

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 383**

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**Introduced by Assembly Member Wagner**

February 14, 2013

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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 Contract 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:*

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

3 1202. As used in this chapter, “department” means the State  
4 Department of Public Health.

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

7 4836.1. (a) Notwithstanding any other law, a registered  
8 veterinary technician or a veterinary assistant may administer a  
9 drug, including, but not limited to, a drug that is a controlled  
10 substance, under the direct or indirect supervision of a licensed  
11 veterinarian when done pursuant to the order, control, and full  
12 professional responsibility of a licensed veterinarian. However,  
13 no person, other than a licensed veterinarian, may induce anesthesia  
14 unless authorized by regulation of the board.

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

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

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

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

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

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

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

4 (e) This section shall remain in effect only until January 1, 2015,  
5 and as of that date is repealed, unless a later enacted statute, that  
6 is enacted before January 1, 2015, deletes or extends that date.

7 SEC. 3. Section 4999.32 of the Business and Professions Code  
8 is amended to read:

9 4999.32. (a) This section shall apply to applicants for  
10 examination eligibility or registration who begin graduate study  
11 before August 1, 2012, and complete that study on or before  
12 December 31, 2018. Those applicants may alternatively qualify  
13 under paragraph (2) of subdivision (a) of Section 4999.33.

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

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

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

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

39 (B) Human growth and development across the lifespan,  
40 including normal and abnormal behavior and an understanding of

1 developmental crises, disability, psychopathology, and situational  
2 and environmental factors that affect both normal and abnormal  
3 behavior.

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

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

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

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

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

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

1 (I) Professional orientation, ethics, and law in counseling,  
2 including professional ethical standards and legal considerations,  
3 licensing law and process, regulatory laws that delineate the  
4 profession's scope of practice, counselor-client privilege,  
5 confidentiality, the client dangerous to self or others, treatment of  
6 minors with or without parental consent, relationship between  
7 practitioner's sense of self and human values, functions and  
8 relationships with other human service providers, strategies for  
9 collaboration, and advocacy processes needed to address  
10 institutional and social barriers that impede access, equity, and  
11 success for clients.

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

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

22 (A) Applied psychotherapeutic techniques.

23 (B) Assessment.

24 (C) Diagnosis.

25 (D) Prognosis.

26 (E) Treatment.

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

28 (G) Health and wellness promotion.

29 (H) Other recognized counseling interventions.

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

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

38 (2) Coursework taken to meet deficiencies in the required areas  
39 of study listed in subparagraphs (A) to (I), inclusive, of paragraph

1 (1) of subdivision (c) shall be the equivalent of three semester units  
2 or four and one-half quarter units of study.

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

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

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

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

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

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

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

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

39 (7) A minimum of 10 contact hours of instruction in aging and  
40 long-term care, which may include, but is not limited to, the

1 biological, social, and psychological aspects of aging. On and after  
2 January 1, 2012, this coursework shall include instruction on the  
3 assessment and reporting of, as well as treatment related to, elder  
4 and dependent adult abuse and neglect.

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

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

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

15 5096.10. (a) The provisions of this article shall only be  
16 operative if there is an appropriation from the Accountancy Fund  
17 in the annual Budget Act to fund the activities in the article and  
18 sufficient hiring authority is granted pursuant to a budget change  
19 proposal to the board to provide staffing to implement this article.

20 (b) This section shall become inoperative on July 1, 2013, and,  
21 as of January 1, 2014, is repealed, unless a later enacted statute,  
22 that becomes operative on or before January 1, 2014, deletes or  
23 extends the dates on which it becomes inoperative and is repealed.

24 SEC. 5. Section 21609.1 of the Business and Professions Code  
25 is amended to read:

26 21609.1. (a) No junk dealer or recycler shall possess any  
27 reasonably recognizable, disassembled, or inoperative fire hydrant  
28 or fire department connection, including, but not limited to,  
29 reasonably recognizable brass fittings and parts, or any manhole  
30 cover or lid or reasonably recognizable part of a manhole cover  
31 or lid, or any backflow device or connection to that device or  
32 reasonably recognizable part of that device, that was owned or  
33 previously owned by an agency, in the absence of a written  
34 certification on the letterhead of the agency owning or previously  
35 owning the material described in the certification that the agency  
36 has either sold the material described or is offering the material  
37 for sale, salvage, or recycling, and that the person possessing the  
38 certification and identified in the certification is authorized to  
39 negotiate the sale of that material.



1 (b) A junk dealer or recycler who unknowingly takes possession  
2 of one or more of the items listed in subdivision (a) as part of a  
3 load of otherwise nonprohibited materials without a written  
4 certification has a duty to notify the appropriate law enforcement  
5 agency by the end of the next business day upon discovery of the  
6 prohibited material. Written certification shall relieve the junk  
7 dealer or recycler from any civil or criminal penalty for possession  
8 of the prohibited material. The prohibited material shall be set  
9 aside and not sold pending a determination made by a law  
10 enforcement agency pursuant to Section 21609.

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

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

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

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

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

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

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

29 23958.4. (a) For purposes of Section 23958, "undue  
30 concentration" means the case in which the applicant premises for  
31 an original or premises-to-premises transfer of any retail license  
32 are located in an area where any of the following conditions exist:

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

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

1 on-sale retail licenses to population in the county in which the  
2 applicant premises are located.

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

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

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

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

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

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

37 (1) “Reporting districts” means geographical areas within the  
38 boundaries of a single governmental entity (city or the  
39 unincorporated area of a county) that are identified by the local

1 law enforcement agency in the compilation and maintenance of  
2 statistical information on reported crimes and arrests.

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

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

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

18 (5) “Retail licenses” shall include the following:

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

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

31 (6) A “premises-to-premises transfer” refers to each license  
32 being separate and distinct, and transferable upon approval of the  
33 department.

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

37 (e) The enactment of this section shall not affect any existing  
38 rights of any holder of a retail license issued before April 29, 1992,  
39 whose premises were destroyed or rendered unusable as a result

1 of the civil disturbances occurring in Los Angeles from April 29  
2 to May 2, 1992, to reopen and operate those licensed premises.

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

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

8 25502.2. (a) A person employed or engaged by an authorized  
9 licensee may appear at a promotional event at the premises of an  
10 off-sale retail licensee for the purposes of providing autographs  
11 to consumers at the promotional event only under the following  
12 conditions:

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

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

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

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

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

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

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

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

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

39 (8) A wholesaler does not directly or indirectly underwrite,  
40 share in, or contribute to any costs related to the promotional event,

1 except that a beer and wine wholesaler that holds at least six  
2 distilled spirits wholesaler licenses may directly or indirectly  
3 underwrite, share in, or contribute to any costs related to a  
4 promotional event for which the wholesaler employs or engages  
5 the person providing autographs to consumers at the promotional  
6 event.

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

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

12 (b) For purposes of this section, “authorized licensee” means a  
13 manufacturer, winegrower, manufacturer’s agent, California  
14 winegrower’s agent, rectifier, importer, brandy manufacturer,  
15 brandy importer, or wholesaler.

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

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

21 25600.2. (a) An authorized licensee may conduct or sponsor  
22 consumer sweepstakes, subject to the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 prize-winning status. An authorized licensee may furnish and  
2 maintain a deposit box on a retail licensed premises for the  
3 collection and forwarding of sweepstakes entry forms.

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

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

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

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

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

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

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

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

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

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

10 (b) For purposes of this section:

11 (1) (A) “Authorized licensee” means a winegrower, beer and  
12 wine importer general, beer manufacturer, out-of-state beer  
13 manufacturer certificate holder, distilled spirits manufacturer,  
14 distilled spirits manufacturer’s agent, distilled spirits importer  
15 general, distilled spirits general rectifier, rectifier, out-of-state  
16 distilled spirits shipper’s certificate holder, brandy manufacturer,  
17 and brandy importer. An authorized licensee may conduct, sponsor,  
18 or participate in a sweepstakes pursuant to this section regardless  
19 of whether the licensee holds an additional license not included in  
20 this paragraph.

21 (B) An “authorized licensee” shall not include a beer and wine  
22 wholesaler, a beer and wine importer general, or distilled spirits  
23 importer general that only holds a wholesaler’s or retailer’s license  
24 as an additional license.

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

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

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

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

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



1 55.56. (a) Statutory damages under either subdivision (a) of  
2 Section 52 or subdivision (a) of Section 54.3 may be recovered in  
3 a construction-related accessibility claim against a place of public  
4 accommodation only if a violation or violations of one or more  
5 construction-related accessibility standards denied the plaintiff  
6 full and equal access to the place of public accommodation on a  
7 particular occasion.

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

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

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

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

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

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

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

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

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

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

22 (C) For a claim alleging a construction-related accessibility  
23 violation filed before January 1, 2018, the structure or area of the  
24 alleged violation was a new construction or an improvement that  
25 was approved by, and passed inspection by, the local building  
26 department permit and inspection process on or after January 1,  
27 2008, and before January 1, 2016, and, to the best of the  
28 defendant’s knowledge, there were no modifications or alterations  
29 that impacted compliance with respect to the plaintiff’s claim that  
30 were completed or commenced between the completion date of  
31 the new construction or improvement and the particular occasion  
32 on which the plaintiff was allegedly denied full and equal access.

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

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

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

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

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

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

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

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

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

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

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

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

4 56.16. For disclosures not addressed by Section 56.1007, unless  
5 there is a specific written request by the patient to the contrary,  
6 nothing in this part shall be construed to prevent a general acute  
7 care hospital, as defined in subdivision (a) of Section 1250 of the  
8 Health and Safety Code, upon an inquiry concerning a specific  
9 patient, from releasing at its discretion any of the following  
10 information: the patient’s name, address, age, and sex; a general  
11 description of the reason for treatment (whether an injury, a burn,  
12 poisoning, or some unrelated condition); the general nature of the  
13 injury, burn, poisoning, or other condition; the general condition  
14 of the patient; and any information that is not medical information  
15 as defined in subdivision (g) of Section 56.05.

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

17 1195. (a) Proof of the execution of an instrument, when not  
18 acknowledged, may be made by any of the following:

- 19 (1) By the party executing it, or either of them.
- 20 (2) By a subscribing witness.
- 21 (3) By other witnesses, in cases mentioned in Section 1198.

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

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

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

33  
 34 State of California            )  
 35 County of \_\_\_\_\_        ) ss.  
 36

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

1 is known to me and provided a satisfactory identifying document. \_\_\_\_ (name  
 2 of subscribing witness), being by me duly sworn, said that he/she was present  
 3 and saw/heard \_\_\_\_ (name[s] of principal[s]), the same person(s) described in  
 4 and whose name(s) is/are subscribed to the within or attached instrument in  
 5 his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute or  
 6 acknowledge executing the same, and that said affiant subscribed his/her name  
 7 to the within or attached instrument as a witness at the request of \_\_\_\_ (name[s]  
 8 of principal[s]).  
 9

10 WITNESS my hand and official seal.

11 Signature \_\_\_\_\_ (Notary public seal)  
 12

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

14 1950.5. (a) This section applies to security for a rental  
 15 agreement for residential property that is used as the dwelling of  
 16 the tenant.

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

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

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

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

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

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

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

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

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

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

28 (f) (1) Within a reasonable time after notification of either  
29 party's intention to terminate the tenancy, or before the end of the  
30 lease term, the landlord shall notify the tenant in writing of his or  
31 her option to request an initial inspection and of his or her right to  
32 be present at the inspection. The requirements of this subdivision  
33 do not apply when the tenancy is terminated pursuant to subdivision  
34 (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At  
35 a reasonable time, but no earlier than two weeks before the  
36 termination or the end of lease date, the landlord, or an agent of  
37 the landlord, shall, upon the request of the tenant, make an initial  
38 inspection of the premises prior to any final inspection the landlord  
39 makes after the tenant has vacated the premises. The purpose of  
40 the initial inspection shall be to allow the tenant an opportunity to

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

17

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

26

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

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

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

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

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

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

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

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



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

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

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

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

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

29 (B) The tenant waived the rights specified in paragraphs (2) and  
30 (3). The waiver shall only be effective if it is signed by the tenant  
31 at the same time or after a notice to terminate a tenancy under  
32 Section 1946 or 1946.1 has been given, a notice under Section  
33 1161 of the Code of Civil Procedure has been given, or no earlier  
34 than 60 calendar days prior to the expiration of a fixed-term lease.  
35 The waiver shall substantially include the text of paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (n) An action under this section may be maintained in small  
36 claims court if the damages claimed, whether actual, statutory, or  
37 both, are within the jurisdictional amount allowed by Section  
38 116.220 or 116.221 of the Code of Civil Procedure.

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

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

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

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

13 SEC. 13. Section 2877 of the Civil Code is amended to read:  
14 2877. Contracts of mortgage, pledge, bottomry, or respondentia  
15 are subject to all of the provisions of this chapter.

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

19 2923.55. (a) A mortgage servicer, mortgagee, trustee,  
20 beneficiary, or authorized agent may not record a notice of default  
21 pursuant to Section 2924 until all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 2923.55. (a) A mortgage servicer, mortgagee, trustee,  
20 beneficiary, or authorized agent may not record a notice of default  
21 pursuant to Section 2924 until all of the following:

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

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

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

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

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

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

- 1 (i) A copy of the borrower’s promissory note or other evidence  
2 of indebtedness.
- 3 (ii) A copy of the borrower’s deed of trust or mortgage.
- 4 (iii) A copy of any assignment, if applicable, of the borrower’s  
5 mortgage or deed of trust required to demonstrate the right of the  
6 mortgage servicer to foreclose.
- 7 (iv) A copy of the borrower’s payment history since the  
8 borrower was last less than 60 days past due.
- 9 (2) A mortgage servicer shall contact the borrower in person or  
10 by telephone in order to assess the borrower’s financial situation  
11 and explore options for the borrower to avoid foreclosure. During  
12 the initial contact, the mortgage servicer shall advise the borrower  
13 that he or she has the right to request a subsequent meeting and,  
14 if requested, the mortgage servicer shall schedule the meeting to  
15 occur within 14 days. The assessment of the borrower’s financial  
16 situation and discussion of options may occur during the first  
17 contact, or at the subsequent meeting scheduled for that purpose.  
18 In either case, the borrower shall be provided the toll-free telephone  
19 number made available by the United States Department of  
20 Housing and Urban Development (HUD) to find a HUD-certified  
21 housing counseling agency. Any meeting may occur telephonically.
- 22 (c) A notice of default recorded pursuant to Section 2924 shall  
23 include a declaration that the mortgage servicer has contacted the  
24 borrower, has tried with due diligence to contact the borrower as  
25 required by this section, or that no contact was required because  
26 the individual did not meet the definition of “borrower” pursuant  
27 to subdivision (c) of Section 2920.5.
- 28 (d) A mortgage servicer’s loss mitigation personnel may  
29 participate by telephone during any contact required by this section.
- 30 (e) A borrower may designate, with consent given in writing,  
31 a HUD-certified housing counseling agency, attorney, or other  
32 adviser to discuss with the mortgage servicer, on the borrower’s  
33 behalf, the borrower’s financial situation and options for the  
34 borrower to avoid foreclosure. That contact made at the direction  
35 of the borrower shall satisfy the contact requirements of paragraph  
36 (2) of subdivision (b). Any foreclosure prevention alternative  
37 offered at the meeting by the mortgage servicer is subject to  
38 approval by the borrower.
- 39 (f) A notice of default may be recorded pursuant to Section 2924  
40 when a mortgage servicer has not contacted a borrower as required



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 2924.8. (a) (1) Upon posting a notice of sale pursuant to  
18 Section 2924f, a trustee or authorized agent shall also post the  
19 following notice, in the manner required for posting the notice of  
20 sale on the property to be sold, and a mortgagee, trustee,  
21 beneficiary, or authorized agent, concurrently with the mailing of  
22 the notice of sale pursuant to Section 2924b, shall send by  
23 first-class mail in an envelope addressed to the “Resident of  
24 property subject to foreclosure sale” the following notice in English  
25 and the languages described in Section 1632:

26  
27 Foreclosure process has begun on this property, which may affect  
28 your right to continue to live in this property. Twenty days or more  
29 after the date of this notice, this property may be sold at  
30 foreclosure. If you are renting this property, the new property  
31 owner may either give you a new lease or rental agreement or  
32 provide you with a 90-day eviction notice. You may have a right  
33 to stay in your home for longer than 90 days. If you have a  
34 fixed-term lease, the new owner must honor the lease unless the  
35 new owner will occupy the property as a primary residence or in  
36 other limited circumstances. Also, in some cases and in some cities  
37 with a “just cause for eviction” law, you may not have to move at  
38 all. All rights and obligations under your lease or tenancy, including  
39 your obligation to pay rent, will continue after the foreclosure sale.

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

3  
4 (2) The amendments to the notice in this subdivision made by  
5 the act that added this paragraph shall become operative on March  
6 1, 2013, or 60 days following posting of a dated notice  
7 incorporating those amendments on the Department of Consumer  
8 Affairs Internet Web site, whichever date is later.

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

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

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

19 (e) This section shall remain in effect only until December 31,  
20 2019, and as of that date is repealed, unless a later enacted statute,  
21 that is enacted before December 31, 2019, deletes or extends that  
22 date.

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

26 2924.19. (a) (1) If a trustee's deed upon sale has not been  
27 recorded, a borrower may bring an action for injunctive relief to  
28 enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

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

36 (b) After a trustee's deed upon sale has been recorded, a  
37 mortgage servicer, mortgagee, beneficiary, or authorized agent  
38 shall be liable to a borrower for actual economic damages pursuant  
39 to Section 3281, resulting from a material violation of Section  
40 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee,

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

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

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

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

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

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

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

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

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

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

4 2924.19. (a) (1) If a trustee's deed upon sale has not been  
5 recorded, a borrower may bring an action for injunctive relief to  
6 enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

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

14 (b) After a trustee's deed upon sale has been recorded, a  
15 mortgage servicer, mortgagee, beneficiary, or authorized agent  
16 shall be liable to a borrower for actual economic damages pursuant  
17 to Section 3281, resulting from a material violation of Section  
18 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee,  
19 beneficiary, or authorized agent where the violation was not  
20 corrected and remedied prior to the recordation of the trustee's  
21 deed upon sale. If the court finds that the material violation was  
22 intentional or reckless, or resulted from willful misconduct by a  
23 mortgage servicer, mortgagee, beneficiary, or authorized agent,  
24 the court may award the borrower the greater of treble actual  
25 damages or statutory damages of fifty thousand dollars (\$50,000).

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

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

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

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

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

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

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

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

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

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

19 2950. When a grant of real property purports to be an absolute  
 20 conveyance, but is intended to be defeasible on the performance  
 21 of certain conditions, such grant is not defeated or affected as  
 22 against any person other than the grantee or his or her heirs or  
 23 devisees, or persons having actual notice, unless an instrument of  
 24 defeasance, duly executed and acknowledged, shall have been  
 25 recorded in the office of the county recorder of the county where  
 26 the property is situated.

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

28 3509. The maxims of jurisprudence hereinafter set forth are  
 29 intended not to qualify any of the foregoing provisions of this code,  
 30 but to aid in their just application.

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

33 116.940. (a) Except as otherwise provided in this section or  
 34 in rules adopted by the Judicial Council, which are consistent with  
 35 the requirements of this section, the characteristics of the small  
 36 claims advisory service required by Section 116.260 shall be  
 37 determined by each county, or by the superior court in a county  
 38 where the small claims advisory service is administered by the  
 39 court, in accordance with local needs and conditions.

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

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

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

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

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

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

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

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

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

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

3 (f) Advisers, including independent contractors, other  
4 employees, and volunteers, have the immunity conferred by Section  
5 818.9 of the Government Code with respect to advice provided as  
6 a public service on behalf of a court or county to small claims  
7 litigants and potential litigants under this chapter.

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

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

13 425.50. (a) An allegation of a construction-related accessibility  
14 claim in a complaint, as defined in subdivision (a) of Section 55.52  
15 of the Civil Code, shall state facts sufficient to allow a reasonable  
16 person to identify the basis of the violation or violations supporting  
17 the claim, including all of the following:

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

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

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

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

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

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

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



1 684.115. (a) A financial institution may, and if it has more  
2 than nine branches or offices at which it conducts its business  
3 within this state shall, designate one or more central locations for  
4 service of legal process within this state. Each designated location  
5 shall be referred to as a “central location.” If a financial institution  
6 elects or is required to designate a central location for service of  
7 legal process, the financial institution shall file a notice of its  
8 designation with the Department of Financial Institutions, which  
9 filing shall be effective upon filing and shall contain all of the  
10 following:

- 11 (1) The physical address of the central location.
- 12 (2) The days and hours during which service will be accepted  
13 at the central location.
- 14 (3) If the central location will not accept service of legal process  
15 directed at deposit accounts maintained or property held at all of  
16 the financial institution’s branches or offices within this state, or  
17 if the service accepted at the central location will not apply to  
18 safe-deposit boxes or other property of the judgment debtor held  
19 by or for the judgment debtor, the filing shall also contain sufficient  
20 information to permit a determination of the limitation or  
21 limitations, including, in the case of a limitation applicable to  
22 certain branches or offices, an identification of the branches or  
23 offices as to which service at the central location will not apply  
24 and the nature of the limitation applicable to those branches or  
25 offices. If the limitation will apply to all branches or offices of the  
26 financial institution within this state, the filing may indicate the  
27 nature of the limitation and that it applies to all branches or offices,  
28 in lieu of an identification of branches or offices as to which the  
29 limitation applies. To the extent that a financial institution’s  
30 designation of a central location for service of legal process covers  
31 the process directed at deposit accounts, safe-deposit boxes, or  
32 other property of the judgment debtor held by or for the judgment  
33 debtor at a particular branch or office located within this state, the  
34 branch or office shall be a branch or office covered by central  
35 process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) The address of the requesting party.

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

23  
24 I hereby declare that this deposit account location request  
25 complies with Section 684.115 of the Code of Civil Procedure,  
26 that the account or accounts of the judgment debtor or other person  
27 or persons appropriately identified in the legal process and  
28 specified herein are subject to a valid writ of execution, or court  
29 order, that I have a reasonable belief, formed after an inquiry  
30 reasonable under the circumstances, that the financial institution  
31 receiving this deposit account location request has an account  
32 standing in the name of the judgment debtor or other person or  
33 persons appropriately identified in the legal process, and that  
34 information pertaining to the location of the account will assist the  
35 judgment creditor in enforcing the judgment.

36  
37 (i) The affidavit contemplated by subdivision (h) shall be signed  
38 by the judgment creditor or the judgment creditor's counsel and  
39 filed at the financial institution's head office located within this  
40 state or, if the financial institution's head office is in another state,

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

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

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

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

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

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

5 1282.4. (a) A party to the arbitration has the right to be  
6 represented by an attorney at any proceeding or hearing in  
7 arbitration under this title. A waiver of this right may be revoked;  
8 but if a party revokes that waiver, the other party is entitled to a  
9 reasonable continuance for the purpose of procuring an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (j) (1) In enacting the amendments to this section made by  
17 Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent  
18 of the Legislature to respond to the holding in *Birbrower v.*  
19 *Superior Court* (1998) 17 Cal.4th 119, as modified at 17 Cal.4th  
20 643a (hereafter *Birbrower*), to provide a procedure for nonresident  
21 attorneys who are not licensed in this state to appear in California  
22 arbitration proceedings.

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

29 (3) Except as otherwise specifically provided in this section, in  
30 enacting the amendments to this section made by Assembly Bill  
31 2086 of the 1997–98 Regular Session, it is the Legislature’s intent  
32 that nothing in this section is intended to expand or restrict the  
33 ability of a party prior to the decision in *Birbrower* to elect to be  
34 represented by any person in a nonjudicial arbitration proceeding,  
35 to the extent those rights or abilities existed prior to that decision.  
36 To the extent that *Birbrower* is interpreted to expand or restrict  
37 that right or ability pursuant to the laws of this state, it is hereby  
38 abrogated except as specifically provided in this section.

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



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

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

7 7237. (a) For purposes of this section, “agent” means a person  
8 who is or was a director, officer, employee, or other agent of the  
9 corporation, or is or was serving at the request of the corporation  
10 as a director, officer, employee, or agent of another foreign or  
11 domestic corporation, partnership, joint venture, trust or other  
12 enterprise, or was a director, officer, employee, or agent of a  
13 foreign or domestic corporation that was a predecessor corporation  
14 of the corporation or of another enterprise at the request of the  
15 predecessor corporation; “proceeding” means any threatened,  
16 pending, or completed action or proceeding, whether civil, criminal,  
17 administrative, or investigative; and “expenses” includes, without  
18 limitation, attorneys’ fees and any expenses of establishing a right  
19 to indemnification under subdivision (d) or paragraph (3) of  
20 subdivision (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18  
 19 CHAPTER 4.5. UNIFORM LIMITED PARTNERSHIP ACT OF 2008

20  
 21 SEC. 27. Section 15282 of the Education Code is amended to  
 22 read:

23 15282. (a) The citizens’ oversight committee shall consist of  
 24 at least seven members who shall serve for a minimum term of  
 25 two years without compensation and for no more than three  
 26 consecutive terms. While consisting of a minimum of at least seven  
 27 members, the citizens’ oversight committee shall be comprised,  
 28 as follows:

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

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

33 (3) One member shall be active in a bona fide taxpayers’  
 34 organization.

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

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

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

10 (b) An employee or official of the school district or community  
11 college district shall not be appointed to the citizens' oversight  
12 committee. A vendor, contractor, or consultant of the school district  
13 or community college district shall not be appointed to the citizens'  
14 oversight committee. Members of the citizens' oversight committee  
15 shall, pursuant to Sections 35233 and 72533, abide by the  
16 prohibitions contained in Article 4 (commencing with Section  
17 1090) and Article 4.7 (commencing with Section 1125) of Chapter  
18 1 of Division 4 of Title 1 of the Government Code.

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

21 17193.5. (a) For purposes of this section, "public credit  
22 provider" means any financial institution or combination of  
23 financial institutions, that consists either solely, or has as a member  
24 or participant, a public retirement system. Notwithstanding any  
25 other law, a public credit provider, in connection with providing  
26 credit enhancement for bonds, notes, certificates of participation,  
27 or other evidences of indebtedness of a participating party, may  
28 require the participating party to agree to the following conditions:

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

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

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

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

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

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

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

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

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

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

32 17250.25. Design-build projects shall progress as follows:

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

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

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

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

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

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

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

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

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

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

26 (I) Significantly more important than cost or price.

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

28 (III) Significantly less important than cost or price.

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

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

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

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

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

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

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

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

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

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



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

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

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

13 (K) Information concerning all settled adverse claims, disputes,  
14 or lawsuits between the owner of a public works project and a  
15 member of the design-build entity during the five-year period  
16 preceding submission of the bid pursuant to this section, in which  
17 the claim, settlement, or judgment exceeds fifty thousand dollars  
18 (\$50,000). Information shall also be provided concerning any work  
19 completed by a surety during this period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 18720. (a) There is hereby established in the state government  
16 the California Library Services Board, to consist of 13 members.  
17 The Governor shall appoint nine members of the board. Three of  
18 the Governor’s appointments shall be representative of laypersons,  
19 one of whom shall represent people with disabilities, one of whom  
20 shall represent limited- and non-English-speaking persons, and  
21 one of whom shall represent economically disadvantaged persons.

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

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

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

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

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

4 22138.5. (a) (1) “Full time” means the days or hours of  
5 creditable service the employer requires to be performed by a class  
6 of employees in a school year in order to earn the compensation  
7 earnable as defined in Section 22115 and specified under the terms  
8 of a collective bargaining agreement or employment agreement.  
9 For the purpose of crediting service under this part, “full time”  
10 may not be less than the minimum standard specified in this  
11 section. Each collective bargaining agreement or employment  
12 agreement that applies to a member subject to the minimum  
13 standard specified in either paragraph (5) or (6) of subdivision (c)  
14 shall specify the number of hours of creditable service that equals  
15 “full time” pursuant to this section for each class of employee  
16 subject to either paragraph and make specific reference to this  
17 section, and the district shall submit a copy of the agreement to  
18 the system.

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

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

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

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

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

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

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

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

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

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

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

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

17 (5) Five hundred twenty-five instructional hours per school year  
18 for all instructors employed on a part-time basis, except instructors  
19 specified in paragraph (6). If an instructor receives compensation  
20 for office hours pursuant to Article 10 (commencing with Section  
21 87880) of Chapter 3 of Part 51 of Division 7 of Title 3, the  
22 minimum standard shall be increased appropriately by the number  
23 of office hours required annually for the class of employees.

24 (6) Eight hundred seventy-five instructional hours per school  
25 year for all instructors employed in adult education programs. If  
26 an instructor receives compensation for office hours pursuant to  
27 Article 10 (commencing with Section 87880) of Chapter 3 of Part  
28 51 of Division 7 of Title 3, the minimum standard shall be  
29 increased appropriately by the number of office hours required  
30 annually for the class of employees.

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

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

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

37 33195. (a) Every person, firm, association, partnership, or  
38 corporation operating a heritage school as defined in Section  
39 33195.4 shall, between the 1st and 31st day of January of each  
40 year, commencing on January 1, 2011, file with the Superintendent

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

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

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

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

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

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

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

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

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

22 (7) The heritage school telephone number.

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

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

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

34 (C) Employees have been notified by the employer of their  
35 reporting obligations and confidentiality rights, pursuant to Section  
36 11165.9 of the Penal Code.

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

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

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

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

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

14 35583. For purposes of paragraph (1) of subdivision (a) of  
15 Section 35735.1, the blended revenue limit per unit of average  
16 daily attendance for the Wiseburn Unified School District shall be  
17 calculated as follows:

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

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

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

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

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

30 38000. (a) The governing board of a school district may  
31 establish a security department under the supervision of a chief of  
32 security as designated by, and under the direction of, the  
33 superintendent of the school district. In accordance with Chapter  
34 5 (commencing with Section 45100) of Part 25, the governing  
35 board of a school district may employ personnel to ensure the  
36 safety of school district personnel and pupils and the security of  
37 the real and personal property of the school district. It is the intent  
38 of the Legislature in enacting this section that a school district  
39 security department is supplementary to city and county law  
40 enforcement agencies and is not vested with general police powers.

