department of Health Care Services, and shall be subject to the confidentiality protections of subdivisions (d) and (e) of Section 121025 of the Health and Safety Code, except this information may be further disclosed as follows:

(I) To the person to whom the information pertains or the designated representative of that person.

(II) To the Office of AIDS within the State Department of Public Health.

(C) Beneficiaries who are Indians receiving Medi-Cal services in accordance with Section 55110 of Title 22 of the California Code of Regulations may opt out of the demonstration project at the beginning of any month.

(D) The department, with stakeholder input, may exempt specific categories of dual eligible beneficiaries from enrollment requirements in this section based on extraordinary medical needs of specific patient groups or to meet federal requirements.

(4) For the 2013 calendar year, the department shall offer federal Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275) compliant contracts to existing Medicare Advantage Special Needs Plans (D-SNP plans) to continue to provide Medicare benefits to their enrollees in their service areas as approved on January 1, 2012. In the 2013 calendar year, beneficiaries in Medicare Advantage and D-SNP plans shall be exempt from the enrollment provisions of subparagraph (A) of paragraph (1), but may voluntarily choose to enroll in the

demonstration project. Enrollment into the demonstration project's managed care health plans shall be reassessed in 2014 depending on federal reauthorization of the D-SNP model and the department's assessment of the demonstration plans.

(5) For the 2013 calendar year, demonstration sites shall not offer to enroll dual eligible beneficiaries eligible for the demonstration project into the demonstration site's D-SNP.

(6) The department shall not terminate contracts in a demonstration site with a managed care organization licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) that has previously contracted with the department as a primary care case management plan pursuant to Article 2.9 (commencing with Section 14088) to provide services to beneficiaries who are HIV positive beneficiaries or who have been diagnosed with AIDS and with any entity with a contract pursuant to Chapter 8.75 (commencing with Section 14591), except as provided in the contract or pursuant to state or federal law.

(m) Notwithstanding Section 10231.5 of the Government Code, the department shall conduct an evaluation, in partnership with CMS, to assess outcomes and the experience of dual eligibles in these demonstration sites and shall provide a report to the Legislature after the first full year of demonstration operation, and annually thereafter. A report submitted to the Legislature pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code. The department shall consult with stakeholders regarding the scope and structure of the evaluation.

(n) This section shall be implemented only if and to the extent that federal financial participation or funding is available.

(o) It is the intent of the Legislature that:

(1) In order to maintain adequate provider networks, demonstration sites shall reimburse providers at rates sufficient to ensure access to care for beneficiaries.

(2) Savings under the demonstration project are intended to be achieved through shifts in utilization, and not through reduced reimbursement rates to providers.

(3) Reimbursement policies shall not prevent demonstration sites and providers from entering into payment arrangements that allow for the alignment of financial incentives and provide opportunities for shared risk and shared savings in order to promote

appropriate utilization shifts, which encourage the use of home- and community-based services and quality of care for dual eligible beneficiaries enrolled in the demonstration sites.

(4) To the extent permitted under the demonstration project, and to the extent that a public entity voluntarily provides an intergovernmental transfer for this purpose, both of the following shall apply:

(A) The department shall work with CMS in ensuring that the capitation rates under the demonstration project are inclusive of funding currently provided through certified public expenditures supplemental payment programs that would otherwise be impacted by the demonstration project.

(B) Demonstration sites shall pay to a public entity voluntarily providing intergovernmental transfers that previously received reimbursement under a certified public expenditures supplemental payment program, rates that include the additional funding under the capitation rates that are funded by the public entity's intergovernmental transfer.

(5) The department shall work with CMS in developing other reimbursement policies and shall inform demonstration sites, providers, and the Legislature of the final policy guidance.

(6) The department shall seek approval from CMS to permit the provider payment requirements contained in subparagraph (G) of paragraph (1) and paragraphs (10) and (11) of subdivision (i), and Section 14132.276.

(7) Demonstration sites that contract with hospitals for hospital services on a fee-for-service basis that otherwise would have been traditionally Medicare services will achieve savings through utilization changes and not by paying hospitals at rates lower than prevailing Medicare fee-for-service rates.

(p) The department shall enter into an interagency agreement with the Department of Managed Health Care to perform some or all of the department's oversight and readiness review activities specified in this section. These activities may include providing consumer assistance to beneficiaries affected by this section and conducting financial audits, medical surveys, and a review of the adequacy of provider networks of the managed care health plans participating in this section. The interagency agreement shall be updated, as necessary, on an annual basis in order to maintain functional clarity regarding the roles and responsibilities of the

Department of Managed Health Care and the department. The department shall not delegate its authority under this section as the single state Medicaid agency to the Department of Managed Health Care.

(q) (1) Beginning with the May Revision to the 2013–14 Governor's Budget, and annually thereafter, the department shall report to the Legislature on the enrollment status, quality measures, and state costs of the actions taken pursuant to this section.

(2) (A) By January 1, 2013, or as soon thereafter as practicable, the department shall develop, in consultation with CMS and stakeholders, quality and fiscal measures for health plans to reflect the short- and long-term results of the implementation of this section. The department shall also develop quality thresholds and milestones for these measures. The department shall update these measures periodically to reflect changes in this program due to implementation factors and the structure and design of the benefits and services being coordinated by managed care health plans.

(B) The department shall require health plans to submit Medicare and Medi-Cal data to determine the results of these measures. If the department finds that a health plan is not in compliance with one or more of the measures set forth in this section, the health plan shall, within 60 days, submit a corrective action plan to the department for approval. The corrective action plan shall, at a minimum, include steps that the health plan shall take to improve its performance based on the standard or standards with which the health plan is out of compliance. The plan shall establish interim benchmarks for improvement that shall be expected to be met by the health plan in order to avoid a sanction pursuant to Section 14304. Nothing in this subparagraph is intended to limit Section 14304.

(C) The department shall publish the results of these measures, including via posting on the department's Internet Web site, on a quarterly basis.

(r) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action. Prior to issuing any letter or similar instrument authorized

pursuant to this section, the department shall notify and consult with stakeholders, including advocates, providers, and beneficiaries. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to issue instructions under this section at least five days in advance of the issuance.

SEC. 219. Section 14132.276 of the Welfare and Institutions Code is amended to read:

14132.276. For nursing facility services provided under the demonstration project as established in Section 14132.275, to the extent these provisions are authorized under the memorandum of understanding specified in subdivision (j) of Section 14132.275, the following shall apply:

(a) The demonstration site shall not combine the rates of payment for post-acute skilled and rehabilitation care provided by a nursing facility and long-term and chronic care provided by a nursing facility in order to establish a single payment rate for dual eligible beneficiaries requiring skilled nursing services.