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

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

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

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

27 41320.1. Acceptance by the school district of the  
28 apportionments made pursuant to Section 41320 constitutes the  
29 agreement by the school district to all of the following conditions:

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

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

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



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

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

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

20 (6) To facilitate the appointment of the trustee and the  
21 employment of necessary staff, for purposes of this section, the  
22 Superintendent is exempt from the requirements of Article 6  
23 (commencing with Section 999) of Chapter 6 of Division 4 of the  
24 Military and Veterans Code and Part 2 (commencing with Section  
25 10100) of Division 2 of the Public Contract Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 41326. (a) Notwithstanding any other provision of this code,  
12 the acceptance by a school district of an apportionment made  
13 pursuant to Section 41320 that exceeds an amount equal to 200  
14 percent of the amount of the reserve recommended for that school  
15 district under the standards and criteria adopted pursuant to Section  
16 33127 constitutes the agreement by the school district to the  
17 conditions set forth in this article. Before applying for an  
18 emergency apportionment in the amount identified in this  
19 subdivision, the governing board of a school district shall discuss  
20 the need for that apportionment at a regular or special meeting of  
21 the governing board of the school district and, at that meeting,  
22 shall receive testimony regarding the apportionment from parents,  
23 exclusive representatives of employees of the school district, and  
24 other members of the community. For purposes of this article,  
25 "qualifying school district" means a school district that accepts a  
26 loan as described in this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) Goals and standards consistent with Section 41327.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

39 47660. (a) For purposes of computing eligibility for, and  
40 entitlements to, general purpose funding and operational funding

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

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

20 (2) Notwithstanding subdivision (a), for the 2005–06 fiscal year  
21 only, for purposes of computing eligibility for, and entitlements  
22 to, revenue limit funding, the average daily attendance of a unified  
23 school district, other than a unified school district that has  
24 converted all of its schools to charter status pursuant to Section  
25 47606 and is operating them as charter schools, shall include all  
26 attendance of pupils who reside in the unified school district and  
27 who would otherwise have been eligible to attend a noncharter  
28 school of the unified school district if the pupils attended a charter  
29 school operating in the unified school district prior to July 1, 2005.  
30 Only the attendance of pupils described by this paragraph shall be  
31 included in the calculation made pursuant to Section 42241.3. The  
32 attendance of the pupils described by this paragraph shall be  
33 included in the calculation made pursuant to paragraph (7) of  
34 subdivision (h) of Section 42238.

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

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

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

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

20 (2) This subdivision shall not apply to a charter school that is  
21 established through the conversion of an existing public school  
22 within a unified school district on or after January 1, 2010, which  
23 instead shall receive general-purpose funding pursuant to Section  
24 47633. This paragraph does not preclude a charter school or unified  
25 school district from agreeing to an alternative funding formula.

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

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

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

4 (f) For the purposes of this section, “basic aid school district”  
5 means a school district that does not receive from the state an  
6 apportionment of state funds pursuant to subdivision (h) of Section  
7 42238.

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

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

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

17 48853. (a) A pupil described in subdivision (a) of Section  
18 48853.5 who is placed in a licensed children’s institution or foster  
19 family home shall attend programs operated by the local  
20 educational agency, unless one of the following applies:

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

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

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

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

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

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

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

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

14 (c) Before any decision is made to place a pupil in a juvenile  
15 court school as defined by Section 48645.1, a community school  
16 as described in Sections 1981 and 48660, or other alternative  
17 educational setting, the parent or guardian, or person holding the  
18 right to make educational decisions for the pupil pursuant to  
19 Section 361 or 726 of the Welfare and Institutions Code or Section  
20 56055, shall first consider placement in the regular public school.

21 (d) If any dispute arises as to the school placement of a pupil  
22 subject to this section, the pupil has the right to remain in his or  
23 her school of origin, as defined in subdivision (e) of Section  
24 48853.5, pending resolution of the dispute. The dispute shall be  
25 resolved in accordance with the existing dispute resolution process  
26 available to any pupil served by the local educational agency.

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

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

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

39 (1) For health and safety emergencies.

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

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

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

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

19 48853.5. (a) This section applies to a foster child. “Foster  
20 child” means a child who has been removed from his or her home  
21 pursuant to Section 309 of the Welfare and Institutions Code, is  
22 the subject of a petition filed under Section 300 or 602 of the  
23 Welfare and Institutions Code, or has been removed from his or  
24 her home and is the subject of a petition filed under Section 300  
25 or 602 of the Welfare and Institutions Code.

26 (b) Each local educational agency shall designate a staff person  
27 as the educational liaison for foster children. In a school district  
28 that operates a foster children services program pursuant to Chapter  
29 11.3 (commencing with Section 42920) of Part 24 of Division 3,  
30 the educational liaison shall be affiliated with the local foster  
31 children services program. The educational liaison shall do all of  
32 the following:

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

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

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

1 agency of pending expulsion proceedings if the decision to  
2 recommend expulsion is a discretionary act, pending proceedings  
3 to extend a suspension until an expulsion decision is rendered if  
4 the decision to recommend expulsion is a discretionary act, and,  
5 if the foster child is an individual with exceptional needs, pending  
6 manifestation determinations pursuant to Section 1415(k) of Title  
7 20 of the United States Code if the local educational agency has  
8 proposed a change in placement due to an act for which the  
9 decision to recommend expulsion is at the discretion of the  
10 principal or the district superintendent of schools.

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

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

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

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

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



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

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

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

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

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

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

1 but not limited to, records or other proof of immunization history  
2 pursuant to Chapter 1 (commencing with Section 120325) of Part  
3 2 of Division 105 of the Health and Safety Code, proof of  
4 residency, other documentation, or school uniforms.

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

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

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

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

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

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

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

7 48900. A pupil shall not be suspended from school or  
8 recommended for expulsion, unless the superintendent of the school  
9 district or the principal of the school in which the pupil is enrolled  
10 determines that the pupil has committed an act as defined pursuant  
11 to any of subdivisions (a) to (r), inclusive:

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

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

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

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

27 (d) Unlawfully offered, arranged, or negotiated to sell a  
28 controlled substance listed in Chapter 2 (commencing with Section  
29 11053) of Division 10 of the Health and Safety Code, an alcoholic  
30 beverage, or an intoxicant of any kind, and either sold, delivered,  
31 or otherwise furnished to a person another liquid, substance, or  
32 material and represented the liquid, substance, or material as a  
33 controlled substance, alcoholic beverage, or intoxicant.

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

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

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

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

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

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

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

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

13 (l) Knowingly received stolen school property or private  
14 property.

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

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

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

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

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

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

3 (1) “Bullying” means any severe or pervasive physical or verbal  
4 act or conduct, including communications made in writing or by  
5 means of an electronic act, and including one or more acts  
6 committed by a pupil or group of pupils as defined in Section  
7 48900.2, 48900.3, or 48900.4, directed toward one or more pupils  
8 that have or can be reasonably predicted to have the effect of one  
9 or more of the following:

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

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

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

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

19 (2) (A) “Electronic act” means the transmission, by means of  
20 an electronic device, including, but not limited to, a telephone,  
21 wireless telephone, or other wireless communication device,  
22 computer, or pager, of a communication, including, but not limited  
23 to, any of the following:

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

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

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

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

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

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

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

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

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

19 (1) While on school grounds.

20 (2) While going to or coming from school.

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

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

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

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

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

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

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

6 48902. (a) The principal of a school or the principal's designee  
7 shall, before the suspension or expulsion of any pupil, notify the  
8 appropriate law enforcement authorities of the county or city in  
9 which the school is situated, of any acts of the pupil that may  
10 violate Section 245 of the Penal Code.

11 (b) The principal of a school or the principal's designee shall,  
12 within one schoolday after suspension or expulsion of any pupil,  
13 notify, by telephone or any other appropriate method chosen by  
14 the school, the appropriate law enforcement authorities of the  
15 county or the school district in which the school is situated of any  
16 acts of the pupil that may violate subdivision (c) or (d) of Section  
17 48900.

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

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

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

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

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

9 48911. (a) The principal of the school, the principal's designee,  
10 or the district superintendent of schools may suspend a pupil from  
11 the school for any of the reasons enumerated in Section 48900,  
12 and pursuant to Section 48900.5, for no more than five consecutive  
13 schooldays.

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

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



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

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

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

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

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

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

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

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

6 In the event that there is not an administrator in addition to the  
7 principal at the schoolsite, a certificated person at the schoolsite  
8 may be specifically designated by the principal, in writing, as a  
9 “principal’s designee,” to assist with disciplinary procedures. The  
10 principal may designate only one person at a time as the principal’s  
11 primary designee for the school year.

12 An additional person meeting the requirements of this  
13 subdivision may be designated by the principal, in writing, to act  
14 for purposes of this article when both the principal and the  
15 principal’s primary designee are absent from the schoolsite. The  
16 name of the person, and the names of any person or persons  
17 designated as “principal’s designee,” shall be on file in the  
18 principal’s office.

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

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

23 49076. (a) A school district shall not permit access to pupil  
24 records to a person without written parental consent or under  
25 judicial order except as set forth in this section and as permitted  
26 by Part 99 (commencing with Section 99.1) of Title 34 of the Code  
27 of Federal Regulations.

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

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

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

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

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

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

22 (F) A pupil 16 years of age or older or having completed the  
23 10th grade who requests access.

24 (G) A district attorney who is participating in or conducting a  
25 truancy mediation program pursuant to Section 48263.5, or Section  
26 601.3 of the Welfare and Institutions Code, or participating in the  
27 presentation of evidence in a truancy petition pursuant to Section  
28 681 of the Welfare and Institutions Code.

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

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

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

1 to be local officials for purposes of Section 99.31(a)(5)(i) of Title  
2 34 of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

9 (E) Organizations conducting studies for, or on behalf of,  
10 educational agencies or institutions for the purpose of developing,  
11 validating, or administering predictive tests, administering student  
12 aid programs, and improving instruction, if the studies are  
13 conducted in a manner that will not permit the personal  
14 identification of pupils or their parents by persons other than  
15 representatives of the organizations, the information will be  
16 destroyed when no longer needed for the purpose for which it is  
17 obtained, and the organization enters into a written agreement with  
18 the educational agency or institution that complies with Section  
19 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

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

29 (b) The officials and authorities to whom pupil records are  
30 disclosed pursuant to subdivision (e) of Section 48902 and  
31 subparagraph (I) of paragraph (1) of subdivision (a) shall certify  
32 in writing to the disclosing school district that the information  
33 shall not be disclosed to another party, except as provided under  
34 the federal Family Educational Rights and Privacy Act of 2001  
35 (20 U.S.C. Sec. 1232g) and state law, without the prior written  
36 consent of the parent of the pupil or the person identified as the  
37 holder of the pupil's educational rights.

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

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

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

15 49548. (a) The state board, in order to effect compliance with  
16 legislative findings expressed in Section 49547, shall restrict the  
17 criteria for the issuance of waivers from the requirements of Section  
18 49550 to feed children during a summer school session. A waiver  
19 shall be granted for a period not to exceed one year if either of the  
20 following conditions exists:

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

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

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

32 (iii) For purposes of this subdivision, “elementary school” means  
33 a public school that maintains kindergarten or any of grades 1 to  
34 8, inclusive.

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

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

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

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

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

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

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

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

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

34 (c) An application for a waiver shall be submitted no later than  
35 60 days before the last regular meeting of the state board before  
36 the commencement of the summer school session for which the  
37 waiver is sought.

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



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

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

- 8 (A) Ethnic subgroups.
- 9 (B) Socioeconomically disadvantaged pupils.
- 10 (C) English learners.
- 11 (D) Pupils with disabilities.

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

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

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

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

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

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

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

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

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

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

4 (ii) The number of pupils entering grade 9 for the first time in  
5 the school year three school years before the current school year,  
6 plus the number of pupils who transferred into the class graduating  
7 at the end of the current school year between the school year that  
8 was three school years before the current school year and the date  
9 of graduation, less the number of pupils who transferred out of the  
10 school between the school year that was three school years before  
11 the current school year and the date of graduation who were  
12 members of the class that is graduating at the end of the current  
13 school year.

14 (iii) Five-year graduation rates shall be calculated by taking the  
15 number of pupils who graduated on time for the current school  
16 year, which is considered to be four school years after the pupils  
17 entered grade 9 for the first time, and dividing that number by the  
18 total calculated in clause (iv).

19 (iv) The number of pupils entering grade 9 for the first time in  
20 the school year four years before the current school year, plus the  
21 number of pupils who transferred into the class graduating at the  
22 end of the current school year between the school year that was  
23 four school years before the current school year and the date of  
24 graduation, less the number of pupils who transferred out of the  
25 school between the school year that was four years before the  
26 current school year and the date of graduation who were members  
27 of the class that is graduating at the end of the current school year.

28 (v) Six-year graduation rates shall be calculated by taking the  
29 number of pupils who graduated on time for the current school  
30 year, which is considered to be five school years after the pupils  
31 entered grade 9 for the first time, and dividing that number by the  
32 total calculated in clause (vi).

33 (vi) The number of pupils entering grade 9 for the first time in  
34 the school year five years before the current school year, plus the  
35 number of pupils who transferred into the class graduating at the  
36 end of the current school year between the school year that was  
37 five school years before the current school year and the date of  
38 graduation, less the number of pupils who transferred out of the  
39 school between the school year that was five years before the

1 current school year and the date of graduation who were members  
2 of the class that is graduating at the end of the current school year.

3 (D) The inclusion of five- and six-year graduation rates for  
4 pupils in secondary schools shall meet the following requirements:

5 (i) Schools shall be granted one-half the credit in their API  
6 scores for graduating pupils in five years that they are granted for  
7 graduating pupils in four years.

8 (ii) Schools shall be granted one-quarter the credit in their API  
9 scores for graduating pupils in six years that they are granted for  
10 graduating pupils in four years.

11 (iii) Notwithstanding clauses (i) and (ii), schools shall be granted  
12 full credit in their API scores for graduating in five or six years a  
13 pupil with disabilities who graduates in accordance with his or her  
14 individualized education program.

15 (E) The pupil data collected for the API that comes from the  
16 achievement test administered pursuant to Section 60640 and the  
17 high school exit examination administered pursuant to Section  
18 60851, when fully implemented, shall be disaggregated by special  
19 education status, English learners, socioeconomic status, gender,  
20 and ethnic group. Only the test scores of pupils who were counted  
21 as part of the enrollment in the annual data collection of the  
22 California Basic Educational Data System for the current fiscal  
23 year and who were continuously enrolled during that year may be  
24 included in the test result reports in the API score of the school.

25 (F) (i) Commencing with the baseline API calculation in 2016,  
26 and for each year thereafter, results of the achievement test and  
27 other tests specified in subdivision (b) shall constitute no more  
28 than 60 percent of the value of the index for secondary schools.

29 (ii) In addition to the elements required by this paragraph, the  
30 Superintendent, with approval of the state board, may incorporate  
31 into the index for secondary schools valid, reliable, and stable  
32 measures of pupil preparedness for postsecondary education and  
33 career.

34 (G) Results of the achievement test and other tests specified in  
35 subdivision (b) shall constitute at least 60 percent of the value of  
36 the index for primary schools and middle schools.

37 (H) It is the intent of the Legislature that the state's system of  
38 public school accountability be more closely aligned with both the  
39 public's expectations for public education and the workforce needs  
40 of the state's economy. It is therefore necessary that the

1 accountability system evolve beyond its narrow focus on pupil test  
2 scores to encompass other valuable information about school  
3 performance, including, but not limited to, pupil preparedness for  
4 college and career, as well as the high school graduation rates  
5 already required by law.

6 (I) The Superintendent shall annually determine the accuracy  
7 of the graduation rate data. Notwithstanding any other law,  
8 graduation rates for pupils in dropout recovery high schools shall  
9 not be included in the API. For purposes of this subparagraph,  
10 “dropout recovery high school” means a high school in which 50  
11 percent or more of its pupils have been designated as dropouts  
12 pursuant to the exit/withdrawal codes developed by the department  
13 or left a school and were not otherwise enrolled in a school for a  
14 period of at least 180 days.

15 (J) To complement the API, the Superintendent, with the  
16 approval of the state board, may develop and implement a program  
17 of school quality review that features locally convened panels to  
18 visit schools, observe teachers, interview pupils, and examine pupil  
19 work, if an appropriation for this purpose is made in the annual  
20 Budget Act.

21 (K) The Superintendent shall annually provide to local  
22 educational agencies and the public a transparent and  
23 understandable explanation of the individual components of the  
24 API and their relative values within the API.

25 (L) An additional element chosen by the Superintendent and  
26 the state board for inclusion in the API pursuant to this paragraph  
27 shall not be incorporated into the API until at least one full school  
28 year after the state board’s decision to include the element into the  
29 API.

30 (b) Pupil scores from the following tests, when available and  
31 when found to be valid and reliable for this purpose, shall be  
32 incorporated into the API:

33 (1) The standards-based achievement tests provided for in  
34 Section 60642.5.

35 (2) The high school exit examination.

36 (c) Based on the API, the Superintendent shall develop, and the  
37 state board shall adopt, expected annual percentage growth targets  
38 for all schools based on their API baseline score from the previous  
39 year. Schools are expected to meet these growth targets through  
40 effective allocation of available resources. For schools below the

1 statewide API performance target adopted by the state board  
2 pursuant to subdivision (d), the minimum annual percentage growth  
3 target shall be 5 percent of the difference between the actual API  
4 score of a school and the statewide API performance target, or one  
5 API point, whichever is greater. Schools at or above the statewide  
6 API performance target shall have, as their growth target,  
7 maintenance of their API score above the statewide API  
8 performance target. However, the state board may set differential  
9 growth targets based on grade level of instruction and may set  
10 higher growth targets for the lowest performing schools because  
11 they have the greatest room for improvement. To meet its growth  
12 target, a school shall demonstrate that the annual growth in its API  
13 is equal to or more than its schoolwide annual percentage growth  
14 target and that all numerically significant pupil subgroups, as  
15 defined in subdivision (a), are making comparable improvement.

16 (d) Upon adoption of state performance standards by the state  
17 board, the Superintendent shall recommend, and the state board  
18 shall adopt, a statewide API performance target that includes  
19 consideration of performance standards and represents the  
20 proficiency level required to meet the state performance target.  
21 When the API is fully developed, schools, at a minimum, shall  
22 meet their annual API growth targets to be eligible for the  
23 Governor's Performance Award Program as set forth in Section  
24 52057. The state board may establish additional criteria that schools  
25 must meet to be eligible for the Governor's Performance Award  
26 Program.

27 (e) (1) A school with 11 to 99 pupils with valid test scores shall  
28 receive an API score with an asterisk that indicates less statistical  
29 certainty than API scores based on 100 or more test scores.

30 (2) A school annually shall receive an API score, unless the  
31 Superintendent determines that an API score would be an invalid  
32 measure of the performance of the school for one or more of the  
33 following reasons:

34 (A) Irregularities in testing procedures occurred.

35 (B) The data used to calculate the API score of the school are  
36 not representative of the pupil population at the school.

37 (C) Significant demographic changes in the pupil population  
38 render year-to-year comparisons of pupil performance invalid.

39 (D) The department discovers or receives information indicating  
40 that the integrity of the API score has been compromised.

1 (E) Insufficient pupil participation in the assessments included  
2 in the API.

3 (3) If a school has fewer than 100 pupils with valid test scores,  
4 the calculation of the API or adequate yearly progress pursuant to  
5 the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301  
6 et seq.) and federal regulations may be calculated over more than  
7 one annual administration of the tests administered pursuant to  
8 Section 60640 and the high school exit examination administered  
9 pursuant to Section 60851, consistent with regulations adopted by  
10 the state board.

11 (f) Only schools with 100 or more test scores contributing to  
12 the API may be included in the API rankings.

13 (g) The Superintendent, with the approval of the state board,  
14 shall develop an alternative accountability system for schools under  
15 the jurisdiction of a county board of education or a county  
16 superintendent of schools, community day schools, nonpublic,  
17 nonsectarian schools pursuant to Section 56366, and alternative  
18 schools serving high-risk pupils, including continuation high  
19 schools and opportunity schools. Schools in the alternative  
20 accountability system may receive an API score, but shall not be  
21 included in the API rankings.

22 SEC. 46. Section 60200.8 of the Education Code is amended  
23 to read:

24 60200.8. (a) Notwithstanding Section 60200.7, the state board  
25 may consider the adoption of a revised curriculum framework and  
26 evaluation criteria for instructional materials in history-social  
27 science.

28 (b) The department shall conduct work necessary to revise the  
29 curriculum framework and evaluation criteria for instructional  
30 materials in history-social science only after it has completed work  
31 related to the development of curriculum frameworks for the  
32 common core academic content standards pursuant to Section  
33 60207.

34 SEC. 47. Section 60209 of the Education Code is amended to  
35 read:

36 60209. For purposes of conducting an adoption of basic  
37 instructional materials for mathematics pursuant to Section 60207,  
38 all of the following shall apply:

39 (a) The department shall provide notice, pursuant to subdivision  
40 (b), to all publishers or manufacturers known to produce basic

1 instructional materials in that subject, post an appropriate notice  
2 on the Internet Web site of the department, and take other  
3 reasonable measures to ensure that appropriate notice is widely  
4 circulated to potentially interested publishers and manufacturers.

5 (b) The notice shall specify that each publisher or manufacturer  
6 choosing to participate in the adoption shall be assessed a fee based  
7 on the number of programs the publisher or manufacturer indicates  
8 will be submitted for review and the number of grade levels  
9 proposed to be covered by each program.

10 (c) The fee assessed pursuant to subdivision (d) shall be in an  
11 amount that does not exceed the reasonable costs to the department  
12 in conducting the adoption process. The department shall take  
13 reasonable steps to limit costs of the adoption and to keep the fee  
14 modest.

15 (d) The department, before incurring substantial costs for the  
16 adoption, shall require that a publisher or manufacturer that wishes  
17 to participate in the adoption first declare the intent to submit one  
18 or more specific programs for adoption and specify the specific  
19 grade levels to be covered by each program.

20 (1) After a publisher or manufacturer declares the intent to  
21 submit one or more programs and the grade levels to be covered  
22 by each program, the department shall assess a fee that shall be  
23 payable by the publisher or manufacturer even if the publisher or  
24 manufacturer subsequently chooses to withdraw a program or  
25 reduce the number of grade levels covered.

26 (2) A submission by a publisher or manufacturer shall not be  
27 reviewed for purposes of adoption until the fee assessed has been  
28 paid in full.

29 (e) (1) Upon the request of a small publisher or small  
30 manufacturer, the state board may reduce the fee for participation  
31 in the adoption.

32 (2) For purposes of this section, “small publisher” and “small  
33 manufacturer” mean an independently owned or operated publisher  
34 or manufacturer that is not dominant in its field of operation and  
35 that, together with its affiliates, has 100 or fewer employees, and  
36 has average annual gross receipts of ten million dollars  
37 (\$10,000,000) or less over the previous three years.

38 (f) If the department determines that there is little or no interest  
39 in participating in an adoption by publishers and manufacturers,  
40 the department shall recommend to the state board whether or not

1 the adoption shall be conducted, and the state board may choose  
2 not to conduct the adoption.

3 (g) Revenue derived from fees assessed pursuant to subdivision  
4 (d) shall be budgeted as reimbursements and subject to review  
5 through the annual budget process, and may be used to pay for  
6 costs associated with any adoption and for any costs associated  
7 with the review of instructional materials, including reimbursement  
8 of substitute costs for teacher reviewers and may be used to cover  
9 stipends for content review experts.

10 SEC. 48. Section 60605.87 of the Education Code is amended  
11 to read:

12 60605.87. (a) The department shall recommend, and the state  
13 board shall approve, evaluation criteria to guide the development  
14 and review of supplemental instructional materials for English  
15 learners.

16 (b) Notwithstanding any other law, and on a one-time basis, the  
17 department, on or before March 1, 2014, shall develop a list of  
18 supplemental instructional materials for beginning through  
19 advanced levels of proficiency for use in kindergarten and grades  
20 1 to 8, inclusive, that are aligned with the revised English language  
21 development standards adopted pursuant to Section 60811.3. The  
22 supplemental instructional materials shall provide a bridge between  
23 the current English language development standards and the revised  
24 English language development standards pursuant to Section  
25 60811.3 with the purpose of ensuring the supplemental instructional  
26 materials address the unique features of the English language  
27 development standards and remain consistent with the relevant  
28 elements of the evaluation criteria for English language arts  
29 supplemental instructional materials adopted pursuant to Section  
30 60605.86.

31 (c) (1) The department shall recommend, and the state board  
32 shall approve, content review experts to review, in an open and  
33 transparent process, supplemental instructional materials submitted  
34 for approval in the subject area of English language development.

35 (2) The majority of content review experts approved pursuant  
36 to paragraph (1) shall be elementary and secondary schoolteachers  
37 who are credentialed in English language arts, possess the  
38 appropriate state English learner authorization, and have five years  
39 of classroom experience instructing English learners. The content  
40 review experts also shall include appropriate persons possessing



1 English learner expertise from postsecondary educational  
2 institutions and school and school district curriculum administrators  
3 possessing English learner expertise, and other persons who are  
4 knowledgeable in English language arts and English language  
5 development.

6 (d) (1) On or before June 30, 2014, the state board shall do the  
7 following:

8 (A) Approve all, or a portion, of the list of supplemental  
9 instructional materials proposed by the department, taking into  
10 consideration the review of the content review experts and any  
11 other relevant information, as appropriate.

12 (B) Reject all, or a portion, of the list of supplemental  
13 instructional materials proposed by the department, taking into  
14 consideration the review of the content review experts and any  
15 other relevant information, as appropriate.

16 (2) If the state board rejects all, or a portion, of the list of  
17 supplemental instructional materials proposed by the department,  
18 or adds an item to the list, the state board, in a public meeting held  
19 pursuant to the Bagley-Keene Open Meeting Act (Article 9  
20 commencing with Section 11120) of Chapter 1 of Part 1 of  
21 Division 3 of Title 2 of the Government Code), shall provide  
22 written reasons for the removal or addition of an item on the list.  
23 The state board shall not approve a supplemental instructional  
24 material it adds to the list at the same time it provides its written  
25 reason for adding the material; instead, the state board shall  
26 approve the added material at a subsequent public meeting.

27 (e) (1) The governing board of a school district and a county  
28 board of education may approve supplemental instructional  
29 materials other than those approved by the state board pursuant to  
30 subdivision (d) if the governing board of a school district or county  
31 board of education determines that other supplemental instructional  
32 materials are aligned with the revised English language  
33 development standards adopted pursuant to Section 60811.3 and  
34 meet the needs of pupils of the district who are English learners.  
35 The governing board of a school district or the county board of  
36 education may only approve supplemental instructional materials  
37 that comply with all of the following:

38 (A) The evaluation criteria approved pursuant to subdivision  
39 (a).

40 (B) Section 60226.

1 (C) Subdivision (h).

2 (D) Article 4 (commencing with Section 60060) of Chapter 1.

3 (2) (A) A supplemental instructional material approved by a  
4 governing board of a school district or county board of education  
5 pursuant to this subdivision that is in the subject area of English  
6 language development shall be reviewed by content review experts  
7 chosen by the governing board.

8 (B) The majority of the content review experts chosen pursuant  
9 to subparagraph (A) shall be elementary and secondary  
10 schoolteachers who are credentialed in English language arts,  
11 possess the appropriate state English learner authorization, and  
12 have five years of classroom experience instructing English  
13 learners.

14 (C) The content review experts also shall include appropriate  
15 persons possessing English learner expertise from postsecondary  
16 educational institutions and school and school district curriculum  
17 administrators possessing English learner expertise, and other  
18 persons who are knowledgeable in English language arts and  
19 English language development.

20 (f) Publishers choosing to submit supplemental instructional  
21 materials for approval by the state board shall submit standards  
22 maps.

23 (g) (1) Before approving supplemental instructional materials  
24 pursuant to this section, the state board shall review those  
25 instructional materials for academic content, social content, and  
26 instructional support to teachers and pupils. Supplemental  
27 instructional materials approved by the state board pursuant to this  
28 section shall meet required program criteria for grade-level  
29 programs and shall include materials for use by teachers.

30 (2) Before approving supplemental instructional materials  
31 pursuant to this section, the governing board of a school district  
32 or county board of education shall review those instructional  
33 materials for academic content and instructional support to teachers  
34 and pupils who are English learners. Supplemental instructional  
35 materials approved by the governing board of a school district or  
36 county board of education pursuant to this section shall meet  
37 required program criteria for grade-level programs and shall include  
38 materials for use by teachers.

1 (h) Supplemental instructional materials approved pursuant to  
2 this section shall comply with the social content review  
3 requirements pursuant to Section 60050.

4 (i) The department shall maintain on its Internet Web site the  
5 list of supplemental instructional materials approved by the state  
6 board pursuant to subdivision (d).

7 (j) This section shall become inoperative on July 1, 2014, and,  
8 as of July 1, 2015, is repealed, unless a later enacted statute, that  
9 becomes operative on or before July 1, 2015, deletes or extends  
10 the dates on which it becomes inoperative and is repealed.

11 SEC. 49. Section 60852.1 of the Education Code is amended  
12 to read:

13 60852.1. (a) The Superintendent shall recommend, and the  
14 state board shall select, members of a panel that shall convene to  
15 make recommendations regarding alternative means for eligible  
16 pupils with disabilities to demonstrate that they have achieved the  
17 same level of academic achievement in the content standards in  
18 English language arts or mathematics, or both, required for passage  
19 of the high school exit examination.

20 (1) The panel shall be composed of educators and other  
21 individuals who have experience with the population of pupils  
22 with disabilities eligible for alternative means of demonstrating  
23 academic achievement, as defined in Section 60852.2, and  
24 educators and other individuals who have expertise with multiple  
25 forms of assessment. The panel shall consult with experts in other  
26 states that offer alternative means for pupils with disabilities to  
27 demonstrate academic achievement. A majority of the panel shall  
28 be classroom teachers.

29 (2) The panel shall make findings and recommendations  
30 regarding all of the following:

31 (A) Specific options for alternative assessments, submission of  
32 evidence, or other alternative means by which eligible pupils with  
33 disabilities may demonstrate that they have achieved the same  
34 level of academic achievement in the content standards in English  
35 language arts or mathematics, or both, required for passage of the  
36 high school exit examination.

37 (B) Scoring or other evaluation systems designed to ensure that  
38 the eligible pupil with a disability has achieved the same  
39 competence in the content standards required for passage of the  
40 high school exit examination.

1 (C) Processes to ensure that the form, content, and scoring of  
2 assessments, evidence, or other means of demonstrating academic  
3 achievement are applied uniformly across the state.

4 (D) Estimates of one-time or ongoing costs, and whether each  
5 option should be implemented on a statewide or regional basis, or  
6 both.

7 (3) The panel shall present its options and make its findings and  
8 recommendations to the Superintendent and to the state board by  
9 October 1, 2009.

10 (b) For those portions of, or those academic content standards  
11 assessed by, the high school exit examination for which the state  
12 board determines it is feasible to create alternative means by which  
13 eligible pupils with disabilities may demonstrate the same level  
14 of academic achievement required for passage of the high school  
15 exit examination, the state board, taking into consideration the  
16 findings and recommendations of the panel, shall adopt regulations  
17 for alternative means by which eligible pupils with disabilities, as  
18 defined in Section 60852.2, may demonstrate that they have  
19 achieved the same level of academic achievement in the content  
20 standards required for passage of the high school exit examination.  
21 The regulations shall include appropriate timelines and the manner  
22 in which eligible pupils with disabilities and school districts shall  
23 be timely notified of the results.

24 SEC. 50. Section 66407 of the Education Code is amended to  
25 read:

26 66407. (a) (1) The publisher of a textbook, or an agent or  
27 employee of the publisher, shall provide a prospective purchaser  
28 of the textbook with all of the following:

29 (A) A list of all the products offered for sale by the publisher  
30 germane to the prospective purchaser's subject area of interest.

31 (B) For a product listed pursuant to subparagraph (A), the  
32 wholesale or retail price of the product, and the estimated length  
33 of time the publisher intends to keep the product on the market.

34 (C) For each new edition of a product listed pursuant to  
35 subparagraph (A), a list of the substantial content differences or  
36 changes between the new edition and the previous edition of the  
37 textbook.

38 (2) The publisher shall make the lists required by paragraph (1)  
39 available to a prospective purchaser at the commencement of a  
40 sales interaction, including, but not necessarily limited to, a sales

1 interaction conducted in person, by telephone, or electronically.  
2 The publisher shall also post in a prominent position on its Internet  
3 Web site the lists required by paragraph (1).

4 (b) As used in this section, the following terms have the  
5 following meanings:

6 (1) “Product” means each version, including, but not necessarily  
7 limited to, a version in a digital format, of a textbook, or set of  
8 textbooks, in a particular subject area, including, but not necessarily  
9 limited to, a supplemental item, whether or not the supplemental  
10 item is sold separately or together with a textbook.

11 (2) “Publisher” has the same meaning as defined in subdivision  
12 (b) of Section 66406.7.

13 (3) “Purchaser” means a faculty member of a public or private  
14 postsecondary educational institution who selects the textbooks  
15 assigned to students.

16 (4) “Textbook” has the same meaning as defined in subdivision  
17 (b) of Section 66406.7.

18 SEC. 51. Section 81378.1 of the Education Code is amended  
19 to read:

20 81378.1. (a) The governing board of a community college  
21 district may, without complying with any other provision of this  
22 article, let, in the name of the district, any buildings, grounds, or  
23 space therein, together with any personal property located thereon,  
24 not needed for academic activities, upon the terms and conditions  
25 agreed upon by the governing board and the lessee for a period of  
26 more than five days but less than five years, as determined by the  
27 governing board. Before executing the lease, the governing board  
28 shall include in an agenda of a meeting of the board open to the  
29 public a description of the proposed lease and an explanation of  
30 the methodology used to establish the lease rate and for determining  
31 the fair market value of the lease.

32 (b) The governing board shall give public notice before taking  
33 any action pursuant to subdivision (a). The notice shall include a  
34 description of the governing board’s intended action. The notice  
35 shall be printed once a week for three successive weeks prior to  
36 the board meeting described in subdivision (a) in a newspaper of  
37 general circulation that is published at least once a week.

38 (c) The governing board shall include, as a condition in any  
39 agreement to let any buildings, grounds, or space therein, together  
40 with any personal property located thereon, a provision that the

1 agreement shall be subject to renegotiation and may be rescinded  
2 after 60 days' notice to the lessee if the governing board determines  
3 at any time during the term of the agreement that the buildings,  
4 grounds, or space therein subject to the agreement are needed for  
5 academic activities. Any revenue derived pursuant to the agreement  
6 shall be retained for the exclusive use of the community college  
7 district whose buildings, grounds, or space therein are the basis of  
8 the agreement and shall be used to supplement, but not supplant,  
9 any state funding. Any buildings, grounds, or space therein let by  
10 the district shall be included as space actually available for use by  
11 the college in any calculations related to any plan for capital  
12 construction submitted to the board of governors pursuant to  
13 Chapter 4 (commencing with Section 81800), or any other law.

14 (d) The authority of a governing board under this section does  
15 not apply to the letting of an entire campus.

16 (e) The use of any buildings, grounds, or space therein, together  
17 with any personal property located thereon, let by the governing  
18 board pursuant to this section shall be consistent with all applicable  
19 zoning ordinances and regulations.

20 SEC. 52. Section 88620 of the Education Code is amended to  
21 read:

22 88620. The following definitions govern the construction of  
23 this part:

24 (a) "Board of governors" means the Board of Governors of the  
25 California Community Colleges.

26 (b) "Business Resource Assistance and Innovation Network"  
27 means the network of projects and programs that comprise the  
28 California Community Colleges Economic and Workforce  
29 Development Program.

30 (c) "California Community Colleges Economic and Workforce  
31 Development Program" and "economic and workforce development  
32 program" mean the program.

33 (d) "Career pathways," and "career ladders," or "career lattices"  
34 mean an identified series of positions, work experiences, or  
35 educational benchmarks or credentials that offer occupational and  
36 financial advancement within a specified career field or related  
37 fields over time.

38 (e) (1) "Center" means a comprehensive program of services  
39 offered by one or more community colleges to an economic region  
40 of the state in accordance with criteria established by the

1 chancellor’s office for designation as an economic and workforce  
2 development program center. Center services shall be designed to  
3 respond to the statewide strategic priorities pursuant to the mission  
4 of the community colleges’ economic and workforce development  
5 program, and to be consistent with programmatic priorities,  
6 competitive and emerging industry sectors and industry clusters,  
7 identified economic development, career technical education,  
8 business development, and continuous workforce training needs  
9 of a region. Centers shall provide a foundation for a long-term,  
10 sustained relationship with businesses, labor, colleges, and other  
11 workforce education and training delivery systems, such as local  
12 workforce investment boards, in the region.

13 (2) A center shall support, develop, and deliver direct services  
14 to students, businesses, colleges, labor organizations, employees,  
15 and employers. For purposes of this subdivision, direct services  
16 include, but are not necessarily limited to, data analysis both of  
17 labor market information and college performance; intraregion  
18 and multiregion sector coordination and logistics; inventory of  
19 community college and other assets relevant to meeting a labor  
20 market need; curriculum development, curriculum model  
21 development, or job task analysis development; articulation of  
22 curriculum in a career pathway or career lattice or in a system of  
23 stackable credentials; faculty training; calibration to a career  
24 readiness or other assessment; assessment administration; career  
25 guidance module development or counseling; convenings, such  
26 as seminars, workshops, conferences, and training; facilitating  
27 collaboration between faculty working in related disciplines and  
28 sectors; upgrading, leveraging, and developing technology; and  
29 other educational services. The establishment and maintenance of  
30 the centers is under the sole authority of the chancellor’s office in  
31 order to preserve the flexibility of the system to adapt to labor  
32 market needs and to integrate resources.

33 (f) “Chancellor” means the Chancellor of the California  
34 Community Colleges.

35 (g) “Economic security” means, with respect to a worker,  
36 earning a wage sufficient to adequately support a family and to,  
37 over time, save money for emergency expenses and adequate  
38 retirement income, the sufficiency of which is determined  
39 considering a variety of factors including household size, the cost

1 of living in the worker’s community, and other factors that may  
2 vary by region.

3 (h) “High-priority occupation” means an occupation that has a  
4 significant presence in a targeted industry sector or industry cluster,  
5 is in demand by employers, and pays or leads to payment of high  
6 wages.

7 (i) “Industry cluster” means a geographic concentration or  
8 emerging concentration of interdependent industries with direct  
9 service, supplier, and research relationships, or independent  
10 industries that share common resources in a given regional  
11 economy or labor market. An industry cluster is a group of  
12 employers closely linked by a common product or services,  
13 workforce needs, similar technologies, and supply chains in a given  
14 regional economy or labor market.

15 (j) “Industry-driven regional collaborative” means a regional  
16 public, private, or other community organizational structure that  
17 jointly defines priorities, delivers services across programs, sectors,  
18 and in response to, or driven by, industry needs. The  
19 industry-driven regional collaborative projects meet the needs and  
20 fill gaps in services that respond to regional business, employee,  
21 and labor needs. These service-delivery structures offer flexibility  
22 to local communities and partners to meet the identified needs in  
23 an economic development region. Industry-driven regional  
24 collaboratives are broadly defined to allow maximum local  
25 autonomy in developing projects responding to the needs of  
26 business, industry, and labor.

27 (k) “Industry sector” means those firms that produce similar  
28 products or provide similar services using somewhat similar  
29 business processes.

30 (l) “Initiative” is an identified strategic priority area that is  
31 organized statewide, but is a regionally based effort to develop  
32 and implement innovative solutions designed to facilitate the  
33 development, implementation, and coordination of community  
34 college economic development and related programs and services.  
35 Each initiative shall be workforce and business development driven  
36 by a statewide committee made up of community college faculty  
37 and administrators and practitioners and managers from business,  
38 labor, and industry. Centers, industry-driven regional  
39 collaboratives, and other economic and workforce development  
40 programs performing services as a part of the implementation of



1 an initiative shall coordinate services statewide and within regions  
2 of the state, as appropriate.

3 (m) “Job development incentive training” means programs that  
4 provide incentives to employers to create entry-level positions in  
5 their businesses, or through their suppliers or prime customers, for  
6 welfare recipients and the working poor.

7 (n) “Matching resources” means any combination of public or  
8 private resources, either cash or in-kind, derived from sources  
9 other than the economic and workforce development program  
10 funds appropriated by the annual Budget Act, that are determined  
11 to be necessary for the success of the project to which they are  
12 applied. The criteria for in-kind resources shall be developed by  
13 the board of governors, with advice from the chancellor and the  
14 California Community Colleges Economic and Workforce  
15 Development Program Advisory Committee, and shall be consistent  
16 with generally accepted accounting practices for state and federal  
17 matching requirements. The ratio of matching resources to  
18 economic and workforce development program funding shall be  
19 determined by the board of governors.

20 (o) “Performance improvement training” means training  
21 delivered by a community college that includes all of the following:

22 (1) An initial needs assessment process that identifies both  
23 training and nontraining issues that need to be addressed to improve  
24 individual and organizational performance.

25 (2) Consultation with employers to develop action plans that  
26 address business or nonprofit performance improvements.

27 (3) Training programs that link individual performance  
28 requirements with quantifiable business measures, resulting in  
29 demonstrable productivity gains, and, as appropriate, job retention,  
30 job creation, improvement in wages, or attainment of wages that  
31 provide economic security.

32 (p) “Program” means the California Community Colleges  
33 Economic and Workforce Development Program established under  
34 this part.

35 (q) “Region” means a geographic area of the state defined by  
36 economic and labor market factors containing at least one industry  
37 cluster and the cities, counties, or community college districts, or  
38 all of them, in the industry cluster’s geographic area. For the  
39 purposes of this chapter, “California Community College economic  
40 development regions” shall be designated by the board of governors

1 based on factors, including, but not necessarily limited to, all of  
2 the following:

3 (1) Regional economic development and training needs of  
4 business and industry.

5 (2) Regional collaboration, as appropriate, among community  
6 colleges and districts, and existing economic development,  
7 continuous workforce improvement, technology deployment, and  
8 business development.

9 (3) Other state economic development definitions of regions.

10 (r) “Sector strategies” means prioritizing investments in  
11 competitive and emerging industry sectors and industry clusters  
12 on the basis of labor market and other economic data that indicate  
13 strategic growth potential, especially with regard to jobs and  
14 income. Sector strategies focus workforce investment in education  
15 and workforce training programs that are likely to lead to  
16 high-wage jobs or to entry-level jobs with well-articulated career  
17 pathways into high-wage jobs. Sector strategies effectively boost  
18 labor productivity or reduce business barriers to growth and  
19 expansion stemming from workforce supply problems, including  
20 skills gaps, and occupational shortages by directing resources and  
21 making investments to plug skills gaps and provide education and  
22 training programs for high-priority occupations. Sector strategies  
23 may be implemented using articulated career pathways or career  
24 lattices and a system of stackable credentials. Sector strategies  
25 often target underserved communities, disconnected youth,  
26 incumbent workers, and recently separated military veterans.  
27 Cluster-based sector strategies focus workforce and economic  
28 development on those sectors that have demonstrated a capacity  
29 for economic growth and job creation in a particular geographic  
30 area. Industry clusters are similar to industry sectors, but the focus  
31 is on a geographic concentration of interdependent industries.

32 (s) “Skills panel” means a collaboration which brings together  
33 multiple employers from an industry sector or industry cluster with  
34 career technical educators, including, but not limited to, community  
35 college career technical education faculty, and other stakeholders  
36 which may include workers and organized labor to address  
37 common workforce needs. Skills panels assess workforce training  
38 and education needs through the identification of assets relevant  
39 to industry need, produce curricula models, perform job task  
40 analysis, define how curricula articulate into career pathways or

1 career lattices or a system of stackable credentials, calibrate career  
2 readiness, develop other assessment tools, and produce career  
3 guidance tools.

4 (t) “Stackable credentials” means a progression of training  
5 modules, credentials, or certificates that build on one another and  
6 are linked to educational and career advancement.

7 SEC. 53. Section 2162 of the Elections Code is amended to  
8 read:

9 2162. (a) No affidavits of registration other than those provided  
10 by the Secretary of State to the county elections officials or the  
11 national voter registration forms authorized pursuant to the federal  
12 National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg  
13 et seq.) shall be used for the registration of voters.

14 (b) A voter registration card shall not be altered, defaced, or  
15 changed in any way, other than by the insertion of a mailing  
16 address and the affixing of postage, if mailed, or as otherwise  
17 specifically authorized by the Secretary of State, prior to  
18 distribution of the cards.

19 (c) The affidavit portion of a voter registration card shall not  
20 be marked, stamped, or partially or fully completed by a person  
21 other than an elector attempting to register to vote or by a person  
22 assisting the elector in completing the affidavit at the request of  
23 the elector.

24 SEC. 54. Section 2224 of the Elections Code is amended to  
25 read:

26 2224. (a) If a voter has not voted in an election within the  
27 preceding four years, and his or her residence address, name, or  
28 party affiliation has not been updated during that time, the county  
29 elections official may send an alternate residency confirmation  
30 postcard. The use of this postcard may be sent subsequent to NCOA  
31 or sample ballot returns, but shall not be used in the residency  
32 confirmation process conducted under Section 2220. The postcard  
33 shall be forwardable, including a postage-paid and preaddressed  
34 return form to enable the voter to verify or correct the address  
35 information, and shall be in substantially the following form:

36 “If the person named on the postcard is not at this address,  
37 PLEASE help keep the voter rolls current and save taxpayer dollars  
38 by returning this postcard to your mail carrier.”

39 “IMPORTANT NOTICE”

1 “According to our records you have not voted in any election  
2 during the past four years, which may indicate that you no longer  
3 reside in \_\_\_\_ County. If you continue to reside in this county you  
4 must confirm your residency address in order to remain on the  
5 active voter list and receive election materials in the mail.”

6 “If confirmation has not been received within 15 days, you may  
7 be required to provide proof of your residence address in order to  
8 vote at future elections. If you no longer live in \_\_\_\_ County, you  
9 must reregister at your new residence address in order to vote in  
10 the next election. California residents may obtain a mail registration  
11 form by calling the county elections office or the Secretary of  
12 State’s office.”

13 (b) The use of a toll-free number to confirm the old residence  
14 address is optional. Any change to a voter’s address shall be  
15 received in writing.

16 (c) A county using the alternate residency confirmation  
17 procedure shall notify all voters of the procedure in the sample  
18 ballot pamphlet or in a separate mailing.

19 SEC. 55. Section 2225 of the Elections Code is amended to  
20 read:

21 2225. (a) Based on change-of-address data received from the  
22 United States Postal Service or its licensees, the county elections  
23 official shall send a forwardable notice, including a postage-paid  
24 and preaddressed return form, to enable the voter to verify or  
25 correct address information.

26 Notification received through NCOA or Operation Mail that a  
27 voter has moved and has given no forwarding address shall not  
28 require the mailing of a forwardable notice to that voter.

29 (b) If postal service change-of-address data indicates that the  
30 voter has moved to a new residence address in the same county,  
31 the forwardable notice shall be in substantially the following form:

32  
33 “We have received notification that the voter has moved to a  
34 new residence address in \_\_\_\_ County. You will be registered to  
35 vote at your new address unless you notify our office within 15  
36 days that the address to which this card was mailed is not a change  
37 of your permanent residence. You must notify our office by either  
38 returning the attached postage-paid postcard, or by calling toll  
39 free. If this is not a permanent residence, and if you do not notify

1 us within 15 days, you may be required to provide proof of your  
2 residence address in order to vote at future elections.”

3  
4 (c) If postal service change-of-address data indicates that the  
5 voter has moved to a new address in another county, the  
6 forwardable notice shall be in substantially the following form:

7  
8 “We have received notification that you have moved to a new  
9 address not in \_\_\_\_ County. Please use the attached postage-paid  
10 postcard to: (1) advise us if this is or is not a permanent change of  
11 residence address, or (2) to advise us if our information is incorrect.  
12 If you do not return this card within 15 days and continue to reside  
13 in \_\_\_\_ County, you may be required to provide proof of your  
14 residence address in order to vote at future elections and, if you  
15 do not offer to vote at any election in the period between the date  
16 of this notice and the second federal general election following  
17 this notice, your voter registration will be canceled and you will  
18 have to reregister in order to vote. If you no longer live in \_\_\_\_  
19 County, you must reregister at your new residence address in order  
20 to vote in the next election. California residents may obtain a mail  
21 registration form by calling the county elections officer or  
22 1-800-345-VOTE.”

23  
24 (d) If postal service change-of-address data received from a  
25 nonforwardable mailing indicates that a voter has moved and left  
26 no forwarding address, a forwardable notice shall be sent in  
27 substantially the following form:

28  
29 “We are attempting to verify postal notification that the voter to  
30 whom this card is addressed has moved and left no forwarding  
31 address. If the person receiving this card is the addressed voter,  
32 please confirm your continued residence or provide current  
33 residence information on the attached postage-paid postcard within  
34 15 days. If you do not return this card and continue to reside in  
35 \_\_\_\_ County, you may be required to provide proof of your  
36 residence address in order to vote at future elections and, if you  
37 do not offer to vote at any election in the period between the date  
38 of this notice and the second federal general election following  
39 this notice, your voter registration will be cancelled and you will  
40 have to reregister in order to vote. If you no longer live in \_\_\_\_

1 County, you must reregister at your new residence address in order  
2 to vote in the next election. California residents may obtain a mail  
3 registration form by calling the county elections office or the  
4 Secretary of State's office.”

5  
6 (e) The use of a toll-free number to confirm the old residence  
7 address is optional. Any change to the voter address must be  
8 received in writing.

9 SEC. 56. Section 3111 of the Elections Code is amended to  
10 read:

11 3111. If a military or overseas voter is unable to appear at his  
12 or her polling place because of being recalled to service after the  
13 final day for making application for a vote by mail ballot, but  
14 before 5 p.m. on the day before the day of election, he or she may  
15 appear before the elections official in the county in which the  
16 military or overseas voter is registered or, if within the state, in  
17 the county in which he or she is recalled to service and make  
18 application for a vote by mail ballot, which may be submitted by  
19 facsimile, or by electronic mail or online transmission if the  
20 elections official makes the transmission option available. The  
21 elections official shall deliver to him or her a vote by mail ballot  
22 which may be voted in the elections official's office or voted  
23 outside the elections official's office on or before the close of the  
24 polls on the day of election and returned as are other vote by mail  
25 ballots. To be counted, the ballot shall be returned to the elections  
26 official's office in person, by facsimile transmission, or by an  
27 authorized person on or before the close of the polls on the day of  
28 the election. If the military or overseas voter appears in the county  
29 in which he or she is recalled to service, rather than the county to  
30 which he or she is registered, the elections official shall coordinate  
31 with the elections official in the county in which the military or  
32 overseas voter is registered to provide the ballot that contains the  
33 appropriate measures and races for the precinct in which the  
34 military or overseas voter is registered.

35 SEC. 57. Section 13115 of the Elections Code is amended to  
36 read:

37 13115. The order in which all state measures that are to be  
38 submitted to the voters shall appear on the ballot is as follows:

39 (a) Bond measures, including those proposed by initiative, in  
40 the order in which they qualify.

1 (b) Constitutional amendments, including those proposed by  
2 initiative, in the order in which they qualify.

3 (c) Legislative measures, other than those described in  
4 subdivision (a) or (b), in the order in which they are approved by  
5 the Legislature.

6 (d) Initiative measures, other than those described in subdivision  
7 (a) or (b), in the order in which they qualify.

8 (e) Referendum measures, in the order in which they qualify.

9 SEC. 58. Section 21000 of the Elections Code is amended to  
10 read:

11 21000. The county elections official in each county shall  
12 compile and make available to the Legislature or any appropriate  
13 committee of the Legislature any information and statistics that  
14 may be necessary for use in connection with the reapportionment  
15 of legislative districts, including, but not limited to, precinct maps  
16 indicating the boundaries of municipalities, school districts, judicial  
17 districts, Assembly districts, senatorial districts, and congressional  
18 districts, lists showing the election returns for each precinct, and  
19 election returns for each precinct reflecting the vote total for all  
20 ballots cast, including both vote by mail ballots and ballots cast at  
21 polling places, compiled pursuant to Section 15321 in the county  
22 at each statewide election. If the county elections official stores  
23 the information and statistics in data-processing files, he or she  
24 shall make the files available, along with whatever documentation  
25 shall be necessary in order to allow the use of the files by the  
26 appropriate committee of the Legislature and shall retain these  
27 files until the next reapportionment has been completed.

28 SEC. 59. Section 3047 of the Family Code is amended to read:

29 3047. (a) A party's absence, relocation, or failure to comply  
30 with custody and visitation orders shall not, by itself, be sufficient  
31 to justify a modification of a custody or visitation order if the  
32 reason for the absence, relocation, or failure to comply is the party's  
33 activation to military duty or temporary duty, mobilization in  
34 support of combat or other military operation, or military  
35 deployment out of state.

36 (b) (1) If a party with sole or joint physical custody or visitation  
37 receives temporary duty, deployment, or mobilization orders from  
38 the military that require the party to move a substantial distance  
39 from his or her residence or otherwise has a material effect on the  
40 ability of the party to exercise custody or visitation rights, any

1 necessary modification of the existing custody order shall be  
2 deemed a temporary custody order made without prejudice, which  
3 shall be subject to review and reconsideration upon the return of  
4 the party from military deployment, mobilization, or temporary  
5 duty.

6 (2) If the temporary order is reviewed upon return of the party  
7 from military deployment, mobilization, or temporary duty, there  
8 shall be a presumption that the custody order shall revert to the  
9 order that was in place before the modification, unless the court  
10 determines that it is not in the best interest of the child. The court  
11 shall not, as part of its review of the temporary order upon the  
12 return of the deploying party, order a child custody evaluation  
13 under Section 3111 of this code or Section 730 of the Evidence  
14 Code, unless the party opposing reversion of the order makes a  
15 prima facie showing that reversion is not in the best interest of the  
16 child.

17 (3) (A) If the court makes a temporary custody order, it shall  
18 consider any appropriate orders to ensure that the relocating party  
19 can maintain frequent and continuing contact with the child by  
20 means that are reasonably available.

21 (B) Upon a motion by the relocating party, the court may grant  
22 reasonable visitation rights to a stepparent, grandparent, or other  
23 family member if the court does all of the following:

24 (i) Finds that there is a preexisting relationship between the  
25 family member and the child that has engendered a bond such that  
26 visitation is in the best interest of the child.

27 (ii) Finds that the visitation will facilitate the child's contact  
28 with the relocating party.

29 (iii) Balances the interest of the child in having visitation with  
30 the family member against the right of the parents to exercise  
31 parental authority.

32 (C) Nothing in this paragraph shall increase the authority of the  
33 persons described in subparagraph (B) to seek visitation orders  
34 independently.

35 (D) The granting of visitation rights to a nonparent pursuant to  
36 subparagraph (B) shall not impact the calculation of child support.

37 (c) If a party's deployment, mobilization, or temporary duty  
38 will have a material effect on his or her ability, or anticipated  
39 ability, to appear in person at a regularly scheduled hearing, the  
40 court shall do either of the following:



1 (1) Upon motion of the party, hold an expedited hearing to  
2 determine custody and visitation issues prior to the departure of  
3 the party.

4 (2) Upon motion of the party, allow the party to present  
5 testimony and evidence and participate in court-ordered child  
6 custody mediation by electronic means, including, but not limited  
7 to, telephone, video teleconferencing, or the Internet, to the extent  
8 that this technology is reasonably available to the court and protects  
9 the due process rights of all parties.

10 (d) A relocation by a nondeploying parent during a period of a  
11 deployed parent's absence while a temporary modification order  
12 for a parenting plan is in effect shall not, by itself, terminate the  
13 exclusive and continuing jurisdiction of the court for purposes of  
14 later determining custody or parenting time under this chapter.

15 (e) When a court of this state has issued a custody or visitation  
16 order, the absence of a child from this state during the deployment  
17 of a parent shall be considered a "temporary absence" for purposes  
18 of the Uniform Child Custody Jurisdiction and Enforcement Act  
19 (Part 3 (commencing with Section 3400)), and the court shall retain  
20 exclusive continuing jurisdiction under Section 3422.

21 (f) The deployment of a parent shall not be used as a basis to  
22 assert inconvenience of the forum under Section 3427.

23 (g) For purposes of this section, the following terms have the  
24 following meanings:

25 (1) "Deployment" means the temporary transfer of a member  
26 of the Armed Forces in active-duty status in support of combat or  
27 some other military operation.

28 (2) "Mobilization" means the transfer of a member of the  
29 National Guard or Military Reserve to extended active-duty status,  
30 but does not include National Guard or Military Reserve annual  
31 training.

32 (3) "Temporary duty" means the transfer of a service member  
33 from one military base to a different location, usually another base,  
34 for a limited period of time to accomplish training or to assist in  
35 the performance of a noncombat mission.

36 (h) It is the intent of the Legislature that this section provide a  
37 fair, efficient, and expeditious process to resolve child custody  
38 and visitation issues when a party receives temporary duty,  
39 deployment, or mobilization orders from the military, as well as  
40 at the time that the party returns from service and files a motion

1 to revert back to the custody order in place before the deployment.  
2 The Legislature intends that family courts shall, to the extent  
3 feasible within existing resources and court practices, prioritize  
4 the calendaring of these cases, avoid unnecessary delay or  
5 continuances, and ensure that parties who serve in the military are  
6 not penalized for their service by a delay in appropriate access to  
7 their children.

8 SEC. 60. Section 3200.5 of the Family Code is amended to  
9 read:

10 3200.5. (a) Any standards for supervised visitation providers  
11 adopted by the Judicial Council pursuant to Section 3200 shall  
12 conform to this section. A provider, as described in Section 3200,  
13 shall be a professional provider or nonprofessional provider.

14 (b) In any case in which the court has determined that there is  
15 domestic violence or child abuse or neglect, as defined in Section  
16 11165.6 of the Penal Code, and the court determines supervision  
17 is necessary, the court shall consider whether to use a professional  
18 or nonprofessional provider based upon the child's best interest.

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

21 (1) "Nonprofessional provider" means any person who is not  
22 paid for providing supervised visitation services. Unless otherwise  
23 ordered by the court or stipulated by the parties, the  
24 nonprofessional provider shall:

25 (A) Have no record of a conviction for child molestation, child  
26 abuse, or other crimes against a person.

27 (B) Have proof of automobile insurance if transporting the child.

28 (C) Have no current or past court order in which the provider  
29 is the person being supervised.

30 (D) Agree to adhere to and enforce the court order regarding  
31 supervised visitation.

32 (2) "Professional provider" means any person paid for providing  
33 supervised visitation services, or an independent contractor,  
34 employee, intern, or volunteer operating independently or through  
35 a supervised visitation center or agency. The professional provider  
36 shall:

37 (A) Be at least 21 years of age.

38 (B) Have no record of a conviction for driving under the  
39 influence (DUI) within the last five years.

40 (C) Not have been on probation or parole for the last 10 years.