(b) The demonstration site shall pay nursing facilities providing post-acute skilled and rehabilitation care or long-term and chronic care rates that reflect the different level of services and intensity required to provide these services.

(c) For the purposes of determining the appropriate rate for the type of care identified in subdivision (b), the demonstration site shall pay no less than the recognized rates under Medicare and Medi-Cal for these service types.

(d) With respect to services under this section, the demonstration site shall not offer, and the nursing facility shall not accept, any discounts, rebates, or refunds as compensation or inducements for the referral of patients or residents.

(e) It is the intent of the Legislature that savings under the demonstration project be achieved through shifts in utilization, and not through reduced reimbursement rates to providers.

(f) In order to encourage quality improvement and promote appropriate utilization incentives, including reduced rehospitalization and shorter lengths of stay, for nursing facilities providing the services under this section, the demonstration sites may do any of the following:

(1) Utilize incentive or bonus payment programs that are in addition to the rates identified in subdivisions (b) and (c).

(2) Opt to direct beneficiaries to facilities that demonstrate better performance on quality or appropriate utilization factors.

SEC. 220. Section 14169.32 of the Welfare and Institutions Code is amended to read:

14169.32. (a) There shall be imposed on each general acute care hospital that is not an exempt facility a quality assurance fee, provided that a quality assurance fee under this article shall not be imposed on a converted hospital.

(b) The quality assurance fee shall be computed starting on July 1, 2011, and continue through and including December 31, 2013.

(c) Subject to Section 14169.34, upon receipt of federal approval, the following shall become operative:

(1) Within 10 business days following receipt of the notice of federal approval from the federal government, the department shall send notice to each hospital subject to the quality assurance fee, and publish on its Internet Web site, the following information:

(A) The date that the state received notice of federal approval.

(B) The fee percentage for each subject fiscal year.

(2) The notice to each hospital subject to the quality assurance fee shall also state the following:

(A) The aggregate quality assurance fee after the application of the fee percentage for each subject fiscal year.

(B) The aggregate quality assurance fee.

(C) The amount of each payment due from the hospital with respect to the aggregate quality assurance fee.

(D) The date on which each payment is due.

(3) The hospitals shall pay the aggregate quality assurance fee after application of the fee percentage for all subject fiscal years in 10 installments. The department shall establish the date that each installment is due, provided that the first installment shall be due no earlier than 20 days following the department sending the notice pursuant to paragraph (1), and the installments shall be paid at least one month apart, but if possible, the installments shall be paid on a quarterly basis.

(4) Notwithstanding any other provision of this section, the amount of each hospital's aggregate quality assurance fee after the application of the fee percentage for each subject fiscal year that has not been paid by the hospital before December 15, 2013, pursuant to paragraphs (3) and (8), shall be paid by the hospital no later than December 15, 2013.

(5) (A) Notwithstanding subdivision (*l*) of Section 14169.31, for the purpose of determining the installments under paragraph (3), the department shall use an interim fee percentage as follows:

(i) One hundred percent for subject fiscal year 2011–12 until the federal government has approved or disapproved additional capitation payments described in Section 14169.5 for that subject fiscal year.

(ii) One hundred percent for subject fiscal year 2012–13 until the federal government has approved or disapproved additional capitation payments described in Section 14169.5 for that subject fiscal year.

(iii) Fifty percent for subject fiscal year 2013–14 until the federal government has approved or disapproved additional capitation payments described in Section 14169.5 for that subject fiscal year.

(B) The director may use a lower interim fee percentage for each subject fiscal year under this paragraph as the director, in his or her discretion, determines is reasonable in order to generate sufficient but not excessive installment payments to make the payments described in subdivision (b) of Section 14169.33.

(6) The director shall determine the final fee percentage for each subject fiscal year within 15 days of the approval or disapproval, in whole or in part, by the federal government of all changes to the capitation rates of managed health care plans requested by the department to implement Section 14169.5 for that subject fiscal year, but in no event later than December 1, 2013. At the time the director determines the final fee percentage for a subject fiscal year, the director shall also determine the amount of future installment payments of the quality assurance fee for each hospital subject to the fee, if any are due. The amount of each future installment payment shall be established by the director with the objective that the total of the installment payments of the quality assurance fee due from a hospital shall equal the director's estimate for each subject fiscal year for the hospital of the aggregate quality assurance fee after the application of the fee percentage.

(7) The director, within 15 days of determining the final fee percentage for a subject fiscal year pursuant to paragraph (6), shall send notice to each hospital subject to the quality assurance fee of the following information:

(A) The final fee percentage for each subject fiscal year for which the final fee percentage has been determined.

(B) The fee percentage determined under paragraph (5) for each subject fiscal year for which the final fee percentage has not been determined.

(C) The aggregate quality assurance fee after application of the fee percentage for each subject fiscal year.

(D) The director's estimate of total quality assurance fee payments due from the hospital under this article whether or not paid. This amount shall be the sum of the aggregate quality assurance fee after application of the fee percentage for each subject fiscal year using the fee percentages contained in the notice.

(E) The total quality assurance fee payments that the hospital has made under this article.

(F) The amount, if any, by which the total quality assurance fee payments due from the hospital under this article as described in subparagraph (C) exceed the total quality assurance fee payments that the hospital has made under this article.

(G) The amount of each remaining installment of the quality assurance fee, if any, due from the hospital and the date each installment is due. This amount shall be the amount described in subparagraph (F) divided by the number of installment payments remaining.

(8) Each hospital that is sent a notice under paragraph (7) shall pay the additional installments of the quality assurance fee that are due, if any, in the amounts and at the times set forth in the notice unless superseded by a subsequent notice from the department.

(9) The department shall refund to a hospital paying the quality assurance fee the amount, if any, by which the total quality assurance fee payments that the hospital has made under this article for all subject fiscal years exceed the total quality assurance fee payments due from the hospital under this article within 30 days of the date on which the notice is sent to the hospital under paragraph (7).

(d) The quality assurance fee, as paid pursuant to this section, shall be paid by each hospital subject to the fee to the department for deposit in the Hospital Quality Assurance Revenue Fund. Deposits may be accepted at any time and will be credited toward the program period.

(e) This section shall become inoperative if the federal Centers for Medicare and Medicaid Services denies approval for, or does

not approve before July 1, 2014, the implementation of the quality assurance fee pursuant to this article or the supplemental payments to private hospitals described in Sections 14169.2 and 14169.3, and either or both provisions cannot be modified by the department pursuant to subdivision (d) of Section 14169.33 in order to meet the requirements of federal law or to obtain federal approval.

(f) In no case shall the aggregate fees collected in a federal fiscal year pursuant to this section~~, Section~~ *and Sections* 14167.32~~,~~ and ~~Section~~ 14168.32 exceed the maximum percentage of the annual aggregate net patient revenue for hospitals subject to the fee that is prescribed pursuant to federal law and regulations as necessary to preclude a finding that an indirect guarantee has been created.

(g) (1) Interest shall be assessed on quality assurance fees not paid on the date due at the greater of 10 percent per annum or the rate at which the department assesses interest on Medi-Cal program overpayments to hospitals that are not repaid when due. Interest shall begin to accrue the day after the date the payment was due and shall be deposited in the Hospital Quality Assurance Revenue Fund.

(2) In the event that any fee payment is more than 60 days overdue, a penalty equal to the interest charge described in paragraph (1) shall be assessed and due for each month for which the payment is not received after 60 days.

(h) When a hospital fails to pay all or part of the quality assurance fee on or before the date that payment is due, the department may immediately begin to deduct the unpaid assessment and interest from any Medi-Cal payments owed to the hospital, or, in accordance with Section 12419.5 of the Government Code, from any other state payments owed to the hospital until the full amount is recovered. All amounts, except penalties, deducted by the department under this subdivision shall be deposited in the Hospital Quality Assurance Revenue Fund. The remedy provided to the department by this section is in addition to other remedies available under law.

(i) The payment of the quality assurance fee shall not be considered as an allowable cost for Medi-Cal cost reporting and reimbursement purposes.

(j) The department shall work in consultation with the hospital community to implement this article and Article 5.228 (commencing with Section 14169.1).

(k) This subdivision creates a contractually enforceable promise on behalf of the state to use the proceeds of the quality assurance fee, including any federal matching funds, solely and exclusively for the purposes set forth in this article as they existed on September 16, 2011, to limit the amount of the proceeds of the quality assurance fee to be used to pay for the health care coverage of children to the amounts specified in this article, to limit any payments for the department's costs of administration to the amounts set forth in this article on September 16, 2011, to maintain and continue prior reimbursement levels as set forth in Section 14169.12 on September 16, 2011, and to otherwise comply with all its obligations set forth in Article 5.228 (commencing with Section 14169.1) and this article provided that amendments that arise from, or have as a basis, a decision, advice, or determination by the federal Centers for Medicare and Medicaid Services relating to federal approval of the quality assurance fee or the payments set forth in this article or Article 5.228 (commencing with Section 14169.1) shall control for the purposes of this subdivision.

(*l*) (1) Effective January 1, 2014, the rates payable to hospitals and managed health care plans under Medi-Cal shall be the rates then payable without the supplemental and increased capitation payments set forth in Article 5.228 (commencing with Section 14169.1).

(2) The supplemental payments and other payments under Article 5.228 (commencing with Section 14169.1) shall be regarded as quality assurance payments, the implementation or suspension of which does not affect a determination of the adequacy of any rates under federal law.

(m) (1) Subject to paragraph (2), the director may waive any or all interest and penalties assessed under this article in the event that the director determines, in his or her sole discretion, that the hospital has demonstrated that imposition of the full quality assurance fee on the timelines applicable under this article has a high likelihood of creating a financial hardship for the hospital or a significant danger of reducing the provision of needed health care services.

(2) Waiver of some or all of the interest or penalties under this subdivision shall be conditioned on the hospital's agreement to make fee payments, or to have the payments withheld from payments otherwise due from the Medi-Cal program to the hospital,

on a schedule developed by the department that takes into account the financial situation of the hospital and the potential impact on services.

(3) A decision by the director under this subdivision is not subject to judicial review.

(4) If fee payments are remitted to the department after the date determined by the department to be the final date for calculating the final supplemental payments under this article and Article 5.228 (commencing with Section 14169.1), the fee payments shall be retained in the fund for purposes of funding supplemental payments supported by a hospital quality assurance fee program implemented under subsequent legislation, provided, however, that if supplemental payments are not implemented under subsequent legislation, then those fee payments shall be deposited in the Distressed Hospital Fund.

(5) If during the implementation of this article, fee payments that were due under Article 5.21 (commencing with Section 14167.1) and Article 5.22 (commencing with Section 14167.31), or Article 5.227 (commencing with Section 14168.31), are remitted to the department under a payment plan or for any other reason, and the final date for calculating the final supplemental payments under those articles has passed, those fee payments shall be deposited in the fund to support the uses established by this article.

SEC. 221. Section 14182 of the Welfare and Institutions Code is amended to read:

14182. (a) (1) In furtherance of the waiver or demonstration project developed pursuant to Section 14180, the department may require seniors and persons with disabilities who do not have other health coverage to be assigned as mandatory enrollees into new or existing managed care health plans. To the extent that enrollment is required by the department, an enrollee's access to fee-for-service Medi-Cal shall not be terminated until the enrollee has been assigned to a managed care health plan.

(2) For purposes of this section:

(A) "Other health coverage" means health coverage providing the same full or partial benefits as the Medi-Cal program, health coverage under another state or federal medical care program, or health coverage under contractual or legal entitlement, including, but not limited to, a private group or indemnification insurance program.

(B) "Managed care health plan" means an individual, organization, or entity that enters into a contract with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.81 (commencing with Section 14087.96), Article 2.91 (commencing with Section 14089), or Chapter 8 (commencing with Section 14200).

(b) In exercising its authority pursuant to subdivision (a), the department shall do all of the following:

(1) Assess and ensure the readiness of the managed care health plans to address the unique needs of seniors or persons with disabilities pursuant to the applicable readiness evaluation criteria and requirements set forth in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 14087.48.

(2) Ensure the managed care health plans provide access to providers that comply with applicable state and federal laws, including, but not limited to, physical accessibility and the provision of health plan information in alternative formats.

(3) Develop and implement an outreach and education program for seniors and persons with disabilities, not currently enrolled in Medi-Cal managed care, to inform them of their enrollment options and rights under the demonstration project. Contingent upon available private or public dollars other than moneys from the General Fund, the department or its designated agent for enrollment and outreach may partner or contract with community-based, nonprofit consumer or health insurance assistance organizations with expertise and experience in assisting seniors and persons with disabilities in understanding their health care coverage options. Contracts entered into or amended pursuant to this paragraph shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and any implementing regulations or policy directives.

(4) At least three months prior to enrollment, inform beneficiaries who are seniors or persons with disabilities, through a notice written at no more than a sixth grade reading level, about the forthcoming changes to their delivery of care, including, at a minimum, how their system of care will change, when the changes will occur, and who they can contact for assistance with choosing a delivery system or with problems they encounter. In developing this notice, the department shall consult with consumer representatives and other stakeholders.

(5) Implement an appropriate cultural awareness and sensitivity training program regarding serving seniors and persons with disabilities for managed care health plans and plan providers and staff in the Medi-Cal Managed Care Division of the department.