- 1 (D) Have no record of a conviction for child molestation, child
- 2 abuse, or other crimes against a person.
- 3 (E) Have proof of automobile insurance if transporting the child.
- 4 (F) Have no civil, criminal, or juvenile restraining orders within
- 5 the last 10 years.
- 6 (G) Have no current or past court order in which the provider
- 7 is the person being supervised.
- 8 (H) Be able to speak the language of the party being supervised
- 9 and of the child, or the provider must provide a neutral interpreter
- 10 over 18 years of age who is able to do so.
- 11 (I) Agree to adhere to and enforce the court order regarding
- 12 supervised visitation.
- 13 (J) Meet the training requirements set forth in subdivision (d).
- 14 (d) (1) Professional providers shall have received 24 hours of
- 15 training that includes training in the following subjects:
- 16 (A) The role of a professional provider.
- 17 (B) Child abuse reporting laws.
- 18 (C) Recordkeeping procedures.
- 19 (D) Screening, monitoring, and termination of visitation.
- 20 (E) Developmental needs of children.
- 21 (F) Legal responsibilities and obligations of a provider.
- 22 (G) Cultural sensitivity.
- 23 (H) Conflicts of interest.
- 24 (I) Confidentiality.
- 25 (J) Issues relating to substance abuse, child abuse, sexual abuse,
- 26 and domestic violence.
- 27 (K) Basic knowledge of family and juvenile law.
- 28 (2) Professional providers shall sign a declaration or any Judicial
- 29 Council form that they meet the training and qualifications of a
- 30 provider.
- 31 (e) The ratio of children to a professional provider shall be
- 32 contingent on:
- 33 (1) The degree of risk factors present in each case.
- 34 (2) The nature of supervision required in each case.
- 35 (3) The number and ages of the children to be supervised during
- 36 a visit.
- 37 (4) The number of people visiting the child during the visit.
- 38 (5) The duration and location of the visit.
- 39 (6) The experience of the provider.
- 40 (f) Professional providers of supervised visitation shall:

- 1 (1) Advise the parties before commencement of supervised  
2 visitation that no confidential privilege exists.
- 3 (2) Report suspected child abuse to the appropriate agency, as  
4 provided by law, and inform the parties of the provider's obligation  
5 to make those reports.
- 6 (3) Suspend or terminate visitation under subdivision (h).
- 7 (g) Professional providers shall:
- 8 (1) Prepare a written contract to be signed by the parties before  
9 commencement of the supervised visitation. The contract should  
10 inform each party of the terms and conditions of supervised  
11 visitation.
- 12 (2) Review custody and visitation orders relevant to the  
13 supervised visitation.
- 14 (3) Keep a record for each case, including, at least, all of the  
15 following:
- 16 (A) A written record of each contact and visit.
- 17 (B) Who attended the visit.
- 18 (C) Any failure to comply with the terms and conditions of the  
19 visitation.
- 20 (D) Any incidence of abuse, as required by law.
- 21 (h) (1) Each provider shall make every reasonable effort to  
22 provide a safe visit for the child and the noncustodial party.
- 23 (2) If a provider determines that the rules of the visit have been  
24 violated, the child has become acutely distressed, or the safety of  
25 the child or the provider is at risk, the visit may be temporarily  
26 interrupted, rescheduled at a later date, or terminated.
- 27 (3) All interruptions or terminations of visits shall be recorded  
28 in the case file.
- 29 (4) All providers shall advise both parties of the reasons for the  
30 interruption or termination of a visit.
- 31 (i) A professional provider shall state the reasons for temporary  
32 suspension or termination of supervised visitation in writing and  
33 shall provide the written statement to both parties, their attorneys,  
34 the attorney for the child, and the court.
- 35 SEC. 61. Section 4055 of the Family Code, as amended by  
36 Section 1 of Chapter 646 of the Statutes of 2012, is amended to  
37 read:
- 38 4055. (a) The statewide uniform guideline for determining  
39 child support orders is as follows:  $CS = K[HN - (H\%)(TN)]$ .
- 40 (b) (1) The components of the formula are as follows:

1 (A) CS = child support amount.  
 2 (B) K = amount of both parents' income to be allocated for child  
 3 support as set forth in paragraph (3).

4 (C) HN = high earner's net monthly disposable income.

5 (D) H% = approximate percentage of time that the high earner  
 6 has or will have primary physical responsibility for the children  
 7 compared to the other parent. In cases in which parents have  
 8 different time-sharing arrangements for different children, H%  
 9 equals the average of the approximate percentages of time the high  
 10 earner parent spends with each child.

11 (E) TN = total net monthly disposable income of both parties.

12 (2) To compute net disposable income, see Section 4059.

13 (3) K (amount of both parents' income allocated for child  
 14 support) equals one plus H% (if H% is less than or equal to 50  
 15 percent) or two minus H% (if H% is greater than 50 percent) times  
 16 the following fraction:

17		
18	Total Net Disposable	
19	Income Per Month	K
20	\$0-800	$0.20 + TN/16,000$
21	\$801-6,666	0.25
22	\$6,667-10,000	$0.10 + 1,000/TN$
23	Over \$10,000	$0.12 + 800/TN$
24		

25 For example, if H% equals 20 percent and the total monthly net  
 26 disposable income of the parents is \$1,000,  $K = (1 + 0.20) \times 0.25$ ,  
 27 or 0.30. If H% equals 80 percent and the total monthly net  
 28 disposable income of the parents is \$1,000,  $K = (2 - 0.80) \times 0.25$ ,  
 29 or 0.30.

30 (4) For more than one child, multiply CS by:

31		
32	2 children	1.6
33	3 children	2
34	4 children	2.3
35	5 children	2.5
36	6 children	2.625
37	7 children	2.75
38	8 children	2.813
39	9 children	2.844
40	10 children	2.86

1 (5) If the amount calculated under the formula results in a  
2 positive number, the higher earner shall pay that amount to the  
3 lower earner. If the amount calculated under the formula results  
4 in a negative number, the lower earner shall pay the absolute value  
5 of that amount to the higher earner.

6 (6) In any default proceeding where proof is by affidavit  
7 pursuant to Section 2336, or in any proceeding for child support  
8 in which a party fails to appear after being duly noticed, H% shall  
9 be set at zero in the formula if the noncustodial parent is the higher  
10 earner or at 100 if the custodial parent is the higher earner, where  
11 there is no evidence presented demonstrating the percentage of  
12 time that the noncustodial parent has primary physical  
13 responsibility for the children. H% shall not be set as described  
14 above if the moving party in a default proceeding is the  
15 noncustodial parent or if the party who fails to appear after being  
16 duly noticed is the custodial parent. A statement by the party who  
17 is not in default as to the percentage of time that the noncustodial  
18 parent has primary physical responsibility for the children shall  
19 be deemed sufficient evidence.

20 (7) In all cases in which the net disposable income per month  
21 of the obligor is less than one thousand five hundred dollars  
22 (\$1,500), adjusted annually for cost-of-living increases, there shall  
23 be a rebuttable presumption that the obligor is entitled to a  
24 low-income adjustment. On March 1, 2013, and annually thereafter,  
25 the Judicial Council shall determine the amount of the net  
26 disposable income adjustment based on the change in the annual  
27 California Consumer Price Index for All Urban Consumers,  
28 published by the California Department of Industrial Relations,  
29 Division of Labor Statistics and Research. The presumption may  
30 be rebutted by evidence showing that the application of the  
31 low-income adjustment would be unjust and inappropriate in the  
32 particular case. In determining whether the presumption is rebutted,  
33 the court shall consider the principles provided in Section 4053,  
34 and the impact of the contemplated adjustment on the respective  
35 net incomes of the obligor and the obligee. The low-income  
36 adjustment shall reduce the child support amount otherwise  
37 determined under this section by an amount that is no greater than  
38 the amount calculated by multiplying the child support amount  
39 otherwise determined under this section by a fraction, the

1 numerator of which is 1,500 minus the obligor's net disposable  
2 income per month, and the denominator of which is 1,500.

3 (8) Unless the court orders otherwise, the order for child support  
4 shall allocate the support amount so that the amount of support for  
5 the youngest child is the amount of support for one child, and the  
6 amount for the next youngest child is the difference between that  
7 amount and the amount for two children, with similar allocations  
8 for additional children. However, this paragraph does not apply  
9 to cases in which there are different time-sharing arrangements  
10 for different children or where the court determines that the  
11 allocation would be inappropriate in the particular case.

12 (c) If a court uses a computer to calculate the child support  
13 order, the computer program shall not automatically default  
14 affirmatively or negatively on whether a low-income adjustment  
15 is to be applied. If the low-income adjustment is applied, the  
16 computer program shall not provide the amount of the low-income  
17 adjustment. Instead, the computer program shall ask the user  
18 whether or not to apply the low-income adjustment, and if  
19 answered affirmatively, the computer program shall provide the  
20 range of the adjustment permitted by paragraph (7) of subdivision  
21 (b).

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

25 SEC. 62. Section 4055 of the Family Code, as added by Section  
26 2 of Chapter 646 of the Statutes of 2012, is amended to read:

27 4055. (a) The statewide uniform guideline for determining  
28 child support orders is as follows:  $CS = K[HN - (H\%)(TN)]$ .

29 (b) (1) The components of the formula are as follows:

30 (A) CS = child support amount.

31 (B) K = amount of both parents' income to be allocated for child  
32 support as set forth in paragraph (3).

33 (C) HN = high earner's net monthly disposable income.

34 (D) H% = approximate percentage of time that the high earner  
35 has or will have primary physical responsibility for the children  
36 compared to the other parent. In cases in which parents have  
37 different time-sharing arrangements for different children, H%  
38 equals the average of the approximate percentages of time the high  
39 earner parent spends with each child.

40 (E) TN = total net monthly disposable income of both parties.

1 (2) To compute net disposable income, see Section 4059.  
 2 (3) K (amount of both parents' income allocated for child  
 3 support) equals one plus H% (if H% is less than or equal to 50  
 4 percent) or two minus H% (if H% is greater than 50 percent) times  
 5 the following fraction:

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7	Total Net Disposable	
8	Income Per Month	K
9	\$0–800	$0.20 + TN/16,000$
10	\$801–6,666	0.25
11	\$6,667–10,000	$0.10 + 1,000/TN$
12	Over \$10,000	$0.12 + 800/TN$

13  
 14 For example, if H% equals 20 percent and the total monthly net  
 15 disposable income of the parents is \$1,000,  $K = (1 + 0.20) \times 0.25$ ,  
 16 or 0.30. If H% equals 80 percent and the total monthly net  
 17 disposable income of the parents is \$1,000,  $K = (2 - 0.80) \times 0.25$ ,  
 18 or 0.30.

19 (4) For more than one child, multiply CS by:

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27	8 children	2.813
28	9 children	2.844
29	10 children	2.86

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 31 (5) If the amount calculated under the formula results in a  
 32 positive number, the higher earner shall pay that amount to the  
 33 lower earner. If the amount calculated under the formula results  
 34 in a negative number, the lower earner shall pay the absolute value  
 35 of that amount to the higher earner.

36 (6) In any default proceeding where proof is by affidavit  
 37 pursuant to Section 2336, or in any proceeding for child support  
 38 in which a party fails to appear after being duly noticed, H% shall  
 39 be set at zero in the formula if the noncustodial parent is the higher  
 40 earner or at 100 if the custodial parent is the higher earner, where



1 there is no evidence presented demonstrating the percentage of  
2 time that the noncustodial parent has primary physical  
3 responsibility for the children. H% shall not be set as described  
4 above if the moving party in a default proceeding is the  
5 noncustodial parent or if the party who fails to appear after being  
6 duly noticed is the custodial parent. A statement by the party who  
7 is not in default as to the percentage of time that the noncustodial  
8 parent has primary physical responsibility for the children shall  
9 be deemed sufficient evidence.

10 (7) In all cases in which the net disposable income per month  
11 of the obligor is less than one thousand dollars (\$1,000), there shall  
12 be a rebuttable presumption that the obligor is entitled to a  
13 low-income adjustment. The presumption may be rebutted by  
14 evidence showing that the application of the low-income  
15 adjustment would be unjust and inappropriate in the particular  
16 case. In determining whether the presumption is rebutted, the court  
17 shall consider the principles provided in Section 4053, and the  
18 impact of the contemplated adjustment on the respective net  
19 incomes of the obligor and the obligee. The low-income adjustment  
20 shall reduce the child support amount otherwise determined under  
21 this section by an amount that is no greater than the amount  
22 calculated by multiplying the child support amount otherwise  
23 determined under this section by a fraction, the numerator of which  
24 is 1,000 minus the obligor's net disposable income per month, and  
25 the denominator of which is 1,000.

26 (8) Unless the court orders otherwise, the order for child support  
27 shall allocate the support amount so that the amount of support for  
28 the youngest child is the amount of support for one child, and the  
29 amount for the next youngest child is the difference between that  
30 amount and the amount for two children, with similar allocations  
31 for additional children. However, this paragraph does not apply  
32 to cases in which there are different time-sharing arrangements  
33 for different children or where the court determines that the  
34 allocation would be inappropriate in the particular case.

35 (c) If a court uses a computer to calculate the child support  
36 order, the computer program shall not automatically default  
37 affirmatively or negatively on whether a low-income adjustment  
38 is to be applied. If the low-income adjustment is applied, the  
39 computer program shall not provide the amount of the low-income  
40 adjustment. Instead, the computer program shall ask the user

1 whether or not to apply the low-income adjustment, and if  
2 answered affirmatively, the computer program shall provide the  
3 range of the adjustment permitted by paragraph (7) of subdivision  
4 (b).

5 (d) This section shall become operative on January 1, 2018.

6 SEC. 63. Section 1587 of the Fish and Game Code is amended  
7 to read:

8 1587. (a) The Mirage Trail within the Magnesia Spring  
9 Ecological Reserve shall be open nine months of the year to  
10 recreational hiking if the commission determines that the following  
11 conditions are met:

12 (1) Local public agencies or other entities will assume complete  
13 financial responsibility for the following as determined to be  
14 necessary by the commission:

15 (A) Fencing to dissuade hikers from traversing beyond the trail  
16 and into sensitive Peninsular bighorn sheep habitat.

17 (B) Signage and educational materials to educate hikers about  
18 Peninsular bighorn sheep.

19 (2) A single entity has been designated to fulfill the financial  
20 arrangements and other terms and conditions determined by the  
21 commission to be necessary pursuant to paragraph (1).

22 (b) The commission shall determine seasonal openings and  
23 closures of the trail that will not conflict with the use of the area  
24 by Peninsular bighorn sheep, consistent with subdivision (a).

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

28 SEC. 64. Section 15100 of the Fish and Game Code is amended  
29 to read:

30 15100. There is within the department an aquaculture  
31 coordinator who shall perform all of the following duties as part  
32 of the department's aquaculture program:

33 (a) Promote understanding of aquaculture among public agencies  
34 and the general public.

35 (b) Propose methods of reducing the negative impact of public  
36 regulation at all levels of government on the aquaculture industry.

37 (c) Provide information on all aspects of regulatory compliance  
38 to the various sectors of the aquaculture industry.

1 (d) Provide advice to the owner of a registered aquaculture  
2 facility on project siting and facility design, as necessary, to comply  
3 with regulatory requirements.

4 (e) Coordinate with the Aquaculture Development Committee  
5 regarding the duties described in subdivisions (a) to (d), inclusive.

6 SEC. 65. Section 4101.3 of the Food and Agricultural Code,  
7 as amended by Section 2 of Chapter 137 of the Statutes of 2012,  
8 is amended to read:

9 4101.3. (a) Notwithstanding any other provision of law, the  
10 California Science Center is hereby authorized to enter into a site  
11 lease with the California Science Center Foundation, a California  
12 Nonprofit Corporation, with the approval of the Natural Resources  
13 Agency, the Department of Finance, and the Department of General  
14 Services, for the purpose of the foundation developing,  
15 constructing, equipping, furnishing, and funding the project known  
16 as Phase II of the California Science Center. The overall  
17 construction cost and scope shall be consistent with the amount  
18 authorized in the Budget Act of 2002, provided that nothing in this  
19 section shall prevent the foundation from expending additional  
20 nonstate funds to complete Phase II provided that the additional  
21 expenditures do not result in additional state operation and  
22 maintenance costs. Any additional expenditure of nonstate funds  
23 by the foundation shall not increase the state's contribution.

24 (b) For the purpose of carrying out subdivision (a), all of the  
25 following shall apply:

26 (1) In connection with the development described in subdivision  
27 (a), above, the foundation may, in its determination, select the  
28 most qualified construction manager/general contractor to oversee  
29 and manage the work and prepare the competitive bid packages  
30 for all major subcontractors to be engaged in the construction of  
31 Phase II Project. Any construction manager/general contractor  
32 selected shall be required to have a California general contractor's  
33 license.

34 (2) Prior to commencement of construction of the Phase II  
35 Project, the California Science Center shall enter into a  
36 lease-purchase agreement upon approval by the Department of  
37 Finance with the foundation on terms that are compatible with the  
38 Phase I Project financing. The term of the lease-purchase agreement  
39 shall be a term not to exceed 25 years. Lease payments on behalf  
40 of the state shall be commensurate with the twenty-two million

1 nine hundred forty-five thousand two hundred sixty-three dollars  
 2 (\$22,945,263), (nineteen million one hundred thirty-seven thousand  
 3 dollars (\$19,137,000) plus 19.9 percent augmentation authority)  
 4 construction cost allocation of the state. Lease payments may also  
 5 include any cost of financing that the foundation may incur related  
 6 to tax-exempt financing. The California Science Center shall be  
 7 authorized to direct the Controller to send the rental payments  
 8 under the lease-purchase agreement directly to the foundation’s  
 9 bond trustee.

10 (3) The foundation shall ensure that the Phase II Project is  
 11 inspected during construction by the state in the manner consistent  
 12 with state infrastructure projects. The foundation shall also  
 13 indemnify and defend and save harmless the Department of General  
 14 Services for any and all claims and losses accruing and resulting  
 15 from or arising out of the foundation’s use of the state’s plans and  
 16 specifications. The foundation and the California Science Center,  
 17 upon consultation with the Director of General Services and the  
 18 Department of Finance shall agree on a reasonable level of state  
 19 oversight throughout the construction of the Phase II Project in  
 20 order to assist the foundation in the completion of the project within  
 21 the intended scope and cost.

22 (4) At the end of the term of the site lease and the lease-purchase  
 23 agreement unencumbered title to the land and improvements shall  
 24 return to the state with jurisdiction held by the California Science  
 25 Center.

26 SEC. 66. Section 4106 of the Food and Agricultural Code, as  
 27 amended by Section 6 of Chapter 137 of the Statutes of 2012, is  
 28 amended to read:

29 4106. (a) The California Science Center shall work with the  
 30 Los Angeles Memorial Coliseum Commission, the City of Los  
 31 Angeles, and the County of Los Angeles to develop additional  
 32 parking facilities in Exposition Park to the extent necessary to  
 33 allow for expansion of the park.

34 (b) The California Science Center shall manage or operate its  
 35 parking facilities in a manner that preserves and protects the  
 36 interests of itself and the California African American Museum  
 37 and recognizes the cultural and educational character of Exposition  
 38 Park.

39 (c) The Exposition Park Improvement Fund is hereby created  
 40 in the State Treasury. All revenues received by the California

1 Science Center from its parking facilities, from rental of museum  
2 facilities, or from other business activities shall be deposited in  
3 the Exposition Park Improvement Fund.

4 (d) The moneys in the Exposition Park Improvement Fund may  
5 only be used, upon appropriation by the Legislature, for  
6 improvements to Exposition Park, including, but not limited to,  
7 maintenance of existing parking and museum facilities, replacement  
8 of museum equipment, supplies and wages expended to generate  
9 revenues from rental of museum facilities, development of new  
10 parking facilities, and acquisition of land within or adjacent to  
11 Exposition Park.

12 (e) (1) The Legislature hereby finds and declares that there is  
13 a need for development of additional park, recreation, museum,  
14 and parking facilities in Exposition Park. The Legislature  
15 recognizes that the provision of these needed improvements as  
16 identified in the California Science Center Exposition Park Master  
17 Plan may require the use of funds provided by other governmental  
18 agencies or private donors.

19 (2) The California Science Center may accept funds from other  
20 governmental agencies or private contributions for the purpose of  
21 implementation of the California Science Center Exposition Park  
22 Master Plan. The private contributions and funds from  
23 governmental agencies other than state governmental agencies  
24 shall be deposited in the Exposition Park Improvement Fund in  
25 the State Treasury and shall be available for expenditure without  
26 regard to fiscal years by the California Science Center for  
27 implementation of the California Science Center Exposition Park  
28 Master Plan. Funds from other state governmental agencies shall  
29 be deposited in the Exposition Park Improvement Fund and shall  
30 be available for expenditure, upon appropriation, by the California  
31 Science Center for implementation of the California Science Center  
32 Exposition Park Master Plan. However, any expenditure is not  
33 authorized sooner than 30 days after notification in writing of the  
34 necessity therefor to the chairperson of the committee in each  
35 house of the Legislature that considers appropriations and the  
36 Chairperson of the Joint Legislative Budget Committee, or not  
37 sooner than whatever lesser time as the chairperson of the joint  
38 committee, or his or her designee, may in each instance determine.  
39 Neither the City of Los Angeles nor the County of Los Angeles

1 shall impose any tax upon tickets purchased authorizing the use  
2 of parking facilities owned by the California Science Center.

3 SEC. 67. Section 14611 of the Food and Agricultural Code is  
4 amended to read:

5 14611. (a) A licensee whose name appears on the label who  
6 sells or distributes bulk fertilizing materials, as defined in Sections  
7 14517 and 14533, to unlicensed purchasers, shall pay to the  
8 secretary an assessment not to exceed two mills (\$0.002) per dollar  
9 of sales for all fertilizing materials. A licensee whose name appears  
10 on the label of packaged fertilizing materials, as defined in Sections  
11 14533 and 14551, shall pay to the secretary an assessment not to  
12 exceed two mills (\$0.002) per dollar of sales. The secretary may,  
13 based on the findings and recommendations of the board, reduce  
14 the assessment rate to a lower rate that provides sufficient revenue  
15 to carry out this chapter.

16 (b) In addition to the assessment provided in subdivision (a),  
17 the secretary may impose an assessment in an amount not to exceed  
18 one mill (\$0.001) per dollar of sales for all sales of fertilizing  
19 materials, to provide funding for research and education regarding  
20 the use and handling of fertilizing material, including, but not  
21 limited to, support for University of California Cooperative  
22 Extension, the California resource conservation districts, other  
23 California institutions of postsecondary education, or other  
24 qualified entities to develop programs in the following areas:

25 (1) Technical education for users of fertilizer materials in the  
26 development and implementation of nutrient management projects  
27 that result in more agronomically sound uses of fertilizer materials  
28 and minimize the environmental impacts of fertilizer use, including,  
29 but not limited to, nitrates in groundwater and emissions of  
30 greenhouse gases resulting from fertilizer use.

31 (2) Research to improve nutrient management practices resulting  
32 in more agronomically sound uses of fertilizer materials and to  
33 minimize the environmental impacts of fertilizer use, including,  
34 but not limited to, nitrates in groundwater and emissions of  
35 greenhouse gases resulting from fertilizer use.

36 (3) Education to increase awareness of more agronomically  
37 sound use of fertilizer materials to reduce the environmental  
38 impacts resulting from the overuse or inefficient use of fertilizing  
39 materials.

1 SEC. 68. Section 19447 of the Food and Agricultural Code is  
2 amended to read:

3 19447. (a) In lieu of any civil action pursuant to Section 19445,  
4 and in lieu of seeking prosecution, the secretary may levy a civil  
5 penalty against a person who violates Article 6 (commencing with  
6 Section 19300), Article 6.5 (commencing with Section 19310), or  
7 any regulation adopted pursuant to those articles, in an amount not  
8 to exceed five thousand dollars (\$5,000) for each violation.

9 (b) Before a civil penalty is levied, the person charged with the  
10 violation shall receive notice of the nature of the violation and  
11 shall be granted the opportunity to review the secretary's evidence  
12 and, for up to 30 days following the issuance of the notice, the  
13 opportunity to present written argument and evidence to the  
14 secretary as to why the civil penalty should not be imposed or  
15 should be reduced from the amount specified in the penalty notice.  
16 Notwithstanding Chapter 4.5 (commencing with Section 11400)  
17 of, and Chapter 5 (commencing with Section 11500) of, Part 1 of  
18 Division 3 of Title 2 of the Government Code or any other  
19 provision of law, this section does not require the department to  
20 conduct either a formal or informal hearing. The secretary instead  
21 may dispose of the matter upon review of the documentation  
22 presented.

23 (c) Any person upon whom a civil penalty is levied may appeal  
24 to the secretary within 20 days of the date of receiving notification  
25 of the penalty, as follows:

26 (1) The appeal shall be in writing and signed by the appellant  
27 or his or her authorized agent and shall state the grounds for the  
28 appeal.

29 (2) Any party, at the time of filing the appeal, or within 10 days  
30 thereafter, may present written evidence and a written argument  
31 to the secretary.

32 (3) The secretary may grant oral arguments upon application  
33 made at the time written arguments are made.

34 (4) If an application to present an oral argument is granted,  
35 written notice of the time and place for the oral argument shall be  
36 given at least 10 days prior to the date set therefor. This time  
37 requirement may be altered by an agreement between the secretary  
38 and the person appealing the penalty.

39 (5) The secretary shall decide the appeal on any oral or written  
40 arguments, briefs, and evidence that he or she has received.

1 (6) The secretary shall render a written decision within 45 days  
2 of the date of appeal, or within 15 days of the date of oral  
3 arguments. A copy of the secretary’s decision shall be delivered  
4 or mailed to the appellant.

5 (7) The secretary may sustain the decision, modify the decision  
6 by reducing the amount of the penalty levied, or reverse the  
7 decision.

8 (8) A review of the decision of the secretary may be sought by  
9 the appellant pursuant to Section 1094.5 of the Code of Civil  
10 Procedure.

11 (d) (1) If the person upon whom a penalty is levied does not  
12 file a petition for a writ of administrative mandamus, the court,  
13 upon receiving a certified copy of the department’s final decision  
14 that directs payment of a civil penalty, shall enter judgment in  
15 favor of the department.

16 (2) After completion of the appeal procedure provided for in  
17 this section, the secretary may file a certified copy of the  
18 department’s final decision that directs payment of a civil penalty  
19 and, if applicable, any order denying a petition for a writ of  
20 administrative mandamus, with the clerk of the superior court of  
21 any county that has jurisdiction over the matter. No fees shall be  
22 charged by the clerk of the superior court for the performance of  
23 any official services required in connection with the entry of  
24 judgment pursuant to this section.

25 (e) Any penalties levied by the secretary pursuant to this section  
26 shall be deposited in the Department of Food and Agriculture Fund,  
27 and, upon appropriation by the Legislature, shall be used for the  
28 purposes described in Section 221.

29 SEC. 69. Section 55527.6 of the Food and Agricultural Code  
30 is amended to read:

31 55527.6. (a) Licensees or applicants for a license shall be  
32 required to furnish and maintain an irrevocable guarantee in a form  
33 and amount satisfactory to the secretary if, within the preceding  
34 four years, the secretary determines that they have done any of the  
35 following:

36 (1) Engaged in conduct which demonstrates a lack of financial  
37 responsibility, including, but not limited to, delinquent accounts  
38 payable, judgments of liability, insolvency, or bankruptcy.

39 (2) Failed to assure future financial responsibility unless an  
40 irrevocable guarantee is provided.



1 (3) Otherwise violated this chapter which resulted in license  
2 revocation.

3 (b) The irrevocable guarantee may include a personal or  
4 corporate guarantee, a certificate of deposit, a bank letter of credit,  
5 or a surety bond, as determined to be appropriate by the secretary.

6 (c) The guarantee shall not be less than ten thousand dollars  
7 (\$10,000) or 20 percent of the annual dollar volume of business  
8 based on farm product value returned to the grower, whichever is  
9 greater, as assurance that the licensee's or applicant's business  
10 will be conducted in accordance with this chapter and that the  
11 licensee or applicant will pay all amounts due farm products  
12 creditors.

13 (d) The secretary, based on changes in the nature and volume  
14 of business conducted by the licensee, may require an increase or  
15 authorize a reduction in the amount of the guarantee, but in no  
16 case shall the guarantee be reduced below ten thousand dollars  
17 (\$10,000). A licensee who is notified by the secretary to provide  
18 a guarantee in an increased amount shall do so within a reasonable  
19 time as specified by the secretary. If the licensee fails to do so, the  
20 secretary may, after a notice and opportunity for a hearing, suspend  
21 or revoke the license of the licensee.

22 SEC. 70. Section 64101 of the Food and Agricultural Code is  
23 amended to read:

24 64101. There is in the state government the Dairy Council of  
25 California which shall consist of not less than 24, nor more than  
26 25, members. All members of the council shall be appointed by  
27 the secretary and may hold office at the pleasure of the secretary.  
28 The membership of the council shall be as follows:

29 (a) There shall be 12 members that are actually engaged in the  
30 production of milk. These 12 members are the producer members  
31 of the council.

32 (b) There shall be 12 members that are handlers or  
33 producer-handlers of dairy products. These 12 members are the  
34 handler members of the council.

35 (c) Upon the recommendation of the council, the secretary may  
36 appoint one person who is neither a producer, handler, or  
37 producer-handler, and who shall represent the public generally.

38 SEC. 71. Section 3513 of the Government Code is amended  
39 to read:

40 3513. As used in this chapter:

1 (a) “Employee organization” means any organization that  
2 includes employees of the state and that has as one of its primary  
3 purposes representing these employees in their relations with the  
4 state.

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

8 (c) “State employee” means any civil service employee of the  
9 state, and the teaching staff of schools under the jurisdiction of the  
10 State Department of Education or the Superintendent of Public  
11 Instruction, except managerial employees, confidential employees,  
12 supervisory employees, employees of the Department of Human  
13 Resources, professional employees of the Department of Finance  
14 engaged in technical or analytical state budget preparation other  
15 than the auditing staff, professional employees in the  
16 Personnel/Payroll Services Division of the Controller’s office  
17 engaged in technical or analytical duties in support of the state’s  
18 personnel and payroll systems other than the training staff,  
19 employees of the Legislative Counsel Bureau, employees of the  
20 Bureau of State Audits, employees of the office of the Inspector  
21 General, employees of the board, conciliators employed by the  
22 California State Mediation and Conciliation Service, employees  
23 of the Office of the State Chief Information Officer except as  
24 otherwise provided in Section 11546.5, and intermittent athletic  
25 inspectors who are employees of the State Athletic Commission.

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

32 (e) “Managerial employee” means any employee having  
33 significant responsibilities for formulating or administering agency  
34 or departmental policies and programs or administering an agency  
35 or department.

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

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

11 (h) “Board” means the Public Employment Relations Board.  
12 The Educational Employment Relations Board shall be renamed  
13 the Public Employment Relations Board as provided in Section  
14 3540. The powers and duties of the board described in Section  
15 3541.3 shall also apply, as appropriate, to this chapter.

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

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

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

39 SEC. 72. Section 3527 of the Government Code is amended  
40 to read:

1 3527. As used in this chapter:

2 (a) “Employee” means a civil service employee of the State of  
3 California. The “State of California” as used in this chapter  
4 includes those state agencies, boards, and commissions as may be  
5 designated by law that employ civil service employees, except the  
6 University of California, Hastings College of the Law, and the  
7 California State University.

8 (b) “Excluded employee,” means all managerial employees, as  
9 defined in subdivision (e) of Section 3513, all confidential  
10 employees, as defined in subdivision (f) of Section 3513, and all  
11 supervisory employees, as defined in subdivision (g) of Section  
12 3513, and all civil service employees of the Department of Human  
13 Resources, professional employees of the Department of Finance  
14 engaged in technical or analytical state budget preparation other  
15 than the auditing staff, professional employees in the  
16 Personnel/Payroll Services Division of the Controller’s office  
17 engaged in technical or analytical duties in support of the state’s  
18 personnel and payroll systems other than the training staff,  
19 employees of the Legislative Counsel Bureau, employees of the  
20 Bureau of State Audits, employees of the Public Employment  
21 Relations Board, conciliators employed by the California State  
22 Mediation and Conciliation Service, employees of the office of  
23 the State Chief Information Officer except as provided in Section  
24 11546.5, and intermittent athletic inspectors who are employees  
25 of the State Athletic Commission.

26 (c) “Supervisory employee organization” means an organization  
27 that represents members who are supervisory employees under  
28 subdivision (g) of Section 3513.

29 (d) “Excluded employee organization” means an organization  
30 that includes excluded employees of the state, as defined in  
31 subdivision (b), and that has as one of its primary purposes  
32 representing its members in employer-employee relations.  
33 Excluded employee organization includes supervisory employee  
34 organizations.

35 (e) “State employer” or “employer,” for purposes of meeting  
36 and conferring on matters relating to supervisory  
37 employer-employee relations, means the Governor or his or her  
38 designated representatives.

39 SEC. 73. Section 7480 of the Government Code, as amended  
40 by Section 2 of Chapter 304 of the Statutes of 2011, is repealed.

1 SEC. 74. Section 7522.20 of the Government Code is amended  
2 to read:

3 7522.20. (a) Each retirement system that offers a defined  
4 benefit plan for nonsafety members of the system shall use the  
5 formula prescribed by this section. The defined benefit plan shall  
6 provide a pension at retirement for service equal to the percentage  
7 of the member’s final compensation set forth opposite the  
8 member’s age at retirement, taken to the preceding quarter year,  
9 in the following table, multiplied by the number of years of service  
10 in the system as a nonsafety member. A member may retire for  
11 service under this section after five years of service and upon  
12 reaching 52 years of age.

13	Age of Retirement	Fraction
14	52 .....	1.000
15	52 1/4 .....	1.025
16	52 1/2 .....	1.050
17	52 3/4 .....	1.075
18	53 .....	1.100
19	53 1/4 .....	1.125
20	53 1/2 .....	1.150
21	53 3/4 .....	1.175
22	54 .....	1.200
23	54 1/4 .....	1.225
24	54 1/2 .....	1.250
25	54 3/4 .....	1.275
26	55 .....	1.300
27	55 1/4 .....	1.325
28	55 1/2 .....	1.350
29	55 3/4 .....	1.375
30	56 .....	1.400
31	56 1/4 .....	1.425
32	56 1/2 .....	1.450
33	56 3/4 .....	1.475
34	57 .....	1.500
35	57 1/4 .....	1.525
36	57 1/2 .....	1.550
37	57 3/4 .....	1.575
38	58 .....	1.600
39	58 1/4 .....	1.625
40		

1	58 <sup>1</sup> / <sub>2</sub> .....	1.650
2	58 <sup>3</sup> / <sub>4</sub> .....	1.675
3	59 .....	1.700
4	59 <sup>1</sup> / <sub>4</sub> .....	1.725
5	59 <sup>1</sup> / <sub>2</sub> .....	1.750
6	59 <sup>3</sup> / <sub>4</sub> .....	1.775
7	60 .....	1.800
8	60 <sup>1</sup> / <sub>4</sub> .....	1.825
9	60 <sup>1</sup> / <sub>2</sub> .....	1.850
10	60 <sup>3</sup> / <sub>4</sub> .....	1.875
11	61 .....	1.900
12	61 <sup>1</sup> / <sub>4</sub> .....	1.925
13	61 <sup>1</sup> / <sub>2</sub> .....	1.950
14	61 <sup>3</sup> / <sub>4</sub> .....	1.975
15	62 .....	2.000
16	62 <sup>1</sup> / <sub>4</sub> .....	2.025
17	62 <sup>1</sup> / <sub>2</sub> .....	2.050
18	62 <sup>3</sup> / <sub>4</sub> .....	2.075
19	63 .....	2.100
20	63 <sup>1</sup> / <sub>4</sub> .....	2.125
21	63 <sup>1</sup> / <sub>2</sub> .....	2.150
22	63 <sup>3</sup> / <sub>4</sub> .....	2.175
23	64 .....	2.200
24	64 <sup>1</sup> / <sub>4</sub> .....	2.225
25	64 <sup>1</sup> / <sub>2</sub> .....	2.250
26	64 <sup>3</sup> / <sub>4</sub> .....	2.275
27	65 .....	2.300
28	65 <sup>1</sup> / <sub>4</sub> .....	2.325
29	65 <sup>1</sup> / <sub>2</sub> .....	2.350
30	65 <sup>3</sup> / <sub>4</sub> .....	2.375
31	66 .....	2.400
32	66 <sup>1</sup> / <sub>4</sub> .....	2.425
33	66 <sup>1</sup> / <sub>2</sub> .....	2.450
34	66 <sup>3</sup> / <sub>4</sub> .....	2.475
35	67 .....	2.500

36  
 37 (b) Pensionable compensation used to calculate the defined  
 38 benefit shall be limited as described in Section 7522.10.

1 (c) A new member of the State Teachers' Retirement System  
2 shall be subject to the formula established pursuant to Section  
3 24202.6 of the Education Code.

4 SEC. 75. Section 7522.56 of the Government Code is amended  
5 to read:

6 7522.56. (a) This section shall apply to any person who is  
7 receiving a pension benefit from a public retirement system and  
8 shall supersede any other provision in conflict with this section.

9 (b) A retired person shall not serve, be employed by, or be  
10 employed through a contract directly by, a public employer in the  
11 same public retirement system from which the retiree receives the  
12 benefit without reinstatement from retirement, except as permitted  
13 by this section.

14 (c) A person who retires from a public employer may serve  
15 without reinstatement from retirement or loss or interruption of  
16 benefits provided by the retirement system upon appointment by  
17 the appointing power of a public employer either during an  
18 emergency to prevent stoppage of public business or because the  
19 retired person has skills needed to perform work of limited  
20 duration.

21 (d) Appointments of the person authorized under this section  
22 shall not exceed a total for all employers in that public retirement  
23 system of 960 hours or other equivalent limit, in a calendar or  
24 fiscal year, depending on the administrator of the system. The rate  
25 of pay for the employment shall not be less than the minimum,  
26 nor exceed the maximum, paid by the employer to other employees  
27 performing comparable duties, divided by 173.333 to equal an  
28 hourly rate. A retired person whose employment without  
29 reinstatement is authorized by this section shall acquire no service  
30 credit or retirement rights under this section with respect to the  
31 employment unless he or she reinstates from retirement.

32 (e) (1) Notwithstanding subdivision (c), any retired person shall  
33 not be eligible to serve or be employed by a public employer if,  
34 during the 12-month period prior to an appointment described in  
35 this section, the retired person received any unemployment  
36 insurance compensation arising out of prior employment subject  
37 to this section with a public employer. A retiree shall certify in  
38 writing to the employer upon accepting an offer of employment  
39 that he or she is in compliance with this requirement.

1 (2) A retired person who accepts an appointment after receiving  
2 unemployment insurance compensation as described in this  
3 subdivision shall terminate that employment on the last day of the  
4 current pay period and shall not be eligible for reappointment  
5 subject to this section for a period of 12 months following the last  
6 day of employment.

7 (f) A retired person shall not be eligible to be employed pursuant  
8 to this section for a period of 180 days following the date of  
9 retirement unless he or she meets one of the following conditions:

10 (1) The employer certifies the nature of the employment and  
11 that the appointment is necessary to fill a critically needed position  
12 before 180 days have passed and the appointment has been  
13 approved by the governing body of the employer in a public  
14 meeting. The appointment may not be placed on a consent calendar.

15 (2) The state employer certifies the nature of the employment  
16 and that the appointment is necessary to fill a critically needed  
17 state employment position before 180 days have passed and the  
18 appointment has been approved by the Department of Human  
19 Resources. The department may establish a process to delegate  
20 appointing authority to individual state agencies, but shall audit  
21 the process to determine if abuses of the system occur. If necessary,  
22 the department may assume an agency's appointing authority for  
23 retired workers and may charge the department an appropriate  
24 amount for administering that authority.

25 (3) The retiree is eligible to participate in the Faculty Early  
26 Retirement Program pursuant to a collective bargaining agreement  
27 with the California State University that existed prior to January  
28 1, 2013, or has been included in subsequent agreements.

29 (4) The retiree is a public safety officer or firefighter.

30 (g) A retired person who accepted a retirement incentive upon  
31 retirement shall not be eligible to be employed pursuant to this  
32 section for a period of 180 days following the date of retirement  
33 and subdivision (f) shall not apply.

34 (h) This section shall not apply to a person who is retired from  
35 the State Teachers' Retirement System, and who is subject to  
36 Section 24214, 24214.5, or 26812 of the Education Code.

37 (i) This section shall not apply to (1) a subordinate judicial  
38 officer whose position, upon retirement, is converted to a judgeship  
39 pursuant to Section 69615, and he or she returns to work in the  
40 converted position, and the employer is a trial court, or (2) a retiree



1 who takes office as a judge of a court of record pursuant to Article  
2 VI of the California Constitution or a retiree of the Judges’  
3 Retirement System I or the Judges’ Retirement System II who is  
4 appointed to serve as a retired judge.

5 SEC. 76. Section 7522.57 of the Government Code is amended  
6 to read:

7 7522.57. (a) This section shall apply to any retired person who  
8 is receiving a pension benefit from a public retirement system and  
9 is first appointed on or after January 1, 2013, to a salaried position  
10 on a state board or commission. This section shall supersede any  
11 other provision in conflict with this section.

12 (b) A person who is retired from a public retirement system  
13 may serve without reinstatement from retirement or loss or  
14 interruption of benefits provided that appointment is to a part-time  
15 state board or commission. A retired person whose employment  
16 without reinstatement is authorized by this subdivision shall acquire  
17 no benefits, service credit, or retirement rights with respect to the  
18 employment. Unless otherwise defined in statute, for the purpose  
19 of this section, a part-time appointment shall mean an appointment  
20 with a salary of no more than \$60,000 annually, which shall be  
21 increased in any fiscal year in which a general salary increase is  
22 provided for state employees. The amount of the increase provided  
23 by this section shall be comparable to, but shall not exceed, the  
24 percentage of the general salary increases provided for state  
25 employees during that fiscal year.

26 (c) A person who is retired from the Public Employees’  
27 Retirement System shall not serve on a full-time basis on a state  
28 board or commission without reinstatement unless that person  
29 serves as a nonsalaried member of the board or commission and  
30 receives only per diem authorized to all members of the board or  
31 commission. A person who serves as a nonsalaried member of a  
32 board or commission shall not earn any service credit or benefits  
33 in the Public Employees’ Retirement System or make contributions  
34 with respect to the service performed.

35 (d) A person retired from a public retirement system other than  
36 the Public Employees’ Retirement System who is appointed on a  
37 full-time basis to a state board or commission shall choose one of  
38 the following options:

39 (1) The person may serve as a nonsalaried member of the board  
40 or commission and continue to receive his or her retirement

1 allowance, in addition to any per diem authorized to all members  
2 of the board or commission. The person shall not earn service  
3 credit or benefits in the Public Employees' Retirement System and  
4 shall not make contributions with respect to the service performed.

5 (2) (A) The person may suspend his or her retirement allowance  
6 or allowances and instate as a new member of the Public  
7 Employees' Retirement System for the service performed on the  
8 board or commission. The pensionable compensation earned  
9 pursuant to this paragraph shall not be eligible for reciprocity with  
10 any other retirement system or plan.

11 (B) Upon retiring for service after serving on the board or  
12 commission, the appointee shall be entitled to reinstatement of any  
13 suspended benefits, including employer provided retiree health  
14 benefits, that he or she was entitled to at the time of being  
15 appointed to the board or commission.

16 (e) Notwithstanding subdivisions (c) and (d), a person who  
17 retires from a public employer may serve without reinstatement  
18 from retirement or loss or interruption of benefits provided by the  
19 retirement system upon appointment to a full-time state board  
20 pursuant to Section 5075 of the Penal Code.

21 SEC. 77. Section 7522.72 of the Government Code is amended  
22 to read:

23 7522.72. (a) This section shall apply to a public employee first  
24 employed by a public employer or first elected or appointed to an  
25 office before January 1, 2013, and, on and after that date, Section  
26 7522.70 shall not apply.

27 (b) (1) If a public employee is convicted by a state or federal  
28 trial court of any felony under state or federal law for conduct  
29 arising out of or in the performance of his or her official duties, in  
30 pursuit of the office or appointment, or in connection with  
31 obtaining salary, disability retirement, service retirement, or other  
32 benefits, he or she shall forfeit all accrued rights and benefits in  
33 any public retirement system in which he or she is a member to  
34 the extent provided in subdivision (c) and shall not accrue further  
35 benefits in that public retirement system, effective on the date of  
36 the conviction.

37 (2) If a public employee who has contact with children as part  
38 of his or her official duties is convicted of a felony that was  
39 committed within the scope of his or her official duties against or  
40 involving a child who he or she has contact with as part of his or

1 her official duties, he or she shall forfeit all accrued rights and  
2 benefits in any public retirement system in which he or she is a  
3 member to the extent provided in subdivision (c) and shall not  
4 accrue further benefits in that public retirement system, effective  
5 on the date of the conviction.

6 (c) (1) A public employee shall forfeit all the retirement benefits  
7 earned or accrued from the earliest date of the commission of any  
8 felony described in subdivision (b) to the forfeiture date, inclusive.  
9 The retirement benefits shall remain forfeited notwithstanding any  
10 reduction in sentence or expungement of the conviction following  
11 the date of the public employee's conviction. Retirement benefits  
12 attributable to service performed prior to the date of the first  
13 commission of the felony for which the public employee was  
14 convicted shall not be forfeited as a result of this section.

15 (2) For purposes of this subdivision, "forfeiture date" means  
16 the date of the conviction.

17 (d) (1) Any contributions to the public retirement system made  
18 by the public employee described in subdivision (b) on or after  
19 the earliest date of the commission of any felony described in  
20 subdivision (b) shall be returned, without interest, to the public  
21 employee upon the occurrence of a distribution event unless  
22 otherwise ordered by a court or determined by the pension  
23 administrator.

24 (2) Any funds returned to the public employee pursuant to  
25 subdivision (d) shall be disbursed by electronic funds transfer to  
26 an account of the public employee, in a manner conforming with  
27 the requirements of the Internal Revenue Code, and the public  
28 retirement system shall notify the court and the district attorney  
29 at least three business days before that disbursement of funds.

30 (3) For the purposes of this subdivision, a "distribution event"  
31 means any of the following:

- 32 (A) Separation from employment.
- 33 (B) Death of the member.
- 34 (C) Retirement of the member.

35 (e) (1) Upon conviction, a public employee as described in  
36 subdivision (b) and the prosecuting agency shall notify the public  
37 employer who employed the public employee at the time of the  
38 commission of the felony within 60 days of the felony conviction  
39 of all of the following information:

- 40 (A) The date of conviction.

1 (B) The date of the first known commission of the felony.

2 (2) The operation of this section is not dependent upon the  
3 performance of the notification obligations specified in this  
4 subdivision.

5 (f) The public employer that employs or employed a public  
6 employee described in subdivision (b) and that public employee  
7 shall each notify the public retirement system in which the public  
8 employee is a member of that public employee's conviction within  
9 90 days of the conviction. The operation of this section is not  
10 dependent upon the performance of the notification obligations  
11 specified in this subdivision.

12 (g) A public retirement system may assess a public employer a  
13 reasonable amount to reimburse the cost of audit, adjustment, or  
14 correction, if it determines that the public employer failed to  
15 comply with this section.

16 (h) If a public employee's conviction is reversed and that  
17 decision is final, the employee shall be entitled to do either of the  
18 following:

19 (1) Recover the forfeited retirement benefits as adjusted for the  
20 contributions received pursuant to subdivision (d).

21 (2) Redeposit those contributions and interest, as determined  
22 by the system actuary, and then recover the full amount of the  
23 forfeited benefits.

24 (i) A public employee first employed by a public employer or  
25 first elected or appointed to an office on or after January 1, 2013,  
26 shall be subject to Section 7522.74.

27 SEC. 78. Section 8164.1 of the Government Code is amended  
28 to read:

29 8164.1. There is in state government a Capitol Area Committee  
30 consisting of nine members who shall be appointed in the following  
31 manner:

32 (a) Four members of the committee shall be appointed by the  
33 Governor of which at least one member shall be appointed from  
34 a list of three candidates submitted by the City of Sacramento and  
35 at least one member shall be appointed from a list of three  
36 candidates submitted by the County of Sacramento. Two members  
37 shall be appointed for a term expiring December 31, 1979, and  
38 two for a term expiring December 31, 1981.

39 (b) Two members shall be appointed by the Speaker of the  
40 Assembly, one of whom may be a Member of the Assembly, and

1 two members shall be appointed by the Senate Rules Committee,  
2 one of whom may be a Member of the Senate. Legislative members  
3 of the committee shall meet and, except as otherwise provided by  
4 the Constitution, advise the department to the extent that the  
5 advisory participation is not incompatible with their respective  
6 positions as Members of the Legislature. Of the four appointments  
7 by the Legislature, two shall be appointed for a term expiring  
8 December 31, 1979, and two for a term expiring December 31,  
9 1981.

10 (c) One shall be appointed by and serve at the pleasure of the  
11 director.

12 Subsequent appointments pursuant to subdivisions (a) and (b)  
13 shall be for terms of four years, ending on December 31 of the  
14 fourth year after the end of the prior term, except that appointments  
15 to fill vacancies occurring for any reason other than the expiration  
16 of the term shall be for the unexpired portion of the term in which  
17 they occur. The members of the board shall hold office until their  
18 successors are appointed and qualify.

19 The members of the committee shall not receive compensation  
20 from the state for their services under this article but, when called  
21 to attend a meeting of the committee, shall be reimbursed for their  
22 actual and necessary expenses incurred in connection with the  
23 meeting in accordance with the rules of the Department of Human  
24 Resources.

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

28 SEC. 79. The heading of Chapter 3.1 (commencing with  
29 Section 8240) of Division 1 of Title 2 of the Government Code is  
30 amended to read:

31

32 CHAPTER 3.1. COMMISSION ON THE STATUS OF WOMEN AND  
33 GIRLS

34

35 SEC. 80. Section 11019 of the Government Code is amended  
36 to read:

37 11019. (a) Any department or authority specified in subdivision  
38 (b) may, upon determining that an advance payment is essential  
39 for the effective implementation of a program within the provisions  
40 of this section, and to the extent funds are available, advance to a

1 community-based private nonprofit agency with which it has  
2 contracted, pursuant to federal law and related state law, for the  
3 delivery of services, not to exceed 25 percent of the annual  
4 allocation to be made pursuant to the contract and those laws during  
5 the fiscal year to the private nonprofit agency. Advances in excess  
6 of 25 percent may be made on contracts financed by a federal  
7 program when the advances are not prohibited by federal  
8 guidelines. Advance payments may be provided for services to be  
9 performed under any contract with a total annual contract amount  
10 of four hundred thousand dollars (\$400,000) or less. This amount  
11 shall be increased by 5 percent, as determined by the Department  
12 of Finance, for each year commencing with 1989. Advance  
13 payments may also be made with respect to any contract that the  
14 Department of Finance determines has been entered into with any  
15 community-based private nonprofit agency with modest reserves  
16 and potential cashflow problems. No advance payment shall be  
17 granted if the total annual contract exceeds four hundred thousand  
18 dollars (\$400,000), without the prior approval of the Department  
19 of Finance.

20 The specific departments and authority mentioned in subdivision  
21 (b) shall develop a plan to establish control procedures for advance  
22 payments. Each plan shall include a procedure whereby the  
23 department or authority determines whether or not an advance  
24 payment is essential for the effective implementation of a particular  
25 program being funded. Each plan shall be approved by the  
26 Department of Finance.

27 (b) Subdivision (a) shall apply to the Emergency Medical  
28 Services Authority, the California Department of Aging, the State  
29 Department of Developmental Services, the State Department of  
30 Alcohol and Drug Programs, the Department of Corrections and  
31 Rehabilitation, including the Division of Juvenile Justice, the  
32 Department of Community Services and Development, the  
33 Employment Development Department, the State Department of  
34 Health *Care* Services, the State Department of State Hospitals, the  
35 Department of Rehabilitation, the State Department of Social  
36 Services, the Department of Child Support Services, the State  
37 Department of Education, the area boards on developmental  
38 disabilities, the State Council on Developmental Disabilities, the  
39 Office of Statewide Health Planning and Development, and the

1 California Environmental Protection Agency, including all boards  
2 and departments contained therein.

3 Subdivision (a) shall also apply to the California Health and  
4 Human Services Agency, which may make advance payments,  
5 pursuant to the requirements of that subdivision, to multipurpose  
6 senior services projects as established in Chapter 8 (commencing  
7 with Section 9560) of Division 8.5 of the Welfare and Institutions  
8 Code.

9 Subdivision (a) shall also apply to the Natural Resources Agency,  
10 including all boards and departments contained in that agency,  
11 which may make advance payments pursuant to the requirements  
12 of that subdivision with respect to grants and contracts awarded  
13 to certified local community conservation corps.

14 (c) A county may, upon determining that an advance payment  
15 is essential for the effective implementation of a program within  
16 the provisions of this section, and to the extent funds are available,  
17 and not more frequently than once each fiscal year, advance to a  
18 community-based private nonprofit agency with which it has  
19 contracted, pursuant to any applicable federal or state law, for the  
20 delivery of services, not to exceed 25 percent of the annual  
21 allocation to be made pursuant to the contract and those laws,  
22 during the fiscal year to the private nonprofit agency.

23 SEC. 81. Section 11020 of the Government Code is amended  
24 to read:

25 11020. (a) Unless otherwise provided by law, all offices of  
26 every state agency shall be kept open for the transaction of business  
27 from 8 a.m. until 5 p.m. of each day from Monday to Friday,  
28 inclusive, other than legal holidays. However, any state agency or  
29 division, branch, or office thereof may be kept open for the  
30 transaction of business on other hours and on other days than those  
31 specified in this subdivision.

32 (b) If this section is in conflict with a memorandum of  
33 understanding reached pursuant to Chapter 12 (commencing with  
34 Section 3560) of Division 4 of Title 1, the memorandum of  
35 understanding shall be controlling without further legislative action,  
36 except that if the memorandum of understanding requires the  
37 expenditure of funds, the memorandum shall not become effective  
38 unless approved by the Legislature in the annual Budget Act.

1 (c) Subdivision (a) shall not apply to any fair or association  
2 specified under Division 3 (commencing with Section 3001) of  
3 the Food and Agricultural Code.

4 SEC. 82. Section 11435.15 of the Government Code is amended  
5 to read:

6 11435.15. (a) The following state agencies shall provide  
7 language assistance in adjudicative proceedings to the extent  
8 provided in this article:

- 9 (1) Agricultural Labor Relations Board.
- 10 (2) State Department of Alcohol and Drug Programs.
- 11 (3) State Athletic Commission.
- 12 (4) California Unemployment Insurance Appeals Board.
- 13 (5) Board of Parole Hearings.
- 14 (6) State Board of Barbering and Cosmetology.
- 15 (7) State Department of Developmental Services.
- 16 (8) Public Employment Relations Board.
- 17 (9) Franchise Tax Board.
- 18 (10) State Department of Health Care Services.
- 19 (11) Department of Housing and Community Development.
- 20 (12) Department of Industrial Relations.
- 21 (13) State Department of State Hospitals.
- 22 (14) Department of Motor Vehicles.
- 23 (15) Notary Public Section, Office of the Secretary of State.
- 24 (16) Public Utilities Commission.
- 25 (17) Office of Statewide Health Planning and Development.
- 26 (18) State Department of Social Services.
- 27 (19) Workers' Compensation Appeals Board.
- 28 (20) Division of Juvenile Justice.
- 29 (21) Division of Juvenile Parole Operations.
- 30 (22) Department of Insurance.
- 31 (23) State Personnel Board.
- 32 (24) California Board of Podiatric Medicine.
- 33 (25) Board of Psychology.

34 (b) Nothing in this section prevents an agency other than an  
35 agency listed in subdivision (a) from electing to adopt any of the  
36 procedures in this article, provided that any selection of an  
37 interpreter is subject to Section 11435.30.

38 (c) Nothing in this section prohibits an agency from providing  
39 an interpreter during a proceeding to which this chapter does not



1 apply, including an informal factfinding or informal investigatory  
2 hearing.

3 (d) This article applies to an agency listed in subdivision (a)  
4 notwithstanding a general provision that this chapter does not apply  
5 to some or all of an agency's adjudicative proceedings.

6 SEC. 83. Section 11552 of the Government Code is amended  
7 to read:

8 11552. (a) Effective January 1, 1988, an annual salary of  
9 eighty-five thousand four hundred two dollars (\$85,402) shall be  
10 paid to each of the following:

- 11 (1) Commissioner of Business Oversight.
- 12 (2) Director of Transportation.
- 13 (3) Real Estate Commissioner.
- 14 (4) Director of Social Services.
- 15 (5) Director of Water Resources.
- 16 (6) Director of General Services.
- 17 (7) Director of Motor Vehicles.
- 18 (8) Executive Officer of the Franchise Tax Board.
- 19 (9) Director of Employment Development.
- 20 (10) Director of Alcoholic Beverage Control.
- 21 (11) Director of Housing and Community Development.
- 22 (12) Director of Alcohol and Drug Programs.
- 23 (13) Director of Statewide Health Planning and Development.
- 24 (14) Director of the Department of Human Resources.
- 25 (15) Director of Health Care Services.
- 26 (16) Director of State Hospitals.
- 27 (17) Director of Developmental Services.
- 28 (18) State Public Defender.
- 29 (19) Director of the California State Lottery.
- 30 (20) Director of Fish and Wildlife.
- 31 (21) Director of Parks and Recreation.
- 32 (22) Director of Rehabilitation.
- 33 (23) Director of the Office of Administrative Law.
- 34 (24) Director of Consumer Affairs.
- 35 (25) Director of Forestry and Fire Protection.
- 36 (26) The Inspector General pursuant to Section 6125 of the  
37 Penal Code.
- 38 (27) Director of Child Support Services.
- 39 (28) Director of Industrial Relations.
- 40 (29) Director of Toxic Substances Control.

- 1 (30) Director of Pesticide Regulation.
- 2 (31) Director of Managed Health Care.
- 3 (32) Director of Environmental Health Hazard Assessment.
- 4 (33) Director of Technology.
- 5 (34) Director of California Bay-Delta Authority.
- 6 (35) Director of California Conservation Corps.

7 (b) The annual compensation provided by this section shall be  
8 increased in any fiscal year in which a general salary increase is  
9 provided for state employees. The amount of the increase provided  
10 by this section shall be comparable to, but shall not exceed, the  
11 percentage of the general salary increases provided for state  
12 employees during that fiscal year.

13 SEC. 84. Section 12460 of the Government Code is amended  
14 to read:

15 12460. The Controller shall submit an annual report to the  
16 Governor containing a statement of the funds of the state, its  
17 revenues, and the public expenditures during the preceding fiscal  
18 year. The annual report shall be known as the budgetary-legal basis  
19 annual report and prepared in a manner that will account for prior  
20 year adjustments, fund balances, encumbrances, deferred payroll,  
21 revenues, expenditures, and other components on the same basis  
22 as that of the applicable Governor's Budget and the applicable  
23 Budget Act, as determined by the Director of Finance in  
24 consultation with the Controller. If the Governor's Budget or the  
25 Budget Act does not provide the applicable information for this  
26 purpose, funds shall be accounted for in the budgetary-legal basis  
27 annual report in a manner prescribed by Section 13344. The  
28 requirements of this section shall apply beginning with the issuance  
29 of the budgetary-legal basis annual report for the 2013–14 fiscal  
30 year. The Controller shall confer with the Department of Finance  
31 to propose and develop methods to facilitate these changes pursuant  
32 to Section 13344, including methods to ensure that information  
33 related to encumbrances and deferred payroll continue to be listed  
34 in the state's financial statements, as deemed appropriate by the  
35 Controller.

36 The Controller shall also issue a comprehensive annual financial  
37 report prepared strictly in accordance with "Generally Accepted  
38 Accounting Principles."

1 The annual reports referenced in this section shall be compiled  
2 and published by the Controller in the time, form, and manner  
3 prescribed by him or her.

4 SEC. 85. Section 12838.14 of the Government Code is amended  
5 to read:

6 12838.14. (a) Notwithstanding any other provision of law,  
7 money recovered by the Department of Corrections and  
8 Rehabilitation from a union paid leave settlement agreement shall  
9 be credited to the fiscal year in which the recovered money is  
10 received. An amount not to exceed the amount of the money  
11 received shall be available for expenditure to the Department of  
12 Corrections and Rehabilitation for the fiscal year in which the  
13 recovered money is received, upon approval of the Department of  
14 Finance. If this statute is enacted on or after July 1, 2012, any  
15 money received prior to July 1, 2012, for purposes of this section,  
16 shall be available for expenditure for the 2012–13 fiscal year.

17 (b) The Department of Corrections and Rehabilitation shall  
18 identify and report the total amount collected annually to the  
19 Department of Finance.

20 (c) This section shall become inoperative on June 30, 2021, and,  
21 as of January 1, 2022, is repealed, unless a later enacted statute,  
22 that becomes operative on or before January 1, 2022, deletes or  
23 extends the dates on which it becomes inoperative and is repealed.