(6) Establish a process for assigning enrollees into an organized delivery system for beneficiaries who do not make an affirmative selection of a managed care health plan. The department shall develop this process in consultation with stakeholders and in a manner consistent with the waiver or demonstration project developed pursuant to Section 14180. The department shall base plan assignment on an enrollee's existing or recent utilization of providers, to the extent possible. If the department is unable to make an assignment based on the enrollee's affirmative selection or utilization history, the department shall base plan assignment on factors, including, but not limited to, plan quality and the inclusion of local health care safety net system providers in the plan's provider network.

(7) Review and approve the mechanism or algorithm that has been developed by the managed care health plan, in consultation with their stakeholders and consumers, to identify, within the earliest possible timeframe, persons with higher risk and more complex health care needs pursuant to paragraph (11) of subdivision (c).

(8) Provide managed care health plans with historical utilization data for beneficiaries upon enrollment in a managed care health plan so that the plans participating in the demonstration project are better able to assist beneficiaries and prioritize assessment and care planning.

(9) Develop and provide managed care health plans participating in the demonstration project with a facility site review tool for use in assessing the physical accessibility of providers, including specialists and ancillary service providers that provide care to a high volume of seniors and persons with disabilities, at a clinic or provider site, to ensure that there are sufficient physically accessible providers. Every managed care health plan participating in the demonstration project shall make the results of the facility site review tool publicly available on their Internet Web site and shall regularly update the results to the department's satisfaction.

(10) Develop a process to enforce legal sanctions, including, but not limited to, financial penalties, withholding of Medi-Cal

payments, enrollment termination, and contract termination, in order to sanction any managed care health plan in the demonstration project that consistently or repeatedly fails to meet performance standards provided in statute or contract.

(11) Ensure that managed care health plans provide a mechanism for enrollees to request a specialist or clinic as a primary care provider. A specialist or clinic may serve as a primary care provider if the specialist or clinic agrees to serve in a primary care provider role and is qualified to treat the required range of conditions of the enrollee.

(12) Ensure that managed care health plans participating in the demonstration project are able to provide communication access to seniors and persons with disabilities in alternative formats or through other methods that ensure communication, including assistive listening systems, sign language interpreters, captioning, written communication, plain language, or written translations and oral interpreters, including for those who are limited English-proficient, or non-English speaking, and that all managed care health plans are in compliance with applicable cultural and linguistic requirements.

(13) Ensure that managed care health plans participating in the demonstration project provide access to out-of-network providers for new individual members enrolled under this section who have an ongoing relationship with a provider if the provider will accept the health plan's rate for the service offered, or the applicable Medi-Cal fee-for-service rate, whichever is higher, and the health plan determines that the provider meets applicable professional standards and has no disqualifying quality of care issues.

(14) Ensure that managed care health plans participating in the demonstration project comply with continuity of care requirements in Section 1373.96 of the Health and Safety Code.

(15) Ensure that the medical exemption criteria applied in counties operating under Chapter 4.1 (commencing with Section 53800) or Chapter 4.5 (commencing with Section 53900) of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations are applied to seniors and persons with disabilities served under this section.

(16) Ensure that managed care health plans participating in the demonstration project take into account the behavioral health needs

of enrollees and include behavioral health services as part of the enrollee's care management plan when appropriate.

(17) Develop performance measures that are required as part of the contract to provide quality indicators for the Medi-Cal population enrolled in a managed care health plan and for the subset of enrollees who are seniors and persons with disabilities. These performance measures may include measures from the Healthcare Effectiveness Data and Information Set (HEDIS) or measures indicative of performance in serving special needs populations, such as the National Committee for Quality Assurance (NCQA) Structure and Process measures, or both.

(18) Conduct medical audit reviews of participating managed care health plans that include elements specifically related to the care of seniors and persons with disabilities. These medical audits shall include, but not be limited to, evaluation of the delivery model's policies and procedures, performance in utilization management, continuity of care, availability and accessibility, member rights, and quality management.

(19) Conduct financial audit reviews to ensure that a financial statement audit is performed on managed care health plans annually pursuant to the Generally Accepted Auditing Standards, and conduct other risk-based audits for the purpose of detecting fraud and irregular transactions.

(20) Ensure that managed care health plans maintain a dedicated liaison to coordinate with the department, affected providers, and new individual members for all of the following purposes:

(A) To ensure a mechanism for new members to obtain continuity of care as described in paragraph (13).

(B) To receive notice, including that a new member has been denied a medical exemption as described in paragraph (15), which is required to include the name or names of the requesting provider, and ensure that the provider's ability to treat the member is continued as described in paragraphs (11) and (13), if applicable, or, if not applicable, ensure the member is immediately referred to a qualified provider or specialty care center.

(C) To assist new members in maintaining an ongoing relationship with a specialist or specialty care center when the specialist is contracting with the plan and the assigned primary care provider has approved a standing referral pursuant to Section 1374.16 of the Health and Safety Code.

(21) Ensure that written notice is provided to the beneficiary and the requesting provider if a request for exemption from plan enrollment is denied. The notice shall set out with specificity the reasons for the denial or failure to unconditionally approve the request for exemption from plan enrollment. The notice shall inform the beneficiary and the provider of the right to appeal the decision, how to appeal the decision, and if the decision is not appealed, that the beneficiary shall enroll in a Medi-Cal plan and how that enrollment shall occur. The notice shall also include information of the possibility of continued access to an out-of-network provider pursuant to paragraph (13). A beneficiary who has not been enrolled in a plan shall remain in fee-for-service Medi-Cal if a request for an exemption from plan enrollment or appeal is submitted, until the final resolution. The department shall also require the plans to ensure that these beneficiaries receive continuity of care.

(22) Develop a process to track a beneficiary who has been denied a request for exemption from plan enrollment and to notify the plan, if applicable, of the denial, including information identifying the provider. Notwithstanding paragraph (12) of subdivision (c), the plan shall immediately refer the beneficiary for a risk assessment survey and an individual care plan shall be developed within 10 days, including authorization for 30 days of continuity of prescription drugs.

(c) Prior to exercising its authority under this section and Section 14180, the department shall ensure that each managed care health plan participating in the demonstration project is able to do all of the following:

(1) Comply with the applicable readiness evaluation criteria and requirements set forth in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 14087.48.

(2) Ensure and monitor an appropriate provider network, including primary care physicians, specialists, professional, allied, and medical supportive personnel, and an adequate number of accessible facilities within each service area. Managed care health plans shall maintain an updated, accurate, and accessible listing of a provider's ability to accept new patients and shall make it available to enrollees, at a minimum, by phone, written material, and Internet Web site.

(3) Assess the health care needs of beneficiaries who are seniors or persons with disabilities and coordinate their care across all settings, including coordination of necessary services within and, where necessary, outside of the plan's provider network.