24 SEC. 86. Section 12926 of the Government Code is amended  
25 to read:

26 12926. As used in this part in connection with unlawful  
27 practices, unless a different meaning clearly appears from the  
28 context:

29 (a) “Affirmative relief” or “prospective relief” includes the  
30 authority to order reinstatement of an employee, awards of backpay,  
31 reimbursement of out-of-pocket expenses, hiring, transfers,  
32 reassignments, grants of tenure, promotions, cease and desist  
33 orders, posting of notices, training of personnel, testing, expunging  
34 of records, reporting of records, and any other similar relief that  
35 is intended to correct unlawful practices under this part.

36 (b) “Age” refers to the chronological age of any individual who  
37 has reached his or her 40th birthday.

38 (c) “Employee” does not include any individual employed by  
39 his or her parents, spouse, or child, or any individual employed

1 under a special license in a nonprofit sheltered workshop or  
2 rehabilitation facility.

3 (d) “Employer” includes any person regularly employing five  
4 or more persons, or any person acting as an agent of an employer,  
5 directly or indirectly, the state or any political or civil subdivision  
6 of the state, and cities, except as follows:

7 “Employer” does not include a religious association or  
8 corporation not organized for private profit.

9 (e) “Employment agency” includes any person undertaking for  
10 compensation to procure employees or opportunities to work.

11 (f) “Essential functions” means the fundamental job duties of  
12 the employment position the individual with a disability holds or  
13 desires. “Essential functions” does not include the marginal  
14 functions of the position.

15 (1) A job function may be considered essential for any of several  
16 reasons, including, but not limited to, any one or more of the  
17 following:

18 (A) The function may be essential because the reason the  
19 position exists is to perform that function.

20 (B) The function may be essential because of the limited number  
21 of employees available among whom the performance of that job  
22 function can be distributed.

23 (C) The function may be highly specialized, so that the  
24 incumbent in the position is hired for his or her expertise or ability  
25 to perform the particular function.

26 (2) Evidence of whether a particular function is essential  
27 includes, but is not limited to, the following:

28 (A) The employer’s judgment as to which functions are essential.

29 (B) Written job descriptions prepared before advertising or  
30 interviewing applicants for the job.

31 (C) The amount of time spent on the job performing the function.

32 (D) The consequences of not requiring the incumbent to perform  
33 the function.

34 (E) The terms of a collective bargaining agreement.

35 (F) The work experiences of past incumbents in the job.

36 (G) The current work experience of incumbents in similar jobs.

37 (g) (1) “Genetic information” means, with respect to any  
38 individual, information about any of the following:

39 (A) The individual’s genetic tests.

40 (B) The genetic tests of family members of the individual.

1 (C) The manifestation of a disease or disorder in family members  
2 of the individual.

3 (2) “Genetic information” includes any request for, or receipt  
4 of, genetic services, or participation in clinical research that  
5 includes genetic services, by an individual or any family member  
6 of the individual.

7 (3) “Genetic information” does not include information about  
8 the sex or age of any individual.

9 (h) “Labor organization” includes any organization that exists  
10 and is constituted for the purpose, in whole or in part, of collective  
11 bargaining or of dealing with employers concerning grievances,  
12 terms or conditions of employment, or of other mutual aid or  
13 protection.

14 (i) “Medical condition” means either of the following:

15 (1) Any health impairment related to or associated with a  
16 diagnosis of cancer or a record or history of cancer.

17 (2) Genetic characteristics. For purposes of this section, “genetic  
18 characteristics” means either of the following:

19 (A) Any scientifically or medically identifiable gene or  
20 chromosome, or combination or alteration thereof, that is known  
21 to be a cause of a disease or disorder in a person or his or her  
22 offspring, or that is determined to be associated with a statistically  
23 increased risk of development of a disease or disorder, and that is  
24 presently not associated with any symptoms of any disease or  
25 disorder.

26 (B) Inherited characteristics that may derive from the individual  
27 or family member, that are known to be a cause of a disease or  
28 disorder in a person or his or her offspring, or that are determined  
29 to be associated with a statistically increased risk of development  
30 of a disease or disorder, and that are presently not associated with  
31 any symptoms of any disease or disorder.

32 (j) “Mental disability” includes, but is not limited to, all of the  
33 following:

34 (1) Having any mental or psychological disorder or condition,  
35 such as intellectual disability, organic brain syndrome, emotional  
36 or mental illness, or specific learning disabilities, that limits a  
37 major life activity. For purposes of this section:

38 (A) “Limits” shall be determined without regard to mitigating  
39 measures, such as medications, assistive devices, or reasonable

1 accommodations, unless the mitigating measure itself limits a  
2 major life activity.

3 (B) A mental or psychological disorder or condition limits a  
4 major life activity if it makes the achievement of the major life  
5 activity difficult.

6 (C) “Major life activities” shall be broadly construed and shall  
7 include physical, mental, and social activities and working.

8 (2) Any other mental or psychological disorder or condition not  
9 described in paragraph (1) that requires special education or related  
10 services.

11 (3) Having a record or history of a mental or psychological  
12 disorder or condition described in paragraph (1) or (2), which is  
13 known to the employer or other entity covered by this part.

14 (4) Being regarded or treated by the employer or other entity  
15 covered by this part as having, or having had, any mental condition  
16 that makes achievement of a major life activity difficult.

17 (5) Being regarded or treated by the employer or other entity  
18 covered by this part as having, or having had, a mental or  
19 psychological disorder or condition that has no present disabling  
20 effect, but that may become a mental disability as described in  
21 paragraph (1) or (2).

22 “Mental disability” does not include sexual behavior disorders,  
23 compulsive gambling, kleptomania, pyromania, or psychoactive  
24 substance use disorders resulting from the current unlawful use of  
25 controlled substances or other drugs.

26 (k) “On the bases enumerated in this part” means or refers to  
27 discrimination on the basis of one or more of the following: race,  
28 religious creed, color, national origin, ancestry, physical disability,  
29 mental disability, medical condition, genetic information, marital  
30 status, sex, age, or sexual orientation.

31 (l) “Physical disability” includes, but is not limited to, all of the  
32 following:

33 (1) Having any physiological disease, disorder, condition,  
34 cosmetic disfigurement, or anatomical loss that does both of the  
35 following:

36 (A) Affects one or more of the following body systems:  
37 neurological, immunological, musculoskeletal, special sense  
38 organs, respiratory, including speech organs, cardiovascular,  
39 reproductive, digestive, genitourinary, hemic and lymphatic, skin,  
40 and endocrine.

1 (B) Limits a major life activity. For purposes of this section:

2 (i) “Limits” shall be determined without regard to mitigating  
3 measures such as medications, assistive devices, prosthetics, or  
4 reasonable accommodations, unless the mitigating measure itself  
5 limits a major life activity.

6 (ii) A physiological disease, disorder, condition, cosmetic  
7 disfigurement, or anatomical loss limits a major life activity if it  
8 makes the achievement of the major life activity difficult.

9 (iii) “Major life activities” shall be broadly construed and  
10 includes physical, mental, and social activities and working.

11 (2) Any other health impairment not described in paragraph (1)  
12 that requires special education or related services.

13 (3) Having a record or history of a disease, disorder, condition,  
14 cosmetic disfigurement, anatomical loss, or health impairment  
15 described in paragraph (1) or (2), which is known to the employer  
16 or other entity covered by this part.

17 (4) Being regarded or treated by the employer or other entity  
18 covered by this part as having, or having had, any physical  
19 condition that makes achievement of a major life activity difficult.

20 (5) Being regarded or treated by the employer or other entity  
21 covered by this part as having, or having had, a disease, disorder,  
22 condition, cosmetic disfigurement, anatomical loss, or health  
23 impairment that has no present disabling effect but may become  
24 a physical disability as described in paragraph (1) or (2).

25 (6) “Physical disability” does not include sexual behavior  
26 disorders, compulsive gambling, kleptomania, pyromania, or  
27 psychoactive substance use disorders resulting from the current  
28 unlawful use of controlled substances or other drugs.

29 (m) Notwithstanding subdivisions (j) and (l), if the definition  
30 of “disability” used in the federal Americans with Disabilities Act  
31 of 1990 (Public Law 101-336) would result in broader protection  
32 of the civil rights of individuals with a mental disability or physical  
33 disability, as defined in subdivision (j) or (l), or would include any  
34 medical condition not included within those definitions, then that  
35 broader protection or coverage shall be deemed incorporated by  
36 reference into, and shall prevail over conflicting provisions of, the  
37 definitions in subdivisions (j) and (l).

38 (n) “Race, religious creed, color, national origin, ancestry,  
39 physical disability, mental disability, medical condition, genetic  
40 information, marital status, sex, age, or sexual orientation” includes

1 a perception that the person has any of those characteristics or that  
2 the person is associated with a person who has, or is perceived to  
3 have, any of those characteristics.

4 (o) “Reasonable accommodation” may include either of the  
5 following:

6 (1) Making existing facilities used by employees readily  
7 accessible to, and usable by, individuals with disabilities.

8 (2) Job restructuring, part-time or modified work schedules,  
9 reassignment to a vacant position, acquisition or modification of  
10 equipment or devices, adjustment or modifications of examinations,  
11 training materials or policies, the provision of qualified readers or  
12 interpreters, and other similar accommodations for individuals  
13 with disabilities.

14 (p) “Religious creed,” “religion,” “religious observance,”  
15 “religious belief,” and “creed” include all aspects of religious  
16 belief, observance, and practice, including religious dress and  
17 grooming practices. “Religious dress practice” shall be construed  
18 broadly to include the wearing or carrying of religious clothing,  
19 head or face coverings, jewelry, artifacts, and any other item that  
20 is part of the observance by an individual of his or her religious  
21 creed. “Religious grooming practice” shall be construed broadly  
22 to include all forms of head, facial, and body hair that are part of  
23 the observance by an individual of his or her religious creed.

24 (q) (1) “Sex” includes, but is not limited to, the following:

25 (A) Pregnancy or medical conditions related to pregnancy.

26 (B) Childbirth or medical conditions related to childbirth.

27 (C) Breastfeeding or medical conditions related to breastfeeding.

28 (2) “Sex” also includes, but is not limited to, a person’s gender.  
29 “Gender” means sex, and includes a person’s gender identity and  
30 gender expression. “Gender expression” means a person’s  
31 gender-related appearance and behavior whether or not  
32 stereotypically associated with the person’s assigned sex at birth.

33 (r) “Sexual orientation” means heterosexuality, homosexuality,  
34 and bisexuality.

35 (s) “Supervisor” means any individual having the authority, in  
36 the interest of the employer, to hire, transfer, suspend, layoff, recall,  
37 promote, discharge, assign, reward, or discipline other employees,  
38 or the responsibility to direct them, or to adjust their grievances,  
39 or effectively to recommend that action, if, in connection with the



1 foregoing, the exercise of that authority is not of a merely routine  
2 or clerical nature, but requires the use of independent judgment.

3 (t) “Undue hardship” means an action requiring significant  
4 difficulty or expense, when considered in light of the following  
5 factors:

6 (1) The nature and cost of the accommodation needed.

7 (2) The overall financial resources of the facilities involved in  
8 the provision of the reasonable accommodations, the number of  
9 persons employed at the facility, and the effect on expenses and  
10 resources or the impact otherwise of these accommodations upon  
11 the operation of the facility.

12 (3) The overall financial resources of the covered entity, the  
13 overall size of the business of a covered entity with respect to the  
14 number of employees, and the number, type, and location of its  
15 facilities.

16 (4) The type of operations, including the composition, structure,  
17 and functions of the workforce of the entity.

18 (5) The geographic separateness, administrative, or fiscal  
19 relationship of the facility or facilities.

20 SEC. 87. Section 14837 of the Government Code is amended  
21 to read:

22 14837. As used in this chapter:

23 (a) “Department” means the Department of General Services.

24 (b) “Director” means the Director of General Services.

25 (c) “Manufacturer” means a business that meets both of the  
26 following requirements:

27 (1) It is primarily engaged in the chemical or mechanical  
28 transformation of raw materials or processed substances into new  
29 products.

30 (2) It is classified between Codes 31 to 33, inclusive, of the  
31 North American Industry Classification System.

32 (d) (1) “Small business” means an independently owned and  
33 operated business that is not dominant in its field of operation, the  
34 principal office of which is located in California, the officers of  
35 which are domiciled in California, and which, together with  
36 affiliates, has 100 or fewer employees, and average annual gross  
37 receipts of ten million dollars (\$10,000,000) or less over the  
38 previous three years, or is a manufacturer, as defined in subdivision  
39 (c), with 100 or fewer employees.

1 (2) “Microbusiness” is a small business which, together with  
2 affiliates, has average annual gross receipts of two million five  
3 hundred thousand dollars (\$2,500,000) or less over the previous  
4 three years, or is a manufacturer, as defined in subdivision (c),  
5 with 25 or fewer employees.

6 (3) The director shall conduct a biennial review of the average  
7 annual gross receipt levels specified in this subdivision and may  
8 adjust that level to reflect changes in the California Consumer  
9 Price Index for all items. To reflect unique variations or  
10 characteristics of different industries, the director may establish,  
11 to the extent necessary, either higher or lower qualifying standards  
12 than those specified in this subdivision, or alternative standards  
13 based on other applicable criteria.

14 (4) Standards applied under this subdivision shall be established  
15 by regulation, in accordance with Chapter 3.5 (commencing with  
16 Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude  
17 the qualification of businesses that are dominant in their industry.  
18 In addition, the standards shall provide that the certified small  
19 business or microbusiness shall provide goods or services that  
20 contribute to the fulfillment of the contract requirements by  
21 performing a commercially useful function, as defined below:

22 (A) A certified small business or microbusiness is deemed to  
23 perform a commercially useful function if the business does all of  
24 the following:

25 (i) Is responsible for the execution of a distinct element of the  
26 work of the contract.

27 (ii) Carries out its obligation by actually performing, managing,  
28 or supervising the work involved.

29 (iii) Performs work that is normal for its business services and  
30 functions.

31 (iv) Is responsible, with respect to products, inventories,  
32 materials, and supplies required for the contract, for negotiating  
33 price, determining quality and quantity, ordering, installing, if  
34 applicable, and making payment.

35 (v) Is not further subcontracting a portion of the work that is  
36 greater than that expected to be subcontracted by normal industry  
37 practices.

38 (B) A contractor, subcontractor, or supplier will not be  
39 considered to perform a commercially useful function if the  
40 contractor’s, subcontractor’s, or supplier’s role is limited to that

1 of an extra participant in a transaction, contract, or project through  
2 which funds are passed in order to obtain the appearance of small  
3 business or microbusiness participation.

4 (e) “Disabled veteran business enterprise” means an enterprise  
5 that has been certified as meeting the qualifications established by  
6 paragraph (7) of subdivision (b) of Section 999 of the Military and  
7 Veterans Code.

8 SEC. 88. The heading of Chapter 3 (commencing with Section  
9 15570) of Part 8.5 of Division 3 of Title 2 of the Government Code  
10 is repealed.

11 SEC. 89. Section 15606.5 of the Government Code, as added  
12 by Chapter 1167 of the Statutes of 1967, is amended and  
13 renumbered to read:

14 15606.7 Training of assessors and their staffs under Sections  
15 15606 and 15608 shall be provided by the board on a  
16 nonreimbursable basis.

17 SEC. 90. Section 15814.25 of the Government Code, as added  
18 by Section 1 of Chapter 234 of the Statutes of 1997, is amended  
19 and renumbered to read:

20 15814.29 Notwithstanding subdivision (f) of Section 15814.11,  
21 for the purposes of this chapter “state agency” also shall include  
22 any local government as defined in subdivision (b) of Section  
23 5921.

24 SEC. 91. Section 15819.30 of the Government Code, as added  
25 by Section 8 of Chapter 585 of the Statutes of 1993, is amended  
26 and renumbered to read:

27 15819.17 (a) The necessary funding for the construction of  
28 the Secure Substance Abuse Treatment Facility authorized by  
29 Section 5 of Chapter 585 of the Statutes of 1993 may be obtained  
30 through lease-purchase financing arrangements. Sections 15819.1  
31 to 15819.13, inclusive, and Section 15819.15 shall apply for this  
32 purpose provided that the following apply:

33 (1) “Prison facility” as used in Section 15819.1 includes the  
34 Secure Substance Abuse Treatment Facility.

35 (2) Notwithstanding the limitation imposed by Section 15819.3  
36 regarding the amount of bonds to be issued for construction,  
37 acquisition, and financing of prison facilities, the State Public  
38 Works Board may issue additional bonds in order to pay the costs  
39 of acquiring and constructing or refinancing the Secure Substance  
40 Abuse Treatment Facility.

1 (b) Notwithstanding Section 13340, funds derived from the  
2 lease-purchase financing methods for the Secure Substance Abuse  
3 Treatment Facility deposited in the State Treasury, are hereby  
4 continuously appropriated to the State Public Works Board on  
5 behalf of the Department of Corrections and Rehabilitation for the  
6 purpose of acquiring and constructing or refinancing the prison  
7 facility so financed.

8 The sum of ninety-three million five hundred thousand dollars  
9 (\$93,500,000) shall be available for capital outlay for the Secure  
10 Substance Abuse Treatment Facility from funds derived from  
11 lease-purchase financing methods.

12 Funds so appropriated shall be available as necessary for the  
13 purposes of site acquisition, site studies and suitability reports,  
14 environmental studies, master planning, architectural programming,  
15 schematics, preliminary plans, working drawings, construction,  
16 and long lead and equipment items. A maximum of two million  
17 dollars (\$2,000,000) of the funds may be available for mitigation  
18 costs of local government and school districts.

19 (c) The State Public Works Board may authorize the  
20 augmentation of the cost of construction of the project set forth in  
21 this section pursuant to the board's authority under Section  
22 13332.11. In addition, the State Public Works Board may authorize  
23 any additional amounts necessary to establish a reasonable  
24 construction reserve and to pay the costs of financing, including  
25 the payment of interest during acquisition or construction of the  
26 project, the cost of financing a debt service reserve fund, and the  
27 cost of issuance of permanent financing for the project. This  
28 additional amount may include interest payable on any interim  
29 loan for the facility from the General Fund or the Pooled Money  
30 Investment Account pursuant to Section 16312.

31 SEC. 92. Section 15820.922 of the Government Code is  
32 amended to read:

33 15820.922. (a) The board may issue up to five hundred million  
34 dollars (\$500,000,000) in revenue bonds, notes, or bond  
35 anticipation notes, pursuant to Chapter 5 (commencing with Section  
36 15830) to finance the acquisition, design, and construction,  
37 including, without limitation, renovation, and a reasonable  
38 construction reserve, of approved adult local criminal justice  
39 facilities described in Section 15820.92, and any additional amount  
40 authorized under Section 15849.6 to pay for the cost of financing.

1 (b) Proceeds from the revenue bonds, notes, or bond anticipation  
2 notes may be used to reimburse a participating county for the costs  
3 of acquisition, design, and construction, including, without  
4 limitation, renovation, for approved adult local criminal justice  
5 facilities.

6 (c) Notwithstanding Section 13340, funds derived pursuant to  
7 this section and Section 15820.921 are continuously appropriated  
8 for purposes of this chapter.

9 SEC. 93. Section 19815 of the Government Code is amended  
10 to read:

11 19815. As used in this part:

12 (a) “Department” means the Department of Human Resources.

13 (b) “Director” means the Director of the Department of Human  
14 Resources.

15 (c) “Division” means the Division of Labor Relations.

16 (d) “Employee” or “state employee,” except where otherwise  
17 indicated, means employees subject to the Ralph C. Dills Act  
18 (Chapter 10.3 (commencing with Section 3512), Division 4, Title  
19 1), supervisory employees as defined in subdivision (g) of Section  
20 3513, managerial employees as defined in subdivision (e) of  
21 Section 3513, confidential employees as defined in subdivision  
22 (f) of Section 3513, employees of the Legislative Counsel Bureau,  
23 employees of the Bureau of State Audits, employees of the office  
24 of the Inspector General, employees of the Public Employment  
25 Relations Board, conciliators employed by the California State  
26 Mediation and Conciliation Service, employees of the Department  
27 of Human Resources, professional employees of the Department  
28 of Finance engaged in technical or analytical state budget  
29 preparation other than audit staff, intermittent athletic inspectors  
30 who are employees of the State Athletic Commission, professional  
31 employees in the Personnel/Payroll Services Division of the  
32 Controller’s office and all employees of the executive branch of  
33 government who are not elected to office.

34 SEC. 94. Section 20391 of the Government Code is amended  
35 to read:

36 20391. “State peace officer/firefighter member” means:

37 (a) All persons in the Board of Parole Hearings, the Department  
38 of Consumer Affairs, the Department of Developmental Services,  
39 the Department of Health Care Services, the Department of Toxic  
40 Substances Control, the California Horse Racing Board, the

1 Department of Industrial Relations, the Department of Insurance,  
2 the State Department of State Hospitals, the Department of Motor  
3 Vehicles, the Department of Social Services employed with the  
4 class title of Special Investigator (Class Code 8553), Senior Special  
5 Investigator (Class Code 8550), and Investigator Assistant (Class  
6 Code 8554) who have been designated as peace officers as defined  
7 in Sections 830.2 and 830.3 of the Penal Code.

8 (b) All persons in the Department of Alcoholic Beverage Control  
9 employed with the class title Investigator Trainee, Alcoholic  
10 Beverage Control (Class Code 7553), Investigator I, Alcoholic  
11 Beverage Control, Range A and B (Class Code 7554), and  
12 Investigator II, Alcoholic Beverage Control (Class Code 7555)  
13 who have been designated as peace officers as defined in Sections  
14 830.2 and 830.3 of the Penal Code.

15 (c) All persons within the Department of Justice who are state  
16 employees as defined in subdivision (c) of Section 3513 and who  
17 have been designated as peace officers and performing investigative  
18 duties.

19 (d) All persons in the Department of Parks and Recreation  
20 employed with the class title of Park Ranger (Intermittent) (Class  
21 Code 0984) who have been designated as peace officers as defined  
22 in Sections 830.2 and 830.3 of the Penal Code.

23 (e) All persons in the Franchise Tax Board who have been  
24 designated as peace officers in subdivision (s) of Section 830.3 of  
25 the Penal Code.

26 (f) A member who is employed in a position that is reclassified  
27 to state peace officer/firefighter pursuant to this section may make  
28 an irrevocable election in writing to remain subject to the service  
29 retirement benefit and the normal rate of contribution applicable  
30 prior to reclassification by filing a notice of election with the board  
31 within 90 days of notification by the board. A member who so  
32 elects shall be subject to the reduced benefit factors specified in  
33 Section 21353 or 21354.1, as applicable, only for service included  
34 in the federal system.

35 SEC. 95. Section 20410 of the Government Code is amended  
36 to read:

37 20410. "State safety member" also includes all persons in the  
38 Department of Alcoholic Beverage Control, the Board of Parole  
39 Hearings, the Department of Consumer Affairs, the Department  
40 of Developmental Services, the Department of Health Care

1 Services, the Department of Toxic Substances Control, the  
2 California Horse Racing Board, the Department of Industrial  
3 Relations, the Department of Insurance, the State Department of  
4 State Hospitals, the Department of Motor Vehicles, and the  
5 Department of Social Services employed with the class title of  
6 Special Investigator (Class Code 8553), Senior Special Investigator  
7 (Class Code 8550), Investigator Trainee (Class Code 8555) and  
8 Investigator Assistant (Class Code 8554), Supervising Special  
9 Investigator I (Class Code 8548), Special Investigator II (Class  
10 Code 8547), and persons in the class of State Park Ranger  
11 (Intermittent) (Class Code 0984) in the Department of Parks and  
12 Recreation, who have been designated as peace officers as defined  
13 in Sections 830.2 and 830.3 of the Penal Code.

14 SEC. 96. Section 20516 of the Government Code is amended  
15 to read:

16 20516. (a) Notwithstanding any other provision of this part,  
17 with or without a change in benefits, a contracting agency and its  
18 employees may agree, in writing, to share the costs of the employer  
19 contribution. The cost sharing pursuant to this section shall also  
20 apply for related nonrepresented employees as approved in a  
21 resolution passed by the contracting agency.

22 (b) The collective bargaining agreement shall specify the exact  
23 percentage of member compensation that shall be paid toward the  
24 current service cost of the benefits by members. The member  
25 contributions shall be contributions over and above normal  
26 contributions otherwise required by this part and shall be treated  
27 as normal contributions for all purposes of this part. The  
28 contributions shall be uniform, except as described in subdivision  
29 (c), with respect to all members within each of the following  
30 classifications: local miscellaneous members, local police officers,  
31 local firefighters, county peace officers, and all local safety  
32 members other than local police officers, local firefighters, and  
33 county peace officers. The balance of any costs shall be paid by  
34 the contracting agency and shall be credited to the employer's  
35 account. An employer shall not use impasse procedures to impose  
36 member cost sharing on any contribution amount above that which  
37 is authorized by law.

38 (c) Member cost sharing may differ by classification for groups  
39 of employees subject to different levels of benefits pursuant to  
40 Sections 7522.20, 7522.25, and 20475, or by a recognized

1 collective bargaining unit if agreed to in a memorandum of  
2 understanding reached pursuant to the applicable collective  
3 bargaining laws.

4 (d) This section shall not apply to any contracting agency nor  
5 to the employees of a contracting agency until the agency elects  
6 to be subject to this section by contract or by amendment to its  
7 contract made in the manner prescribed for approval of contracts.  
8 Contributions provided by this section shall be withheld from  
9 member compensation or otherwise collected when the contract  
10 amendment becomes effective.

11 (e) For the purposes of this section, all contributions, liabilities,  
12 actuarial interest rates, and other valuation factors shall be  
13 determined on the basis of actuarial assumptions and methods that,  
14 in the aggregate, are reasonable and that, in combination, offer the  
15 actuary's best estimate of anticipated experience under this system.

16 (f) Nothing in this section shall preclude a contracting agency  
17 and its employees from independently agreeing in a memorandum  
18 of understanding to share the costs of any benefit, in a manner  
19 inconsistent with this section. However, any agreement in a  
20 memorandum of understanding that is inconsistent with this section  
21 shall not be part of the contract between this system and the  
22 contracting agency.

23 (g) If, and to the extent that, the board determines that a  
24 cost-sharing agreement under this section would conflict with Title  
25 26 of the United States Code, the board may refuse to approve the  
26 agreement.

27 (h) Nothing in this section shall require a contracting agency to  
28 enter into a memorandum of understanding or collective bargaining  
29 agreement with a bargaining representative in order to increase  
30 the amount of member contributions when such a member  
31 contribution increase is authorized by other provisions under this  
32 part.

33 SEC. 97. Section 20677.7 of the Government Code is amended  
34 to read:

35 20677.7. (a) Notwithstanding Section 20677.4, effective with  
36 the beginning of the September 2010 pay period, the normal rate  
37 of contribution for state miscellaneous or state industrial members  
38 who are represented by State Bargaining Unit 8, shall be:



1 (1) Eleven percent of the compensation in excess of three  
2 hundred seventeen dollars (\$317) per month paid to a member  
3 whose service is not included in the federal system.

4 (2) Ten percent of compensation in excess of five hundred  
5 thirteen dollars (\$513) per month paid to a member whose service  
6 has been included in the federal system.

7 (b) Notwithstanding Section 20677.4, effective with the  
8 beginning of the September 2010 pay period, the normal rate of  
9 contribution for state miscellaneous or state industrial members  
10 who are represented by State Bargaining Unit 5 shall be:

11 (1) Eight percent of the compensation in excess of three hundred  
12 seventeen dollars (\$317) per month paid to a member whose service  
13 is not included in the federal system.

14 (2) Seven percent of compensation in excess of five hundred  
15 thirteen dollars (\$513) per month paid to a member whose service  
16 has been included in the federal system.

17 (c) If the provisions of this section are in conflict with the  
18 provisions of a memorandum of understanding reached pursuant  
19 to Section 3517.5, the memorandum of understanding shall be  
20 controlling without further legislative action, except that if the  
21 provisions of a memorandum of understanding require the  
22 expenditure of funds, the provisions shall not become effective  
23 unless and until approved by the Legislature in the annual Budget  
24 Act.

25 (d) Consistent with the normal rate of contribution for all  
26 members identified in this subdivision, the Director of the  
27 Department of Personnel Administration may exercise his or her  
28 discretion to establish the normal rate of contribution for a related  
29 state employee who is excepted from the definition of “state  
30 employee” in subdivision (c) of Section 3513, and an officer or  
31 employee of the executive branch of state government who is not  
32 a member of the civil service.

33 SEC. 98. Section 25060 of the Government Code is amended  
34 to read:

35 25060. Whenever a vacancy occurs in a board of supervisors,  
36 the Governor shall fill the vacancy. The appointee shall hold office  
37 until the election and qualification of his or her successor.

38 SEC. 99. Section 25062 of the Government Code is amended  
39 to read:

1 25062. When a vacancy occurs from the failure of the person  
2 elected to file his or her oath or bond as provided by law, and the  
3 person elected is appointed to fill the vacancy, he or she shall hold  
4 office for the unexpired term.

5 SEC. 100. Section 65040.7 of the Government Code is amended  
6 to read:

7 65040.7. (a) For purposes of this section, the following terms  
8 have the following meanings:

9 (1) “Energy security and military mission goals” means federal  
10 laws, regulations, or executive orders, related to alternative fuel  
11 and vehicle technology, clean energy, energy efficiency, water  
12 and waste conservation, greenhouse gas emissions reductions, and  
13 related infrastructure, including, but not limited to, the federal  
14 laws, regulations, and executive orders, and the goals set forth  
15 therein, of the National Energy Conservation Policy Act (42 U.S.C.  
16 Sec. 8201 et seq.), the Energy Independence and Security Act of  
17 2007 (42 U.S.C. Sec. 17001 et seq.), the Energy Policy Act of  
18 2005 (42 U.S.C. Sec. 15801 et seq.), and the Energy Policy Act  
19 of 1992 (42 U.S.C. Sec. 13201 et seq.), and the goals set forth in  
20 Executive Order No. 13514, Executive Order No. 13423, and  
21 Executive Order No. 13221.