(4) Ensure that the provider network and informational materials meet the linguistic and other special needs of seniors and persons with disabilities, including providing information in an understandable manner in plain language, maintaining toll-free telephone lines, and offering member or ombudsperson services.

(5) Provide clear, timely, and fair processes for accepting and acting upon complaints, grievances, and disenrollment requests, including procedures for appealing decisions regarding coverage or benefits. Each managed care health plan participating in the demonstration project shall have a grievance process that complies with Section 14450, and Sections 1368 and 1368.01 of the Health and Safety Code.

(6) Solicit stakeholder and member participation in advisory groups for the planning and development activities related to the provision of services for seniors and persons with disabilities.

(7) Contract with safety net and traditional providers as defined in subdivisions (hh) and (jj) of Section 53810, of Title 22 of the California Code of Regulations, to ensure access to care and services. The managed care health plan shall establish participation standards to ensure participation and broad representation of traditional and safety net providers within a service area.

(8) Inform seniors and persons with disabilities of procedures for obtaining transportation services to service sites that are offered by the plan or are available through the Medi-Cal program.

(9) Monitor the quality and appropriateness of care for children with special health care needs, including children eligible for, or enrolled in, the California Children's Services Program, and seniors and persons with disabilities.

(10) Maintain a dedicated liaison to coordinate with each regional center operating within the plan's service area to assist members with developmental disabilities in understanding and accessing services and act as a central point of contact for questions, access and care concerns, and problem resolution.

(11) At the time of enrollment apply the risk stratification mechanism or algorithm described in paragraph (7) of subdivision

(b) approved by the department to determine the health risk level of beneficiaries.

(12) (A) Managed care health plans shall assess an enrollee's current health risk by administering a risk assessment survey tool approved by the department. This risk assessment survey shall be performed within the following timeframes:

(i) Within 45 days of plan enrollment for individuals determined to be at higher risk pursuant to paragraph (11).

(ii) Within 105 days of plan enrollment for individuals determined to be at lower risk pursuant to paragraph (11).

(B) Based on the results of the current health risk assessment, managed care health plans shall develop individual care plans for higher risk beneficiaries that shall include the following minimum components:

(i) Identification of medical care needs, including primary care, specialty care, durable medical equipment, medications, and other needs with a plan for care coordination as needed.

(ii) Identification of needs and referral to appropriate community resources and other agencies as needed for services outside the scope of responsibility of the managed care health plan.

(iii) Appropriate involvement of caregivers.

(iv) Determination of timeframes for reassessment and, if necessary, circumstances or conditions that require redetermination of risk level.

(13) (A) Establish medical homes to which enrollees are assigned that include, at a minimum, all of the following elements, which shall be considered in the provider contracting process:

(i) A primary care physician who is the primary clinician for the beneficiary and who provides core clinical management functions.

(ii) Care management and care coordination for the beneficiary across the health care system including transitions among levels of care.

(iii) Provision of referrals to qualified professionals, community resources, or other agencies for services or items outside the scope of responsibility of the managed care health plan.

(iv) Use of clinical data to identify beneficiaries at the care site with chronic illness or other significant health issues.

(v) Timely preventive, acute, and chronic illness treatment in the appropriate setting.

(vi) Use of clinical guidelines or other evidence-based medicine when applicable for treatment of beneficiaries' health care issues or timing of clinical preventive services.

(B) In implementing this section, and the Special Terms and Conditions of the demonstration project, the department may alter the medical home elements described in this paragraph as necessary to secure the increased federal financial participation associated with the provision of medical assistance in conjunction with a health home, as made available under the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and codified in Section 1945 of Title XIX of the federal Social Security Act. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to alter medical home elements under this section at least five days in advance of taking this action.

(14) Perform, at a minimum, the following care management and care coordination functions and activities for enrollees who are seniors or persons with disabilities:

(A) Assessment of each new enrollee's risk level and health needs shall be conducted through a standardized risk assessment survey by means such as telephonic, Web-based, or in-person communication or by other means as determined by the department.

(B) Facilitation of timely access to primary care, specialty care, durable medical equipment, medications, and other health services needed by the enrollee, including referrals to address any physical or cognitive barriers to access.

(C) Active referral to community resources or other agencies for needed services or items outside the managed care health plans responsibilities.

(D) Facilitating communication among the beneficiaries' health care providers, including mental health and substance abuse providers when appropriate.

(E) Other activities or services needed to assist beneficiaries in optimizing their health status, including assisting with self-management skills or techniques, health education, and other modalities to improve health status.

(d) Except in a county where Medi-Cal services are provided by a county-organized health system, and notwithstanding any other provision of law, in any county in which fewer than two

existing managed care health plans contract with the department to provide Medi-Cal services under this chapter, the department may contract with additional managed care health plans to provide Medi-Cal services for seniors and persons with disabilities and other Medi-Cal beneficiaries.

(e) Beneficiaries enrolled in managed care health plans pursuant to this section shall have the choice to continue an established patient-provider relationship in a managed care health plan participating in the demonstration project if his or her treating provider is a primary care provider or clinic contracting with the managed care health plan and agrees to continue to treat that beneficiary.

(f) The department may contract with existing managed care health plans to operate under the demonstration project to provide or arrange for services under this section. Notwithstanding any other provision of law, the department may enter into the contract without the need for a competitive bid process or other contract proposal process, provided the managed care health plan provides written documentation that it meets all qualifications and requirements of this section.

(g) This section shall be implemented only to the extent that federal financial participation is available.

(h) (1) The development of capitation rates for managed care health plan contracts shall include the analysis of data specific to the seniors and persons with disabilities population. For the purposes of developing capitation rates for payments to managed care health plans, the director may require managed care health plans, including existing managed care health plans, to submit financial and utilization data in a form, time, and substance as deemed necessary by the department.

(2) (A) Notwithstanding Section 14301, the department may incorporate, on a one-time basis for a three-year period, a risk-sharing mechanism in a contract with the local initiative health plan in the county with the highest normalized fee-for-service risk score over the normalized managed care risk score listed in Table 1.0 of the Medi-Cal Acuity Study Seniors and Persons with Disabilities (SPD) report written by Mercer Government Human Services Consulting and dated September 28, 2010, if the local initiative health plan meets the requirements of subparagraph (B). The Legislature finds and declares that this risk-sharing mechanism

will limit the risk of beneficial or adverse effects associated with a contract to furnish services pursuant to this section on an at-risk basis.

(B) The local initiative health plan shall pay the nonfederal share of all costs associated with the development, implementation, and monitoring of the risk-sharing mechanism established pursuant to subparagraph (A) by means of intergovernmental transfers. The nonfederal share includes the state costs of staffing, state contractors, or administrative costs directly attributable to implementing subparagraph (A).