22 (2) “State energy and environmental policies” includes, but is  
23 not limited to, policies involving alternative fuels and vehicle  
24 technology and related fueling infrastructure, renewable electricity  
25 generation and related transmission infrastructure, energy efficiency  
26 and demand response, waste management, recycling, water  
27 conservation, water quality, water supply, greenhouse gas  
28 emissions reductions, and green chemistry.

29 (b) A state agency that is identified by the Office of Planning  
30 and Research pursuant to paragraph (1) of subdivision (c) shall,  
31 when developing and implementing state energy and environmental  
32 policies, consider the direct impacts of those policies upon the  
33 United States Department of Defense’s energy security and military  
34 mission goals.

35 (c) The Office of Planning and Research shall do both of the  
36 following:

37 (1) Identify state agencies that develop and implement state  
38 energy and environmental policies that directly impact the United  
39 States Department of Defense’s energy security and military  
40 mission goals in the state.

1 (2) Serve as a liaison to coordinate effective inclusion of the  
2 United States Department of Defense in the development and  
3 implementation of state energy and environmental policy.

4 (d) This section shall not do any of the following:

5 (1) Interfere with the existing authority of, or prevent, an agency  
6 or department from carrying out of its programs, projects, or  
7 responsibilities.

8 (2) Limit compliance with requirements imposed under any  
9 other law.

10 (3) Authorize or require the United States Department of  
11 Defense to operate differently from any other self-generating  
12 ratepayer, or alter an existing rate structure.

13 SEC. 101. Section 65302.5 of the Government Code is amended  
14 to read:

15 65302.5. (a) At least 45 days prior to adoption or amendment  
16 of the safety element, each county and city shall submit to the  
17 California Geological Survey of the Department of Conservation  
18 one copy of a draft of the safety element or amendment and any  
19 technical studies used for developing the safety element. The  
20 division may review drafts submitted to it to determine whether  
21 they incorporate known seismic and other geologic hazard  
22 information, and report its findings to the planning agency within  
23 30 days of receipt of the draft of the safety element or amendment  
24 pursuant to this subdivision. The legislative body shall consider  
25 the division's findings prior to final adoption of the safety element  
26 or amendment unless the division's findings are not available  
27 within the above prescribed time limits or unless the division has  
28 indicated to the city or county that the division will not review the  
29 safety element. If the division's findings are not available within  
30 those prescribed time limits, the legislative body may take the  
31 division's findings into consideration at the time it considers future  
32 amendments to the safety element. Each county and city shall  
33 provide the division with a copy of its adopted safety element or  
34 amendments. The division may review adopted safety elements  
35 or amendments and report its findings. All findings made by the  
36 division shall be advisory to the planning agency and legislative  
37 body.

38 (b) (1) The draft element of or draft amendment to the safety  
39 element of a county or a city's general plan shall be submitted to  
40 the State Board of Forestry and Fire Protection and to every local

1 agency that provides fire protection to territory in the city or county  
 2 at least 90 days prior to either of the following:

3 (A) The adoption or amendment to the safety element of its  
 4 general plan for each county that contains state responsibility areas.

5 (B) The adoption or amendment to the safety element of its  
 6 general plan for each city or county that contains a very high fire  
 7 hazard severity zone as defined pursuant to subdivision (i) of  
 8 Section 51177.

9 (2) A county that contains state responsibility areas and a city  
 10 or county that contains a very high fire hazard severity zone as  
 11 defined pursuant to subdivision (i) of Section 51177 shall submit  
 12 for review the safety element of its general plan to the State Board  
 13 of Forestry and Fire Protection and every local agency that provides  
 14 fire protection to territory in the city or county in accordance with  
 15 the following dates, as specified, unless the local government  
 16 submitted the element within five years prior to that date:

17 (A) Local governments within the regional jurisdiction of the  
 18 San Diego Association of Governments: December 31, 2010.

19 (B) Local governments within the regional jurisdiction of the  
 20 Southern California Association of Governments: December 31,  
 21 2011.

22 (C) Local governments within the regional jurisdiction of the  
 23 Association of Bay Area Governments: December 31, 2012.

24 (D) Local governments within the regional jurisdiction of the  
 25 Council of Fresno County Governments, the Kern County Council  
 26 of Governments, and the Sacramento Area Council of  
 27 Governments: June 30, 2013.

28 (E) Local governments within the regional jurisdiction of the  
 29 Association of Monterey Bay Area Governments: December 31,  
 30 2014.

31 (F) All other local governments: December 31, 2015.

32 (3) The State Board of Forestry and Fire Protection shall, and  
 33 a local agency may, review the draft or an existing safety element  
 34 and recommend changes to the planning agency within 60 days  
 35 of its receipt regarding both of the following:

36 (A) Uses of land and policies in state responsibility areas and  
 37 very high fire hazard severity zones that will protect life, property,  
 38 and natural resources from unreasonable risks associated with wild  
 39 land fires.

1 (B) Methods and strategies for wild land fire risk reduction and  
2 prevention within state responsibility areas and very high fire  
3 hazard severity zones.

4 (4) Prior to the adoption of its draft element or draft amendment,  
5 the board of supervisors of the county or the city council of a city  
6 shall consider the recommendations, if any, made by the State  
7 Board of Forestry and Fire Protection and any local agency that  
8 provides fire protection to territory in the city or county. If the  
9 board of supervisors or city council determines not to accept all  
10 or some of the recommendations, if any, made by the State Board  
11 of Forestry and Fire Protection or local agency, the board of  
12 supervisors or city council shall communicate in writing to the  
13 State Board of Forestry and Fire Protection or the local agency,  
14 its reasons for not accepting the recommendations.

15 (5) If the State Board of Forestry and Fire Protection's or local  
16 agency's recommendations are not available within the time limits  
17 required by this section, the board of supervisors or city council  
18 may act without those recommendations. The board of supervisors  
19 or city council shall take the recommendations into consideration  
20 the next time it considers amendments to the safety element.

21 SEC. 102. Section 65915 of the Government Code, as amended  
22 by Section 53 of Chapter 181 of the Statutes of 2012, is amended  
23 to read:

24 65915. (a) When an applicant seeks a density bonus for a  
25 housing development within, or for the donation of land for housing  
26 within, the jurisdiction of a city, county, or city and county, that  
27 local government shall provide the applicant with incentives or  
28 concessions for the production of housing units and child care  
29 facilities as prescribed in this section. All cities, counties, or cities  
30 and counties shall adopt an ordinance that specifies how  
31 compliance with this section will be implemented. Failure to adopt  
32 an ordinance shall not relieve a city, county, or city and county  
33 from complying with this section.

34 (b) (1) A city, county, or city and county shall grant one density  
35 bonus, the amount of which shall be as specified in subdivision  
36 (f), and incentives or concessions, as described in subdivision (d),  
37 when an applicant for a housing development seeks and agrees to  
38 construct a housing development, excluding any units permitted  
39 by the density bonus awarded pursuant to this section, that will  
40 contain at least any one of the following:

1 (A) Ten percent of the total units of a housing development for  
 2 lower income households, as defined in Section 50079.5 of the  
 3 Health and Safety Code.

4 (B) Five percent of the total units of a housing development for  
 5 very low income households, as defined in Section 50105 of the  
 6 Health and Safety Code.

7 (C) A senior citizen housing development, as defined in Sections  
 8 51.3 and 51.12 of the Civil Code, or mobilehome park that limits  
 9 residency based on age requirements for housing for older persons  
 10 pursuant to Section 798.76 or 799.5 of the Civil Code.

11 (D) Ten percent of the total dwelling units in a common interest  
 12 development as defined in Section 4100 of the Civil Code for  
 13 persons and families of moderate income, as defined in Section  
 14 50093 of the Health and Safety Code, provided that all units in the  
 15 development are offered to the public for purchase.

16 (2) For purposes of calculating the amount of the density bonus  
 17 pursuant to subdivision (f), the applicant who requests a density  
 18 bonus pursuant to this subdivision shall elect whether the bonus  
 19 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)  
 20 of paragraph (1).

21 (3) For the purposes of this section, “total units” or “total  
 22 dwelling units” does not include units added by a density bonus  
 23 awarded pursuant to this section or any local law granting a greater  
 24 density bonus.

25 (c) (1) An applicant shall agree to, and the city, county, or city  
 26 and county shall ensure, continued affordability of all low- and  
 27 very low income units that qualified the applicant for the award  
 28 of the density bonus for 30 years or a longer period of time if  
 29 required by the construction or mortgage financing assistance  
 30 program, mortgage insurance program, or rental subsidy program.  
 31 Rents for the lower income density bonus units shall be set at an  
 32 affordable rent as defined in Section 50053 of the Health and Safety  
 33 Code. Owner-occupied units shall be available at an affordable  
 34 housing cost as defined in Section 50052.5 of the Health and Safety  
 35 Code.

36 (2) An applicant shall agree to, and the city, county, or city and  
 37 county shall ensure that, the initial occupant of the  
 38 moderate-income units that are directly related to the receipt of  
 39 the density bonus in the common interest development, as defined  
 40 in Section 4100 of the Civil Code, are persons and families of

1 moderate income, as defined in Section 50093 of the Health and  
2 Safety Code, and that the units are offered at an affordable housing  
3 cost, as that cost is defined in Section 50052.5 of the Health and  
4 Safety Code. The local government shall enforce an equity sharing  
5 agreement, unless it is in conflict with the requirements of another  
6 public funding source or law. The following apply to the equity  
7 sharing agreement:

8 (A) Upon resale, the seller of the unit shall retain the value of  
9 any improvements, the downpayment, and the seller's proportionate  
10 share of appreciation. The local government shall recapture any  
11 initial subsidy, as defined in subparagraph (B), and its proportionate  
12 share of appreciation, as defined in subparagraph (C), which  
13 amount shall be used within five years for any of the purposes  
14 described in subdivision (e) of Section 33334.2 of the Health and  
15 Safety Code that promote home ownership.

16 (B) For purposes of this subdivision, the local government's  
17 initial subsidy shall be equal to the fair market value of the home  
18 at the time of initial sale minus the initial sale price to the  
19 moderate-income household, plus the amount of any downpayment  
20 assistance or mortgage assistance. If upon resale the market value  
21 is lower than the initial market value, then the value at the time of  
22 the resale shall be used as the initial market value.

23 (C) For purposes of this subdivision, the local government's  
24 proportionate share of appreciation shall be equal to the ratio of  
25 the local government's initial subsidy to the fair market value of  
26 the home at the time of initial sale.

27 (d) (1) An applicant for a density bonus pursuant to subdivision  
28 (b) may submit to a city, county, or city and county a proposal for  
29 the specific incentives or concessions that the applicant requests  
30 pursuant to this section, and may request a meeting with the city,  
31 county, or city and county. The city, county, or city and county  
32 shall grant the concession or incentive requested by the applicant  
33 unless the city, county, or city and county makes a written finding,  
34 based upon substantial evidence, of any of the following:

35 (A) The concession or incentive is not required in order to  
36 provide for affordable housing costs, as defined in Section 50052.5  
37 of the Health and Safety Code, or for rents for the targeted units  
38 to be set as specified in subdivision (c).

39 (B) The concession or incentive would have a specific adverse  
40 impact, as defined in paragraph (2) of subdivision (d) of Section

1 65589.5, upon public health and safety or the physical environment  
2 or on any real property that is listed in the California Register of  
3 Historical Resources and for which there is no feasible method to  
4 satisfactorily mitigate or avoid the specific adverse impact without  
5 rendering the development unaffordable to low- and  
6 moderate-income households.

7 (C) The concession or incentive would be contrary to state or  
8 federal law.

9 (2) The applicant shall receive the following number of  
10 incentives or concessions:

11 (A) One incentive or concession for projects that include at least  
12 10 percent of the total units for lower income households, at least  
13 5 percent for very low income households, or at least 10 percent  
14 for persons and families of moderate income in a common interest  
15 development.

16 (B) Two incentives or concessions for projects that include at  
17 least 20 percent of the total units for lower income households, at  
18 least 10 percent for very low income households, or at least 20  
19 percent for persons and families of moderate income in a common  
20 interest development.

21 (C) Three incentives or concessions for projects that include at  
22 least 30 percent of the total units for lower income households, at  
23 least 15 percent for very low income households, or at least 30  
24 percent for persons and families of moderate income in a common  
25 interest development.

26 (3) The applicant may initiate judicial proceedings if the city,  
27 county, or city and county refuses to grant a requested density  
28 bonus, incentive, or concession. If a court finds that the refusal to  
29 grant a requested density bonus, incentive, or concession is in  
30 violation of this section, the court shall award the plaintiff  
31 reasonable attorney's fees and costs of suit. Nothing in this  
32 subdivision shall be interpreted to require a local government to  
33 grant an incentive or concession that has a specific, adverse impact,  
34 as defined in paragraph (2) of subdivision (d) of Section 65589.5,  
35 upon health, safety, or the physical environment, and for which  
36 there is no feasible method to satisfactorily mitigate or avoid the  
37 specific adverse impact. Nothing in this subdivision shall be  
38 interpreted to require a local government to grant an incentive or  
39 concession that would have an adverse impact on any real property  
40 that is listed in the California Register of Historical Resources.



1 The city, county, or city and county shall establish procedures for  
2 carrying out this section, that shall include legislative body  
3 approval of the means of compliance with this section.

4 (e) (1) In no case may a city, county, or city and county apply  
5 any development standard that will have the effect of physically  
6 precluding the construction of a development meeting the criteria  
7 of subdivision (b) at the densities or with the concessions or  
8 incentives permitted by this section. An applicant may submit to  
9 a city, county, or city and county a proposal for the waiver or  
10 reduction of development standards that will have the effect of  
11 physically precluding the construction of a development meeting  
12 the criteria of subdivision (b) at the densities or with the  
13 concessions or incentives permitted under this section, and may  
14 request a meeting with the city, county, or city and county. If a  
15 court finds that the refusal to grant a waiver or reduction of  
16 development standards is in violation of this section, the court  
17 shall award the plaintiff reasonable attorney's fees and costs of  
18 suit. Nothing in this subdivision shall be interpreted to require a  
19 local government to waive or reduce development standards if the  
20 waiver or reduction would have a specific, adverse impact, as  
21 defined in paragraph (2) of subdivision (d) of Section 65589.5,  
22 upon health, safety, or the physical environment, and for which  
23 there is no feasible method to satisfactorily mitigate or avoid the  
24 specific adverse impact. Nothing in this subdivision shall be  
25 interpreted to require a local government to waive or reduce  
26 development standards that would have an adverse impact on any  
27 real property that is listed in the California Register of Historical  
28 Resources, or to grant any waiver or reduction that would be  
29 contrary to state or federal law.

30 (2) A proposal for the waiver or reduction of development  
31 standards pursuant to this subdivision shall neither reduce nor  
32 increase the number of incentives or concessions to which the  
33 applicant is entitled pursuant to subdivision (d).

34 (f) For the purposes of this chapter, "density bonus" means a  
35 density increase over the otherwise maximum allowable residential  
36 density as of the date of application by the applicant to the city,  
37 county, or city and county. The applicant may elect to accept a  
38 lesser percentage of density bonus. The amount of density bonus  
39 to which the applicant is entitled shall vary according to the amount

1 by which the percentage of affordable housing units exceeds the  
2 percentage established in subdivision (b).

3 (1) For housing developments meeting the criteria of  
4 subparagraph (A) of paragraph (1) of subdivision (b), the density  
5 bonus shall be calculated as follows:

6	Percentage Low-Income Units	Percentage Density
7		Bonus
8	10	20
9	11	21.5
10	12	23
11	13	24.5
12	14	26
13	15	27.5
14	17	30.5
15	18	32
16	19	33.5
17	20	35
18		
19		

20 (2) For housing developments meeting the criteria of  
21 subparagraph (B) of paragraph (1) of subdivision (b), the density  
22 bonus shall be calculated as follows:

23	Percentage Very Low Income Units	Percentage Density Bonus
24	5	20
25	6	22.5
26	7	25
27	8	27.5
28	9	30
29	10	32.5
30	11	35
31		
32		

33 (3) For housing developments meeting the criteria of  
34 subparagraph (C) of paragraph (1) of subdivision (b), the density  
35 bonus shall be 20 percent of the number of senior housing units.

36 (4) For housing developments meeting the criteria of  
37 subparagraph (D) of paragraph (1) of subdivision (b), the density  
38 bonus shall be calculated as follows:

39	Percentage Moderate-Income Units	Percentage Density Bonus
40		

1	10	5
2	11	6
3	12	7
4	13	8
5	14	9
6	15	10
7	16	11
8	17	12
9	18	13
10	19	14
11	20	15
12	21	16
13	22	17
14	23	18
15	24	19
16	25	20
17	26	21
18	27	22
19	28	23
20	29	24
21	30	25
22	31	26
23	32	27
24	33	28
25	34	29
26	35	30
27	36	31
28	37	32
29	38	33
30	39	34
31	40	35

33 (5) All density calculations resulting in fractional units shall be  
34 rounded up to the next whole number. The granting of a density  
35 bonus shall not be interpreted, in and of itself, to require a general  
36 plan amendment, local coastal plan amendment, zoning change,  
37 or other discretionary approval.

38 (g) (1) When an applicant for a tentative subdivision map,  
39 parcel map, or other residential development approval donates  
40 land to a city, county, or city and county in accordance with this

1 subdivision, the applicant shall be entitled to a 15-percent increase  
2 above the otherwise maximum allowable residential density for  
3 the entire development, as follows:

	Percentage Very Low Income	Percentage Density Bonus
4		
5		
6	10	15
7	11	16
8	12	17
9	13	18
10	14	19
11	15	20
12	16	21
13	17	22
14	18	23
15	19	24
16	20	25
17	21	26
18	22	27
19	23	28
20	24	29
21	25	30
22	26	31
23	27	32
24	28	33
25	29	34
26	30	35

27  
28 (2) This increase shall be in addition to any increase in density  
29 mandated by subdivision (b), up to a maximum combined mandated  
30 density increase of 35 percent if an applicant seeks an increase  
31 pursuant to both this subdivision and subdivision (b). All density  
32 calculations resulting in fractional units shall be rounded up to the  
33 next whole number. Nothing in this subdivision shall be construed  
34 to enlarge or diminish the authority of a city, county, or city and  
35 county to require a developer to donate land as a condition of  
36 development. An applicant shall be eligible for the increased  
37 density bonus described in this subdivision if all of the following  
38 conditions are met:

1 (A) The applicant donates and transfers the land no later than  
2 the date of approval of the final subdivision map, parcel map, or  
3 residential development application.

4 (B) The developable acreage and zoning classification of the  
5 land being transferred are sufficient to permit construction of units  
6 affordable to very low income households in an amount not less  
7 than 10 percent of the number of residential units of the proposed  
8 development.

9 (C) The transferred land is at least one acre in size or of  
10 sufficient size to permit development of at least 40 units, has the  
11 appropriate general plan designation, is appropriately zoned with  
12 appropriate development standards for development at the density  
13 described in paragraph (3) of subdivision (c) of Section 65583.2,  
14 and is or will be served by adequate public facilities and  
15 infrastructure.

16 (D) The transferred land shall have all of the permits and  
17 approvals, other than building permits, necessary for the  
18 development of the very low income housing units on the  
19 transferred land, not later than the date of approval of the final  
20 subdivision map, parcel map, or residential development  
21 application, except that the local government may subject the  
22 proposed development to subsequent design review to the extent  
23 authorized by subdivision (i) of Section 65583.2 if the design is  
24 not reviewed by the local government prior to the time of transfer.

25 (E) The transferred land and the affordable units shall be subject  
26 to a deed restriction ensuring continued affordability of the units  
27 consistent with paragraphs (1) and (2) of subdivision (c), which  
28 shall be recorded on the property at the time of the transfer.

29 (F) The land is transferred to the local agency or to a housing  
30 developer approved by the local agency. The local agency may  
31 require the applicant to identify and transfer the land to the  
32 developer.

33 (G) The transferred land shall be within the boundary of the  
34 proposed development or, if the local agency agrees, within  
35 one-quarter mile of the boundary of the proposed development.

36 (H) A proposed source of funding for the very low income units  
37 shall be identified not later than the date of approval of the final  
38 subdivision map, parcel map, or residential development  
39 application.

1 (h) (1) When an applicant proposes to construct a housing  
 2 development that conforms to the requirements of subdivision (b)  
 3 and includes a child care facility that will be located on the  
 4 premises of, as part of, or adjacent to, the project, the city, county,  
 5 or city and county shall grant either of the following:  
 6 (A) An additional density bonus that is an amount of square  
 7 feet of residential space that is equal to or greater than the amount  
 8 of square feet in the child care facility.  
 9 (B) An additional concession or incentive that contributes  
 10 significantly to the economic feasibility of the construction of the  
 11 child care facility.  
 12 (2) The city, county, or city and county shall require, as a  
 13 condition of approving the housing development, that the following  
 14 occur:  
 15 (A) The child care facility shall remain in operation for a period  
 16 of time that is as long as or longer than the period of time during  
 17 which the density bonus units are required to remain affordable  
 18 pursuant to subdivision (c).  
 19 (B) Of the children who attend the child care facility, the  
 20 children of very low income households, lower income households,  
 21 or families of moderate income shall equal a percentage that is  
 22 equal to or greater than the percentage of dwelling units that are  
 23 required for very low income households, lower income  
 24 households, or families of moderate income pursuant to subdivision  
 25 (b).  
 26 (3) Notwithstanding any requirement of this subdivision, a city,  
 27 county, or city and county shall not be required to provide a density  
 28 bonus or concession for a child care facility if it finds, based upon  
 29 substantial evidence, that the community has adequate child care  
 30 facilities.  
 31 (4) “Child care facility,” as used in this section, means a child  
 32 day care facility other than a family day care home, including, but  
 33 not limited to, infant centers, preschools, extended day care  
 34 facilities, and schoolage child care centers.  
 35 (i) “Housing development,” as used in this section, means a  
 36 development project for five or more residential units. For the  
 37 purposes of this section, “housing development” also includes a  
 38 subdivision or common interest development, as defined in Section  
 39 4100 of the Civil Code, approved by a city, county, or city and  
 40 county and consists of residential units or unimproved residential

1 lots and either a project to substantially rehabilitate and convert  
2 an existing commercial building to residential use or the substantial  
3 rehabilitation of an existing multifamily dwelling, as defined in  
4 subdivision (d) of Section 65863.4, where the result of the  
5 rehabilitation would be a net increase in available residential units.  
6 For the purpose of calculating a density bonus, the residential units  
7 shall be on contiguous sites that are the subject of one development  
8 application, but do not have to be based upon individual  
9 subdivision maps or parcels. The density bonus shall be permitted  
10 in geographic areas of the housing development other than the  
11 areas where the units for the lower income households are located.

12 (j) The granting of a concession or incentive shall not be  
13 interpreted, in and of itself, to require a general plan amendment,  
14 local coastal plan amendment, zoning change, or other discretionary  
15 approval. This provision is declaratory of existing law.

16 (k) For the purposes of this chapter, concession or incentive  
17 means any of the following:

18 (1) A reduction in site development standards or a modification  
19 of zoning code requirements or architectural design requirements  
20 that exceed the minimum building standards approved by the  
21 California Building Standards Commission as provided in Part 2.5  
22 (commencing with Section 18901) of Division 13 of the Health  
23 and Safety Code, including, but not limited to, a reduction in  
24 setback and square footage requirements and in the ratio of  
25 vehicular parking spaces that would otherwise be required that  
26 results in identifiable, financially sufficient, and actual cost  
27 reductions.

28 (2) Approval of mixed-use zoning in conjunction with the  
29 housing project if commercial, office, industrial, or other land uses  
30 will reduce the cost of the housing development and if the  
31 commercial, office, industrial, or other land uses are compatible  
32 with the housing project and the existing or planned development  
33 in the area where the proposed housing project will be located.

34 (3) Other regulatory incentives or concessions proposed by the  
35 developer or the city, county, or city and county that result in  
36 identifiable, financially sufficient, and actual cost reductions.

37 (l) Subdivision (k) does not limit or require the provision of  
38 direct financial incentives for the housing development, including  
39 the provision of publicly owned land, by the city, county, or city  
40 and county, or the waiver of fees or dedication requirements.

1 (m) This section shall not be construed to supersede or in any  
2 way alter or lessen the effect or application of the California  
3 Coastal Act of 1976 (Division 20 (commencing with Section  
4 30000) of the Public Resources Code).

5 (n) If permitted by local ordinance, nothing in this section shall  
6 be construed to prohibit a city, county, or city and county from  
7 granting a density bonus greater than what is described in this  
8 section for a development that meets the requirements of this  
9 section or from granting a proportionately lower density bonus  
10 than what is required by this section for developments that do not  
11 meet the requirements of this section.

12 (o) For purposes of this section, the following definitions shall  
13 apply:

14 (1) “Development standard” includes a site or construction  
15 condition, including, but not limited to, a height limitation, a  
16 setback requirement, a floor area ratio, an onsite open-space  
17 requirement, or a parking ratio that applies to a residential  
18 development pursuant to any ordinance, general plan element,  
19 specific plan, charter, or other local condition, law, policy,  
20 resolution, or regulation.

21 (2) “Maximum allowable residential density” means the density  
22 allowed under the zoning ordinance and land use element of the  
23 general plan, or if a range of density is permitted, means the  
24 maximum allowable density for the specific zoning range and land  
25 use element of the general plan applicable to the project. Where  
26 the density allowed under the zoning ordinance is inconsistent  
27 with the density allowed under the land use element of the general  
28 plan, the general plan density shall prevail.

29 (p) (1) Upon the request of the developer, no city, county, or  
30 city and county shall require a vehicular parking ratio, inclusive  
31 of handicapped and guest parking, of a development meeting the  
32 criteria of subdivision (b), that exceeds the following ratios:

33 (A) Zero to one bedroom: one onsite parking space.

34 (B) Two to three bedrooms: two onsite parking spaces.

35 (C) Four and more bedrooms: two and one-half parking spaces.

36 (2) If the total number of parking spaces required for a  
37 development is other than a whole number, the number shall be  
38 rounded up to the next whole number. For purposes of this  
39 subdivision, a development may provide “onsite parking” through



1 tandem parking or uncovered parking, but not through onstreet  
2 parking.

3 (3) This subdivision shall apply to a development that meets  
4 the requirements of subdivision (b) but only at the request of the  
5 applicant. An applicant may request parking incentives or  
6 concessions beyond those provided in this subdivision pursuant  
7 to subdivision (d).

8 SEC. 103. The heading of Chapter 3 (commencing with Section  
9 80) of Division 1 of the Harbors and Navigation Code, as added  
10 by Section 2 of Chapter 136 of the Statutes of 2012, is amended  
11 to read:

12  
13 CHAPTER 3. BOATING AND WATERWAYS COMMISSION  
14

15 SEC. 104. Section 80.2 of the Harbors and Navigation Code,  
16 as added by Section 2 of Chapter 136 of the Statutes of 2012, is  
17 amended to read:

18 80.2. The commission shall be composed of seven members  
19 appointed by the Governor, with the advice and consent of the  
20 Senate. The members shall have experience and background  
21 consistent with the functions of the commission. In making  
22 appointments to the commission, the Governor shall give primary  
23 consideration to geographical location of the residence of members  
24 as related to boating activities and harbors. In addition to the  
25 geographical considerations, the members of the commission shall  
26 be appointed with regard to their special interests in recreational  
27 boating. At least one of the members shall be a member of a  
28 recognized statewide organization representing recreational boaters.  
29 One member of the commission shall be a private small craft harbor  
30 owner and operator. One member of the commission shall be an  
31 officer or employee of a law enforcement agency responsible for  
32 enforcing boating laws.

33 The Governor shall appoint the first seven members of the  
34 commission for the following terms to expire on January 15: one  
35 member for one year, two members for two years, two members  
36 for three years, and two members for four years. Thereafter,  
37 appointments shall be for a four-year term. Vacancies occurring  
38 prior to the expiration of the term shall be filled by appointment  
39 for the unexpired term.

1 SEC. 105. Section 82 of the Harbors and Navigation Code, as  
2 added by Section 2 of Chapter 136 of the Statutes of 2012, is  
3 amended to read:

4 82. The division, consistent with Section 82.3, and in  
5 furtherance of the public interest and in accordance therewith, shall  
6 have only the following duties with respect to the commission:

7 (a) To submit any proposed changes in regulations pertaining  
8 to boating functions and responsibilities of the division to the  
9 commission for its advice and comment prior to enactment of  
10 changes.

11 (b) To submit proposals for transfers pursuant to Section 70,  
12 loans pursuant to Section 71.4 or 76.3, and grants pursuant to  
13 Section 72.5 to the commission for its advice and comment.

14 (c) To submit any proposed project it is considering approving  
15 to the commission if that project could have a potentially significant  
16 impact on either public health or safety, public access, or the  
17 environment for the commission’s advice and comment prior to  
18 approval by the division.

19 (d) To annually submit a report on its budget and expenditures  
20 to the commission for its advice and comment.

21 (e) To cause studies and surveys to be made of the need for  
22 small craft harbors and connecting waterways throughout the state  
23 and the most suitable sites therefor, and submit those studies and  
24 surveys to the commission for advice and comment.

25 SEC. 106. Section 1339.40 of the Health and Safety Code is  
26 amended to read:

27 1339.40. For purposes of this article, the following definitions  
28 apply:

29 (a) “Bereavement services” has the same meaning as defined  
30 in subdivision (a) of Section 1746.

31 (b) “Hospice care” means a specialized form of interdisciplinary  
32 health care that is designed to provide palliative care, alleviate the  
33 physical, emotional, social, and spiritual discomforts of an  
34 individual who is experiencing the last phases of life due to the  
35 existence of a terminal disease, and provide supportive care to the  
36 primary caregiver and the family of the hospice patient, and that  
37 meets all of the following criteria:

38 (1) Considers the patient and the patient’s family, in addition  
39 to the patient, as the unit of care.

1 (2) Utilizes an interdisciplinary team to assess the physical,  
2 medical, psychological, social, and spiritual needs of the patient  
3 and the patient’s family.