(C) This subdivision shall be implemented only to the extent federal financial participation is not jeopardized.

(i) Persons meeting participation requirements for the Program of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter 8.75 (commencing with Section 14591), may select a PACE plan if one is available in that county.

(j) Persons meeting the participation requirements in effect on January 1, 2010, for a Medi-Cal primary care case management (PCCM) plan in operation on that date, may select that PCCM plan or a successor health care plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) to provide services within the same geographic area that the PCCM plan served on January 1, 2010.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action. Prior to issuing any letter or similar instrument authorized pursuant to this section, the department shall notify and consult with stakeholders, including advocates, providers, and beneficiaries. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to issue instructions under this section at least five days in advance of the issuance.

(*l*) Consistent with state law that exempts Medi-Cal managed care contracts from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, and in order

to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process is necessary for contracts entered into or amended pursuant to this section. The contracts and amendments entered into or amended pursuant to this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and the requirements of State Administrative Management Manual Memo 03-10. The department shall make the terms of a contract available to the public within 30 days of the contract's effective date.

(m) In the event of a conflict between the Special Terms and Conditions of the approved demonstration project, including any attachment thereto, and any provision of this part, the Special Terms and Conditions shall control. If the department identifies a specific provision of this article that conflicts with a term or condition of the approved waiver or demonstration project, or an attachment thereto, the term or condition shall control, and the department shall so notify the appropriate fiscal and policy committees of the Legislature within 15 business days.

(n) In the event of a conflict between the provisions of this article and any other provision of this part, the provisions of this article shall control.

(o) Any otherwise applicable provisions of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14591) not in conflict with this article or with the terms and conditions of the demonstration project shall apply to this section.

(p) To the extent that the director utilizes state plan amendments or waivers to accomplish the purposes of this article in addition to waivers granted under the demonstration project, the terms of the state plan amendments or waivers shall control in the event of a conflict with any provision of this part.

(q) (1) Enrollment of seniors and persons with disabilities into a managed care health plan under this section shall be accomplished using a phased-in process to be determined by the department and shall not commence until necessary federal approvals have been acquired or until June 1, 2011, whichever is later.

(2) Notwithstanding paragraph (1), and at the director's discretion, enrollment in Los Angeles County of seniors and persons with disabilities may be phased-in over a 12-month period

using a geographic region method that is proposed by Los Angeles County subject to approval by the department.

(r) A managed care health plan established pursuant to this section, or under the Special Terms and Conditions of the demonstration project pursuant to Section 14180, shall be subject to, and comply with, the requirement for submission of encounter data specified in Section 14182.1.

(s) (1) Commencing January 1, 2011, and until January 1, 2014, the department shall provide the fiscal and policy committees of the Legislature with semiannual updates regarding core activities for the enrollment of seniors and persons with disabilities into managed care health plans pursuant to the pilot program. The semiannual updates shall include key milestones, progress toward the objectives of the pilot program, relevant or necessary changes to the program, submittal of state plan amendments to the federal Centers for Medicare and Medicaid Services, submittal of any federal waiver documents, and other key activities related to the mandatory enrollment of seniors and persons with disabilities into managed care health plans. The department shall also include updates on the transition of individuals into managed care health plans, the health outcomes of enrollees, the care management and coordination process, and other information concerning the success or overall status of the pilot program.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2015, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(t) The department, in collaboration with the State Department of Social Services and county welfare departments, shall monitor the utilization and caseload of the In-Home Supportive Services (IHSS) program before and during the implementation of the pilot program. This information shall be monitored in order to identify the impact of the pilot program on the IHSS program for the affected population.

(u) Services under Section 14132.95 or 14132.952, or Article 7 (commencing with Section 12300) of Chapter 3 that are provided to individuals assigned to managed care health plans under this section shall be provided through direct hiring of personnel,

contract, or establishment of a public authority or nonprofit consortium, in accordance with and subject to the requirements of Section 12302 or 12301.6, as applicable.

(v) The department shall, at a minimum, monitor on a quarterly basis the adequacy of provider networks of the managed care health plans.

(w) The department shall suspend new enrollment of seniors and persons with disabilities into a managed care health plan if it determines that the managed care health plan does not have sufficient primary or specialty providers to meet the needs of their enrollees.

SEC. 222. Section 14182.16 of the Welfare and Institutions Code is amended to read:

14182.16. (a) The department shall require Medi-Cal beneficiaries who have dual eligibility in Medi-Cal and the Medicare Program to be assigned as mandatory enrollees into new or existing Medi-Cal managed care health plans for their Medi-Cal benefits in counties participating in the demonstration project pursuant to Section 14132.275.

(b) For the purposes of this section and Section 14182.17, the following definitions shall apply:

(1) "Dual eligible beneficiary" means an individual 21 years of age or older who is enrolled for benefits under Medicare Part A (42 U.S.C. Sec. 1395c et seq.) or Medicare Part B (42 U.S.C. Sec. 1395j et seq.), or both, and is eligible for medical assistance under the Medi-Cal State Plan.

(2) "Full-benefit dual eligible beneficiary" means an individual 21 years of age or older who is eligible for benefits under Medicare Part A (42 U.S.C. Sec. 1395c et seq.), Medicare Part B (42 U.S.C. Sec. 1395j et seq.), and Medicare Part D (42 U.S.C. Sec. 1395w-101), and is eligible for medical assistance under the Medi-Cal State Plan.

(3) "Managed care health plan" means an individual, organization, or entity that enters into a contract with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089), of this chapter, or Chapter 8 (commencing with Section 14200).

(4) "Other health coverage" means health coverage providing the same full or partial benefits as the Medi-Cal program, health

coverage under another state or federal medical care program except for the Medicare Program (Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.)), or health coverage under a contractual or legal entitlement, including, but not limited to, a private group or indemnification insurance program.

(5) "Out-of-network Medi-Cal provider" means a health care provider that does not have an existing contract with the beneficiary's managed care health plan or its subcontractors.

(6) "Partial-benefit dual eligible beneficiary" means an individual 21 years of age or older who is enrolled for benefits under Medicare Part A (42 U.S.C. Sec. 1395c et seq.), but not Medicare Part B (42 U.S.C. Sec. 1395j et seq.), or who is eligible for Medicare Part B (42 U.S.C. Sec. 1395j et seq.), but not Medicare Part A (42 U.S.C. Sec. 1395c et seq.), and is eligible for medical assistance under the Medi-Cal State Plan.

(c) (1) Notwithstanding subdivision (a), a dual eligible beneficiary is exempt from mandatory enrollment in a managed care health plan if the dual eligible beneficiary meets any of the following:

(A) Except in counties with county-organized health systems operating pursuant to Article 2.8 (commencing with Section 14087.5), the beneficiary has other health coverage.

(B) The beneficiary receives services through a foster care program, including the program described in Article 5 (commencing with Section 11400) of Chapter 2.

(C) The beneficiary is under 21 years of age.

(D) The beneficiary is not eligible for enrollment in managed care health plans for medically necessary reasons determined by the department.

(E) The beneficiary resides in one of the Veterans' Homes of California, as described in Chapter 1 (commencing with Section 1010) of Division 5 of the Military and Veterans Code.

(F) The beneficiary is enrolled in any entity with a contract with the department pursuant to Chapter 8.75 (commencing with Section 14591).

(G) The beneficiary is enrolled in a managed care organization licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) that has previously contracted

with the department as a primary care case management plan pursuant to Article 2.9 (commencing with Section 14088).

(2) A beneficiary who has been diagnosed with HIV/AIDS is not exempt from mandatory enrollment, but may opt out of managed care enrollment at the beginning of any month.

(d) Implementation of this section shall incorporate the provisions of Section 14182.17 that are applicable to beneficiaries eligible for benefits under Medi-Cal and the Medicare Program.

(e) At the director's sole discretion, in consultation with stakeholders, the department may determine and implement a phased-in enrollment approach that may include Medi-Cal beneficiary enrollment into managed care health plans immediately upon implementation of this section in a specific county, over a 12-month period, or other phased approach. The phased-in enrollment shall commence no sooner than March 1, 2013, and not until all necessary federal approvals have been obtained.

(f) To the extent that mandatory enrollment is required by the department, an enrollee's access to fee-for-service Medi-Cal shall not be terminated until the enrollee has selected or been assigned to a managed care health plan.

(g) Except in a county where Medi-Cal services are provided by a county organized health system, and notwithstanding any other law, in any county in which fewer than two existing managed health care plans contract with the department to provide Medi-Cal services under this chapter that are available to dual eligible beneficiaries, including long-term services and supports, the department may contract with additional managed care health plans to provide Medi-Cal services.

(h) For partial-benefit dual eligible beneficiaries, the department shall inform these beneficiaries of their rights to continuity of care from out-of-network Medi-Cal providers pursuant to subparagraph (G) of paragraph (5) of subdivision (d) of Section 14182.17, and that the need for medical exemption criteria applied to counties operating under Chapter 4.1 (commencing with Section 53800) of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations may not be necessary to continue receiving Medi-Cal services from an out-of-network provider.

(i) The department may contract with existing managed care health plans to provide or arrange for services under this section. Notwithstanding any other law, the department may enter into the

contract without the need for a competitive bid process or other contract proposal process, provided that the managed care health plan provides written documentation that it meets all of the qualifications and requirements of this section and Section 14182.17.

(j) The development of capitation rates for managed care health plan contracts shall include the analysis of data specific to the dual eligible population. For the purposes of developing capitation rates for payments to managed care health plans, the department shall require all managed care health plans, including existing managed care health plans, to submit financial, encounter, and utilization data in a form, at a time, and including substance as deemed necessary by the department. Failure to submit the required data shall result in the imposition of penalties pursuant to Section 14182.1.

(k) Persons meeting participation requirements for the Program of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter 8.75 (commencing with Section 14591) may select a PACE plan if one is available in that county.

(*l*) Except for dual eligible beneficiaries participating in the demonstration project pursuant to Section 14132.275, persons meeting the participation requirements in effect on January 1, 2010, for a Medi-Cal primary case management plan in operation on that date, may select that primary care case management plan or a successor health care plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) to provide services within the same geographic area that the primary care case management plan served on January 1, 2010.

(m) The department may implement an intergovernmental transfer arrangement with a public entity that elects to transfer public funds to the state to be used solely as the nonfederal share of Medi-Cal payments to managed care health plans for the provision of services to dual eligible beneficiaries pursuant to Section 14182.15.

(n) To implement this section, the department may contract with public or private entities. Contracts or amendments entered into under this section may be on an exclusive or nonexclusive basis

and on a noncompetitive bid basis and shall be exempt from all of the following:

(1) Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and any policies, procedures, or regulations authorized by that part.

(2) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(3) Review or approval of contracts by the Department of General Services.

(o) Any otherwise applicable provisions of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14591) not in conflict with this section or with the Special Terms and Conditions of the waiver shall apply to this section.

(p) The department shall, in coordination with and consistent with an interagency agreement with the Department of Managed Health Care, at a minimum, monitor on a quarterly basis the adequacy of provider networks of the managed care health plans.

(q) The department shall suspend new enrollment of dual eligible beneficiaries into a managed care health plan if it determines that the managed care health plan does not have sufficient primary or specialty care providers and long-term services and supports to meet the needs of its enrollees.

(r) Managed care health plans shall pay providers in accordance with Medicare and Medi-Cal coordination of benefits.

(s) This section shall be implemented only to the extent that all federal approvals and waivers are obtained and only if and to the extent that federal financial participation is available.

(t) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action. Prior to issuing any letter or similar instrument authorized pursuant to this section, the department shall notify and consult with stakeholders, including advocates, providers, and beneficiaries. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to issue

instructions under this section at least five days in advance of the issuance.

(u) A managed care health plan that contracts with the department for the provision of services under this section shall ensure that beneficiaries have access to the same categories of licensed providers that are available under fee-for-service Medicare. Nothing in this section shall prevent a managed care health plan from contracting with selected providers within a category of licensure.

SEC. 223. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days:

(A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following shall occur:

(i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, and no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(ii) If the suspected abuse does not result in serious bodily injury, a telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(iii) When the suspected abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter, drawing upon his or her training or experience, the reporter shall report to the local ombudsman or law enforcement agency by telephone, immediately or as soon as practicably possible, and by written report, within 24 hours.

(iv) When applicable, reports made pursuant to clauses (i) and (ii) shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of Title VI of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91 of the Health and Safety Code, and Section 72541 of Title 22 of *the* California Code of Regulations. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this subparagraph, the local law enforcement agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

(B) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title

2 of the Government Code, or any other law, the department may implement subparagraph (A), in whole or in part, by means of all-county letters, provider bulletins, or other similar instructions without taking regulatory action.

(C) If the suspected or alleged abuse is abuse other than physical abuse, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a telephone report and a written report shall be made to the local ombudsman or the local law enforcement agency.

(D) With regard to abuse reported pursuant to subparagraphs (A) and (C), the local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day program, as defined in paragraph (2) of subdivision (a) of Section 1502 of the Health and Safety Code.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(E) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

(i) Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud.

(ii) Mandated reporters of the State Department of Developmental Services shall immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency.

(F) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) This subdivision shall not be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical

abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an

elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of State Hospitals or the State Department of Developmental Services or to a local law enforcement agency. Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent

adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in ~~the~~ *a* county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily

injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) discovers the offense.

(i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.

SEC. 224. Section 15650 of the Welfare and Institutions Code is amended to read:

15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the bureau, the local law enforcement agency, and the long-term care ombudsman program.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency, unless another public agency is given responsibility for investigation in that jurisdiction, and the local law enforcement agency.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Public Health Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of State Hospitals and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs, and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county

adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

SEC. 225. Section 18969 of the Welfare and Institutions Code is amended to read:

18969. (a) There is hereby created in the State Treasury a fund which shall be known as the State Children's Trust Fund. The fund shall consist of funds received from a county pursuant to Section 18968, funds collected by the state and transferred to the fund pursuant to subdivision (b) of Section 103625 of the Health and Safety Code and Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, grants, gifts, or bequests made to the state from private sources to be used for innovative and distinctive child abuse and neglect prevention and intervention projects, and money appropriated to the fund for this purpose by the Legislature. The State Registrar may retain a percentage of the fees collected pursuant to Section 103625 of the Health and Safety Code, not to exceed 10 percent, in order to defray the costs of collection.

(b) Money in the State Children's Trust Fund, upon appropriation by the Legislature, shall be allocated to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs. The department may not supplant any federal, state, or county funds

with any funds made available through the State Children's Trust Fund.

(c) The department may establish positions as needed for the purpose of implementing and administering child abuse and neglect prevention and intervention programs that are funded by the State Children's Trust Fund. However, the department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) No State Children's Trust Fund money shall be used to supplant state General Fund money for any purpose.

(e) It is the intent of the Legislature that the State Children's Trust Fund provide for all of the following:

(1) The development of a public-private partnership by encouraging consistent outreach to the private foundation and corporate community.

(2) Funds for large-scale dissemination of information that will promote public awareness regarding the nature and incidence of child abuse and the availability of services for intervention. These public awareness activities shall include, but not be limited to, the production of public service announcements, well-designed posters, pamphlets, booklets, videos, and other media tools.

(3) Research and demonstration projects that explore the nature and incidence and the development of long-term solutions to the problem of child abuse.

(4) The development of a mechanism to provide ongoing public awareness through activities that will promote the charitable tax deduction for the trust fund and seek continued contributions. These activities may include convening a philanthropic roundtable, developing literature for use by the State Bar for dissemination, and whatever other activities are deemed necessary and appropriate to promote the trust fund.

SEC. 226. Section 1 of Chapter 357 of the Statutes of 2012 is amended to read:

SECTION 1. (a) The sum of six hundred twenty-four thousand six hundred seventy-one dollars and eighty-six cents ($624,671.86) is hereby appropriated from the fund specified in subdivision (b) to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of claims accepted by the board pursuant to the schedule set forth in subdivision (b).

(b) Pursuant to subdivision (a), claims accepted by the California Victim Compensation and Government Claims Board shall be paid pursuant to the following schedule:

Total for Fund: General Fund (0001) $593,372.28
Total for Fund: Item 2660-001-0042 .....$9,330.35
Budget Act of 2012, Program 20.10
Total for Fund: Item 2740-001-0044 .....$3,055.15
Budget Act of 2012, Program 11
Total for Fund: Item 4260-001-0001 .....$6,131.34
Budget Act of 2012, Program 20
Total for Fund: Item 5180-111-0001 .....$3,117.59
Budget Act of 2012, Program 25.15
Total for Fund: Item 7100-001-0185 .....$9,665.15
Budget Act of 2012, Program 21

SEC. 227. Section 1 of Chapter 513 of the Statutes of 2012 is amended to read:

SECTION 1. This act shall be known and may be cited as Kathy's Law.

SEC. 228. Section 1 of Chapter 541 of the Statutes of 2012 is amended to read:

SECTION 1. The Legislature finds and declares all of the following:

(a) The coho salmon (Oncorhynchus kisutch) is a fish native to many northern California coastal streams and consists of two distinct Evolutionary Significant Units (ESU), the Southern Oregon/Northern California Coast (SONCC) and the Central California Coast (CCC) ESUs. The historical range of the SONCC ESU includes coastal rivers and tributaries in Del Norte, Siskiyou, Humboldt, Trinity, Mendocino, and Lake Counties. The historical range for the CCC ESU includes coastal rivers and tributaries in parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano, Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara, and Santa Cruz Counties.

(b) All coho salmon runs in California have declined dramatically over the past 40 to 50 years. Population numbers, including hatchery stocks, were estimated at 6 to 15 percent of 1940 levels in 2004. Since 2004, populations in all monitored

streams have continued to decline with an estimated 1 percent remaining of the original population. While a few coastal rivers, such as the Russian River, did show an increase in population for 2011, it is not yet known whether the increase is sustainable, and the species remains at critical risk of extinction.

(c) Both the SONCC and the CCC ESUs are listed pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code). The populations south of the San Francisco Bay are listed as endangered and considered to be virtually extinct. The populations between San Francisco Bay and Punta Gorda to the north are listed as endangered, and the populations from Punta Gorda to the Oregon border are listed as threatened.

(d) California's salmon populations need freshwater habitat that includes cold and clean water, appropriate water depth, quantity, and flow velocities, upland and riparian vegetation to stabilize soil and shade, clean gravel for spawning and egg rearing, large woody debris to provide resting and hiding places, adequate food, and varied channel forms.

(e) An urgency exists due to the extraordinarily small numbers of coho salmon remaining in California. In order to prevent their extinction from northern California waters, it is imperative that habitat restoration efforts be expedited and increased as soon as possible.

(f) Therefore, it is the intent of the Legislature in enacting this policy that the Department of Fish and Wildlife seek agreements and partnerships with state and federal agencies to efficiently and effectively permit habitat enhancement projects necessary to prevent the extinction of coho salmon populations in California coastal watersheds and that the Department of Fish and Wildlife expedite and streamline the permitting and approval of coho salmon habitat enhancement projects, including, in particular, large woody debris restoration projects, in northern California streams.

(g) By eliminating barriers to fish passage, stabilizing banks, increasing stream channel complexity, and otherwise restoring and enhancing habitat, these projects will result in a net benefit to coho salmon and other species.

SEC. 229. Section 2 of Chapter 719 of the Statutes of 2012 is amended to read:

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This authorization is required to begin construction on the memorial as quickly as possible to coincide with ~~the~~ Portuguese Heritage Month, established by Resolution Chapter 24 of the Statutes of 2010.

SEC. 230. Any section of any act enacted by the Legislature during the 2013 calendar year that takes effect on or before January 1, 2014, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2013 calendar year and takes effect on or before January 1, 2014, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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