4 (3) Requires the interdisciplinary team to develop an overall  
5 plan of care and to provide coordinated care that emphasizes  
6 supportive services, including, but not limited to, home care, pain  
7 control, and limited inpatient services. Limited inpatient services  
8 are intended to ensure both continuity of care and appropriateness  
9 of services for those patients who cannot be managed at home  
10 because of acute complications or the temporary absence of a  
11 capable primary caregiver.

12 (4) Provides for the palliative medical treatment of pain and  
13 other symptoms associated with a terminal disease, but does not  
14 provide for efforts to cure the disease.

15 (5) Provides for bereavement services following death to assist  
16 the family in coping with social and emotional needs associated  
17 with the death of the patient.

18 (6) Actively utilizes volunteers in the delivery of hospice  
19 services.

20 (7) To the extent appropriate, based on the medical needs of the  
21 patient, provides services in the patient’s home or primary place  
22 of residence.

23 (c) “Hospice facility” means a health facility as defined in  
24 subdivision (n) of Section 1250.

25 (d) “Inpatient hospice care” means hospice care that is provided  
26 to patients in a hospice facility, including routine, continuous, and  
27 inpatient care directly as specified in Section 418.110 of Title 42  
28 of the Code of Federal Regulations, and may include short-term  
29 inpatient respite care as specified in Section 418.108 of Title 42  
30 of the Code of Federal Regulations.

31 (e) “Interdisciplinary team” has the same meaning as defined  
32 in subdivision (g) of Section 1746.

33 (f) “Medical direction” has the same meaning as defined in  
34 subdivision (h) of Section 1746.

35 (g) “Palliative care” has the same meaning as defined in  
36 subdivision (j) of Section 1746.

37 (h) “Plan of care” has the same meaning as defined in  
38 subdivision (l) of Section 1746.

39 (i) “Skilled nursing services” has the same meaning as defined  
40 in subdivision (n) of Section 1746.

1 (j) “Social services/counseling services” has the same meaning  
 2 as defined in subdivision (o) of Section 1746.

3 (k) “Terminal disease” or “terminal illness” has the same  
 4 meaning as defined in subdivision (p) of Section 1746.

5 (l) “Volunteer services” has the same meaning as defined in  
 6 subdivision (q) of Section 1746.

7 SEC. 107. Section 1339.41 of the Health and Safety Code is  
 8 amended to read:

9 1339.41. (a) A person, governmental agency, or political  
 10 subdivision of the state shall not be licensed as a hospice facility  
 11 under this chapter unless the person or entity is a provider of  
 12 hospice services licensed pursuant to Section 1751 and is certified  
 13 as a hospice facility under Part 418 of Title 42 of the Code of  
 14 Federal Regulations.

15 (b) A hospice provider that intends to provide inpatient hospice  
 16 care in the hospice provider’s own facility shall submit an  
 17 application and fee for licensure as a hospice facility under this  
 18 chapter. Notwithstanding the maximum period for a provisional  
 19 license under subdivision (b) of Section 1268.5, the department  
 20 may issue a provisional license to a hospice facility for a period  
 21 of up to one year.

22 (c) A verified application for a new license completed on forms  
 23 furnished by the department shall be submitted to the department  
 24 upon the occurrence of either of the following:

- 25 (1) Establishment of a hospice facility.
- 26 (2) Change of ownership.

27 (d) The licensee shall submit to the department a verified  
 28 application for a corrected license completed on forms furnished  
 29 by the department upon the occurrence of any of the following:

- 30 (1) Construction of new or replacement hospice facility.
- 31 (2) Increase in licensed bed capacity.
- 32 (3) Change of name of facility.
- 33 (4) Change of licensed category.
- 34 (5) Change of location of facility.
- 35 (6) Change in bed classification.

36 (e) (1) A hospice facility that participates in the Medicare and  
 37 Medicaid programs may obtain initial certification from a federal  
 38 Centers for Medicare and Medicaid Services (CMS) approved  
 39 accreditation organization.

1 (2) If the CMS-approved accreditation organization conducts  
2 certification inspections, the hospice facility shall transmit to the  
3 department, within 30 days of receipt, a copy of the final  
4 accreditation report of the accreditation organization.

5 (f) A hospice facility shall be separately licensed, irrespective  
6 of the location of the facility.

7 (g) (1) The licensee shall notify the department in writing of  
8 any changes in the information provided pursuant to subdivision  
9 (d) within 10 days of these changes. This notice shall include  
10 information and documentation regarding the changes.

11 (2) Each licensee shall notify the department within 10 days in  
12 writing of any change of the mailing address of the licensee. This  
13 notice shall include the new mailing address of the licensee.

14 (3) When a change in the principal officer of a corporate  
15 licensee, including the chairman, president, or general manager  
16 occurs, the licensee shall notify the department of this change  
17 within 10 days in writing. This notice shall include the name and  
18 business address of the officer.

19 (4) Any decrease in licensed bed capacity of the facility shall  
20 require notification by letter to the department and shall result in  
21 the issuance of a corrected license.

22 SEC. 108. Section 1367.65 of the Health and Safety Code is  
23 amended to read:

24 1367.65. (a) On or after January 1, 2000, each health care  
25 service plan contract, except a specialized health care service plan  
26 contract, that is issued, amended, delivered, or renewed shall be  
27 deemed to provide coverage for mammography for screening or  
28 diagnostic purposes upon referral by a participating nurse  
29 practitioner, participating certified nurse-midwife, participating  
30 physician assistant, or participating physician, providing care to  
31 the patient and operating within the scope of practice provided  
32 under existing law.

33 (b) This section does not prevent application of copayment or  
34 deductible provisions in a plan, nor shall this section be construed  
35 to require that a plan be extended to cover any other procedures  
36 under an individual or a group health care service plan contract.  
37 This section does not authorize a plan enrollee to receive the  
38 services required to be covered by this section if those services  
39 are furnished by a nonparticipating provider, unless the plan

1 enrollee is referred to that provider by a participating physician,  
 2 nurse practitioner, or certified nurse-midwife providing care.

3 SEC. 109. Section 1531.15 of the Health and Safety Code is  
 4 amended to read:

5 1531.15. (a) A licensee of an adult residential facility or group  
 6 home for no more than 15 residents, that is eligible for and serving  
 7 clients eligible for federal Medicaid funding and utilizing delayed  
 8 egress devices pursuant to Section 1531.1, may install and utilize  
 9 secured perimeters in accordance with the provisions of this  
 10 section.

11 (b) As used in this section, “secured perimeters” means fences  
 12 that meet the requirements prescribed by this section.

13 (c) Only individuals meeting all of the following conditions  
 14 may be admitted to or reside in a facility described in subdivision

15 (a) utilizing secured perimeters:

16 (1) The person shall have a developmental disability as defined  
 17 in Section 4512 of the Welfare and Institutions Code.

18 (2) The person shall be receiving services and case management  
 19 from a regional center under the Lanterman Developmental  
 20 Disabilities Services Act (Division 4.5 (commencing with Section  
 21 4500) of the Welfare and Institutions Code).

22 (3) (A) The person shall be 14 years of age or older, except as  
 23 specified in subparagraph (B).

24 (B) Notwithstanding subparagraph (A), a child who is at least  
 25 10 years of age and less than 14 years of age may be placed in a  
 26 licensed group home described in subdivision (a) using secured  
 27 perimeters only if both of the following occur:

28 (i) A comprehensive assessment is conducted and an individual  
 29 program plan meeting is convened to determine the services and  
 30 supports needed for the child to receive services in a less restrictive,  
 31 unlocked residential setting in California, and the regional center  
 32 requests assistance from the State Department of Developmental  
 33 Services’ statewide specialized resource service to identify options  
 34 to serve the child in a less restrictive, unlocked residential setting  
 35 in California.

36 (ii) The regional center requests placement of the child in a  
 37 licensed group home described in subdivision (a) using secured  
 38 perimeters on the basis that the placement is necessary to prevent  
 39 out-of-state placement or placement in a more restrictive, locked

1 residential setting and the State Department of Developmental  
2 Services approves the request.

3 (4) The person is not a foster child under the jurisdiction of the  
4 juvenile court pursuant to Section 300, 450, 601, or 602 of the  
5 Welfare and Institutions Code.

6 (5) An interdisciplinary team, through the individual program  
7 plan (IPP) process pursuant to Section 4646.5 of the Welfare and  
8 Institutions Code, shall have determined the person lacks hazard  
9 awareness or impulse control and, for his or her safety and security,  
10 requires the level of supervision afforded by a facility equipped  
11 with secured perimeters, and, but for this placement, the person  
12 would be at risk of admission to, or would have no option but to  
13 remain in, a more restrictive placement. The individual program  
14 planning team shall determine the continued appropriateness of  
15 the placement at least annually.

16 (d) The licensee shall be subject to all applicable fire and  
17 building codes, regulations, and standards, and shall receive  
18 approval by the county or city fire department, the local fire  
19 prevention district, or the State Fire Marshal for the installed  
20 secured perimeters.

21 (e) The licensee shall provide staff training regarding the use  
22 and operation of the secured perimeters, protection of residents'  
23 personal rights, lack of hazard awareness and impulse control  
24 behavior, and emergency evacuation procedures.

25 (f) The licensee shall revise its facility plan of operation. These  
26 revisions shall first be approved by the State Department of  
27 Developmental Services. The plan of operation shall not be  
28 approved by the State Department of Social Services unless the  
29 licensee provides certification that the plan was approved by the  
30 State Department of Developmental Services. The plan shall  
31 include, but not be limited to, all of the following:

32 (1) A description of how the facility is to be equipped with  
33 secured perimeters that are consistent with regulations adopted by  
34 the State Fire Marshal pursuant to Section 13143.6.

35 (2) A description of how the facility will provide training for  
36 staff.

37 (3) A description of how the facility will ensure the protection  
38 of the residents' personal rights consistent with Sections 4502,  
39 4503, and 4504 of the Welfare and Institutions Code, and any

1 applicable personal rights provided in Title 22 of the California  
2 Code of Regulations.

3 (4) A description of how the facility will manage residents’ lack  
4 of hazard awareness and impulse control behavior.

5 (5) A description of the facility’s emergency evacuation  
6 procedures.

7 (g) Secured perimeters shall not substitute for adequate staff.

8 (h) Emergency fire and earthquake drills shall be conducted on  
9 each shift in accordance with existing licensing requirements, and  
10 shall include all facility staff providing resident care and  
11 supervision on each shift.

12 (i) Interior and exterior space shall be available on the facility  
13 premises to permit clients to move freely and safely.

14 (j) For the purpose of using secured perimeters, the licensee  
15 shall not be required to obtain a waiver or exception to a regulation  
16 that would otherwise prohibit the locking of a perimeter fence or  
17 gate.

18 (k) This section shall become operative only upon the  
19 publication in Title 17 of the California Code of Regulations of  
20 emergency regulations filed by the State Department of  
21 Developmental Services. These regulations shall be developed  
22 with stakeholders, including the State Department of Social  
23 Services, consumer advocates, and regional centers. The regulations  
24 shall establish program standards for homes that include secured  
25 perimeters, including requirements and timelines for the completion  
26 and updating of a comprehensive assessment of each consumer’s  
27 needs, including the identification through the individual program  
28 plan process of the services and supports needed to transition the  
29 consumer to a less restrictive living arrangement, and a timeline  
30 for identifying or developing those services and supports. The  
31 regulations shall establish a statewide limit on the total number of  
32 beds in homes with secured perimeters. The adoption of these  
33 regulations shall be deemed to be an emergency and necessary for  
34 the immediate preservation of the public peace, health and safety,  
35 or general welfare.

36 SEC. 110. Section 11378 of the Health and Safety Code is  
37 amended to read:

38 11378. Except as otherwise provided in Article 7 (commencing  
39 with Section 4110) of Chapter 9 of Division 2 of the Business and  
40 Professions Code, a person who possesses for sale a controlled



1 substance that meets any of the following criteria shall be punished  
2 by imprisonment pursuant to subdivision (h) of Section 1170 of  
3 the Penal Code:

4 (1) The substance is classified in Schedule III, IV, or V and is  
5 not a narcotic drug, except the substance specified in subdivision  
6 (g) of Section 11056.

7 (2) The substance is specified in subdivision (d) of Section  
8 11054, except paragraphs (13), (14), (15), (20), (21), (22), and  
9 (23) of subdivision (d).

10 (3) The substance is specified in paragraph (11) of subdivision  
11 (c) of Section 11056.

12 (4) The substance is specified in paragraph (2) or (3) of  
13 subdivision (f) of Section 11054.

14 (5) The substance is specified in subdivision (d), (e), or (f),  
15 except paragraph (3) of subdivision (e) and subparagraphs (A) and  
16 (B) of paragraph (2) of subdivision (f), of Section 11055.

17 SEC. 111. Section 11755 of the Health and Safety Code is  
18 amended to read:

19 11755. The department shall do all of the following:

20 (a) Adopt regulations pursuant to Section 11152 of the  
21 Government Code.

22 (b) Employ administrative, technical, and other personnel as  
23 may be necessary for the performance of its powers and duties.

24 (c) Do or perform any of the acts that may be necessary,  
25 desirable, or proper to carry out the purpose of this division.

26 (d) Provide funds to counties for the planning and  
27 implementation of local programs to alleviate problems related to  
28 alcohol and other drug use.

29 (e) Review and execute contracts for drug and alcohol services  
30 submitted for funds allocated or administered by the department.

31 (f) Provide for technical assistance and training to local alcohol  
32 and other drug programs to assist in the planning and  
33 implementation of quality services.

34 (g) Review research in, and serve as a resource to provide  
35 information relating to, alcohol and other drug programs.

36 (h) In cooperation with the Department of Human Resources,  
37 encourage training in other state agencies to assist the agencies to  
38 recognize employee problems relating to alcohol and other drug  
39 use that affects job performance and encourage the employees to  
40 seek appropriate services.

- 1 (i) Assist and cooperate with the Office of Statewide Health  
2 Planning and Development in the drafting and adoption of the state  
3 health plan to ensure inclusion of appropriate provisions relating  
4 to alcohol and other drug problems.
- 5 (j) In the same manner and subject to the same conditions as  
6 other state agencies, develop and submit annually to the  
7 Department of Finance a program budget for the alcohol and other  
8 drug programs, which budget shall include expenditures proposed  
9 to be made under this division, and may include expenditures  
10 proposed to be made by any other state agency relating to alcohol  
11 and other drug problems, pursuant to an interagency agreement  
12 with the department.
- 13 (k) Review and certify alcohol and other drug programs meeting  
14 state standards pursuant to Chapter 7 (commencing with Section  
15 11830) and Chapter 13 (commencing with Section 11847) of Part  
16 2.
- 17 (l) Develop standards for ensuring minimal statewide levels of  
18 service quality provided by alcohol and other drug programs.
- 19 (m) Review and license narcotic treatment programs.
- 20 (n) Develop and implement, in partnership with the counties,  
21 alcohol and other drug prevention strategies especially designed  
22 for youth.
- 23 (o) Develop and maintain a centralized alcohol and drug abuse  
24 indicator data collection system that shall gather and obtain  
25 information on the status of the alcohol and other drug abuse  
26 problems in the state. This information shall include, but not be  
27 limited to, all of the following:
- 28 (1) The number and characteristics of persons receiving recovery  
29 or treatment services from alcohol and other drug programs  
30 providing publicly funded services or services licensed by the  
31 state.
- 32 (2) The location and types of services offered by these programs.
- 33 (3) The number of admissions to hospitals on both an emergency  
34 room and inpatient basis for treatment related to alcohol and other  
35 drugs.
- 36 (4) The number of arrests for alcohol and other drug violations.
- 37 (5) The number of Department of Corrections and  
38 Rehabilitation, Division of Juvenile Facilities, commitments for  
39 drug violations.

1 (6) The number of Department of Corrections and Rehabilitation  
2 commitments for drug violations.

3 (7) The number or percentage of persons having alcohol or other  
4 drug problems as determined by survey information.

5 (8) The amounts of illicit drugs confiscated by law enforcement  
6 in the state.

7 (9) The statewide alcohol and other drug program distribution  
8 and the fiscal impact of alcohol and other drug problems upon the  
9 state.

10 Providers of publicly funded services or services licensed by the  
11 department to clients-participants shall report data in a manner, in  
12 a format, and under a schedule prescribed by the department.

13 (p) Issue an annual report that portrays the drugs abused,  
14 populations affected, user characteristics, crime-related costs,  
15 socioeconomic costs, and other related information deemed  
16 necessary in providing a problem profile of alcohol and other drug  
17 abuse in the state.

18 (q) (1) Require any individual, public or private organization,  
19 or government agency, receiving federal grant funds, to comply  
20 with all federal statutes, regulations, guidelines, and terms and  
21 conditions of the grants. The failure of the individual, public or  
22 private organization, or government agency, to comply with the  
23 statutes, regulations, guidelines, and terms and conditions of grants  
24 received may result in the department's disallowing noncompliant  
25 costs, or the suspension or termination of the contract or grant  
26 award allocating the grant funds.

27 (2) Adopt regulations implementing this subdivision in  
28 accordance with Chapter 3.5 (commencing with Section 11340)  
29 of Part 1 of Division 3 of Title 2 of the Government Code. For the  
30 purposes of the Administrative Procedure Act, the adoption of the  
31 regulations shall be deemed necessary for the preservation of the  
32 public peace, health and safety, or general welfare. Subsequent  
33 amendments to the adoption of emergency regulations shall be  
34 deemed an emergency only if those amendments are adopted in  
35 direct response to a change in federal statutes, regulations,  
36 guidelines, or the terms and conditions of federal grants. Nothing  
37 in this paragraph shall be interpreted as prohibiting the department  
38 from adopting subsequent amendments on a nonemergency basis  
39 or as emergency regulations in accordance with the standards set  
40 forth in Section 11346.1 of the Government Code.

1 SEC. 112. Section 25110.11 of the Health and Safety Code is  
2 amended to read:

3 25110.11. (a) “Contained gaseous material,” for purposes of  
4 subdivision (a) of Section 25124 or any other provision of this  
5 chapter, means any gas that is contained in an enclosed cylinder  
6 or other enclosed container.

7 (b) Notwithstanding subdivision (a), “contained gaseous  
8 material” does not include any exhaust or flue gas, or other vapor  
9 stream, or any air or exhaust gas stream that is filtered or otherwise  
10 processed to remove particulates, dusts, or other air pollutants,  
11 regardless of the source.

12 SEC. 113. Section 34177 of the Health and Safety Code is  
13 amended to read:

14 34177. Successor agencies are required to do all of the  
15 following:

16 (a) Continue to make payments due for enforceable obligations.

17 (1) On and after February 1, 2012, and until a Recognized  
18 Obligation Payment Schedule becomes operative, only payments  
19 required pursuant to an enforceable obligations payment schedule  
20 shall be made. The initial enforceable obligation payment schedule  
21 shall be the last schedule adopted by the redevelopment agency  
22 under Section 34169. However, payments associated with  
23 obligations excluded from the definition of enforceable obligations  
24 by paragraph (2) of subdivision (d) of Section 34171 shall be  
25 excluded from the enforceable obligations payment schedule and  
26 be removed from the last schedule adopted by the redevelopment  
27 agency under Section 34169 prior to the successor agency adopting  
28 it as its enforceable obligations payment schedule pursuant to this  
29 subdivision. The enforceable obligation payment schedule may  
30 be amended by the successor agency at any public meeting and  
31 shall be subject to the approval of the oversight board as soon as  
32 the board has sufficient members to form a quorum. In recognition  
33 of the fact that the timing of the California Supreme Court’s ruling  
34 in the case California Redevelopment Association v. Matosantos  
35 (2011) 53 Cal.4th 231 delayed the preparation by successor  
36 agencies and the approval by oversight boards of the January 1,  
37 2012, through June 30, 2012, Recognized Obligation Payment  
38 Schedule, a successor agency may amend the Enforceable  
39 Obligation Payment Schedule to authorize the continued payment  
40 of enforceable obligations until the time that the January 1, 2012,

1 through June 30, 2012, Recognized Obligation Payment Schedule  
2 has been approved by the oversight board and by the Department  
3 of Finance.

4 (2) The Department of Finance and the Controller shall each  
5 have the authority to require any documents associated with the  
6 enforceable obligations to be provided to them in a manner of their  
7 choosing. Any taxing entity, the department, and the Controller  
8 shall each have standing to file a judicial action to prevent a  
9 violation under this part and to obtain injunctive or other  
10 appropriate relief.

11 (3) Commencing on the date the Recognized Obligation Payment  
12 Schedule is valid pursuant to subdivision (l), only those payments  
13 listed in the Recognized Obligation Payment Schedule may be  
14 made by the successor agency from the funds specified in the  
15 Recognized Obligation Payment Schedule. In addition, after it  
16 becomes valid, the Recognized Obligation Payment Schedule shall  
17 supersede the Statement of Indebtedness, which shall no longer  
18 be prepared nor have any effect under the Community  
19 Redevelopment Law (Part 1 (commencing with Section 33000)).

20 (4) Nothing in the act adding this part is to be construed as  
21 preventing a successor agency, with the prior approval of the  
22 oversight board, as described in Section 34179, from making  
23 payments for enforceable obligations from sources other than those  
24 listed in the Recognized Obligation Payment Schedule.

25 (5) From February 1, 2012, to July 1, 2012, a successor agency  
26 shall have no authority and is hereby prohibited from accelerating  
27 payment or making any lump-sum payments that are intended to  
28 prepay loans unless such accelerated repayments were required  
29 prior to the effective date of this part.

30 (b) Maintain reserves in the amount required by indentures,  
31 trust indentures, or similar documents governing the issuance of  
32 outstanding redevelopment agency bonds.

33 (c) Perform obligations required pursuant to any enforceable  
34 obligation.

35 (d) Remit unencumbered balances of redevelopment agency  
36 funds to the county auditor-controller for distribution to the taxing  
37 entities, including, but not limited to, the unencumbered balance  
38 of the Low and Moderate Income Housing Fund of a former  
39 redevelopment agency. In making the distribution, the county  
40 auditor-controller shall utilize the same methodology for allocation

1 and distribution of property tax revenues provided in Section  
2 34188.

3 (e) Dispose of assets and properties of the former redevelopment  
4 agency as directed by the oversight board; provided, however, that  
5 the oversight board may instead direct the successor agency to  
6 transfer ownership of certain assets pursuant to subdivision (a) of  
7 Section 34181. The disposal is to be done expeditiously and in a  
8 manner aimed at maximizing value. Proceeds from asset sales and  
9 related funds that are no longer needed for approved development  
10 projects or to otherwise wind down the affairs of the agency, each  
11 as determined by the oversight board, shall be transferred to the  
12 county auditor-controller for distribution as property tax proceeds  
13 under Section 34188. The requirements of this subdivision shall  
14 not apply to a successor agency that has been issued a finding of  
15 completion by the Department of Finance pursuant to Section  
16 34179.7.

17 (f) Enforce all former redevelopment agency rights for the  
18 benefit of the taxing entities, including, but not limited to,  
19 continuing to collect loans, rents, and other revenues that were due  
20 to the redevelopment agency.

21 (g) Effectuate transfer of housing functions and assets to the  
22 appropriate entity designated pursuant to Section 34176.

23 (h) Expeditiously wind down the affairs of the redevelopment  
24 agency pursuant to the provisions of this part and in accordance  
25 with the direction of the oversight board.

26 (i) Continue to oversee development of properties until the  
27 contracted work has been completed or the contractual obligations  
28 of the former redevelopment agency can be transferred to other  
29 parties. Bond proceeds shall be used for the purposes for which  
30 bonds were sold unless the purposes can no longer be achieved,  
31 in which case, the proceeds may be used to defease the bonds.

32 (j) Prepare a proposed administrative budget and submit it to  
33 the oversight board for its approval. The proposed administrative  
34 budget shall include all of the following:

35 (1) Estimated amounts for successor agency administrative costs  
36 for the upcoming six-month fiscal period.

37 (2) Proposed sources of payment for the costs identified in  
38 paragraph (1).

39 (3) Proposals for arrangements for administrative and operations  
40 services provided by a city, county, city and county, or other entity.

1 (k) Provide administrative cost estimates, from its approved  
2 administrative budget that are to be paid from property tax revenues  
3 deposited in the Redevelopment Property Tax Trust Fund, to the  
4 county auditor-controller for each six-month fiscal period.

5 (l) (1) Before each six-month fiscal period, prepare a  
6 Recognized Obligation Payment Schedule in accordance with the  
7 requirements of this paragraph. For each recognized obligation,  
8 the Recognized Obligation Payment Schedule shall identify one  
9 or more of the following sources of payment:

10 (A) Low and Moderate Income Housing Fund.

11 (B) Bond proceeds.

12 (C) Reserve balances.

13 (D) Administrative cost allowance.

14 (E) The Redevelopment Property Tax Trust Fund, but only to  
15 the extent no other funding source is available or when payment  
16 from property tax revenues is required by an enforceable obligation  
17 or by this part.

18 (F) Other revenue sources, including rents, concessions, asset  
19 sale proceeds, interest earnings, and any other revenues derived  
20 from the former redevelopment agency, as approved by the  
21 oversight board in accordance with this part.

22 (2) A Recognized Obligation Payment Schedule shall not be  
23 deemed valid unless all of the following conditions have been met:

24 (A) A Recognized Obligation Payment Schedule is prepared  
25 by the successor agency for the enforceable obligations of the  
26 former redevelopment agency. The initial schedule shall project  
27 the dates and amounts of scheduled payments for each enforceable  
28 obligation for the remainder of the time period during which the  
29 redevelopment agency would have been authorized to obligate  
30 property tax increment had the redevelopment agency not been  
31 dissolved.

32 (B) The Recognized Obligation Payment Schedule is submitted  
33 to and duly approved by the oversight board. The successor agency  
34 shall submit a copy of the Recognized Obligation Payment  
35 Schedule to the county administrative officer, the county  
36 auditor-controller, and the Department of Finance at the same time  
37 that the successor agency submits the Recognized Obligation  
38 Payment Schedule to the oversight board for approval.

39 (C) A copy of the approved Recognized Obligation Payment  
40 Schedule is submitted to the county auditor-controller and both

1 the Controller's office and the Department of Finance and be posted  
2 on the successor agency's Internet Web site.

3 (3) The Recognized Obligation Payment Schedule shall be  
4 forward looking to the next six months. The first Recognized  
5 Obligation Payment Schedule shall be submitted to the Controller's  
6 office and the Department of Finance by April 15, 2012, for the  
7 period of January 1, 2012, to June 30, 2012, inclusive. This  
8 Recognized Obligation Payment Schedule shall include all  
9 payments made by the former redevelopment agency between  
10 January 1, 2012, through January 31, 2012, and shall include all  
11 payments proposed to be made by the successor agency from  
12 February 1, 2012, through June 30, 2012. Former redevelopment  
13 agency enforceable obligation payments due, and reasonable or  
14 necessary administrative costs due or incurred, prior to January 1,  
15 2012, shall be made from property tax revenues received in the  
16 spring of 2011 property tax distribution, and from other revenues  
17 and balances transferred to the successor agency.

18 (m) The Recognized Obligation Payment Schedule for the period  
19 of January 1, 2013, to June 30, 2013, shall be submitted by the  
20 successor agency, after approval by the oversight board, no later  
21 than September 1, 2012. Commencing with the Recognized  
22 Obligation Payment Schedule covering the period July 1, 2013,  
23 through December 31, 2013, successor agencies shall submit an  
24 oversight board-approved Recognized Obligation Payment  
25 Schedule to the Department of Finance and to the county  
26 auditor-controller no fewer than 90 days before the date of property  
27 tax distribution. The Department of Finance shall make its  
28 determination of the enforceable obligations and the amounts and  
29 funding sources of the enforceable obligations no later than 45  
30 days after the Recognized Obligation Payment Schedule is  
31 submitted. Within five business days of the department's  
32 determination, a successor agency may request additional review  
33 by the department and an opportunity to meet and confer on  
34 disputed items. The meet and confer period may vary; an untimely  
35 submittal of a Recognized Obligation Payment Schedule may result  
36 in a meet and confer period of less than 30 days. The department  
37 shall notify the successor agency and the county auditor-controllers  
38 as to the outcome of its review at least 15 days before the date of  
39 property tax distribution.



1 (1) The successor agency shall submit a copy of the Recognized  
2 Obligation Payment Schedule to the Department of Finance  
3 electronically, and the successor agency shall complete the  
4 Recognized Obligation Payment Schedule in the manner provided  
5 for by the department. A successor agency shall be in  
6 noncompliance with this paragraph if it only submits to the  
7 department an electronic message or a letter stating that the  
8 oversight board has approved a Recognized Obligation Payment  
9 Schedule.

10 (2) If a successor agency does not submit a Recognized  
11 Obligation Payment Schedule by the deadlines provided in this  
12 subdivision, the city, county, or city and county that created the  
13 redevelopment agency shall be subject to a civil penalty equal to  
14 ten thousand dollars (\$10,000) per day for every day the schedule  
15 is not submitted to the department. The civil penalty shall be paid  
16 to the county auditor-controller for allocation to the taxing entities  
17 under Section 34183. If a successor agency fails to submit a  
18 Recognized Obligation Payment Schedule by the deadline, any  
19 creditor of the successor agency or the Department of Finance or  
20 any affected taxing entity shall have standing to and may request  
21 a writ of mandate to require the successor agency to immediately  
22 perform this duty. Those actions may be filed only in the County  
23 of Sacramento and shall have priority over other civil matters.  
24 Additionally, if an agency does not submit a Recognized Obligation  
25 Payment Schedule within 10 days of the deadline, the maximum  
26 administrative cost allowance for that period shall be reduced by  
27 25 percent.

28 (3) If a successor agency fails to submit to the department an  
29 oversight board-approved Recognized Obligation Payment  
30 Schedule that complies with all requirements of this subdivision  
31 within five business days of the date upon which the Recognized  
32 Obligation Payment Schedule is to be used to determine the amount  
33 of property tax allocations, the department may determine if any  
34 amount should be withheld by the county auditor-controller for  
35 payments for enforceable obligations from distribution to taxing  
36 entities, pending approval of a Recognized Obligation Payment  
37 Schedule. The county auditor-controller shall distribute the portion  
38 of any of the sums withheld pursuant to this paragraph to the  
39 affected taxing entities in accordance with paragraph (4) of  
40 subdivision (a) of Section 34183 upon notice by the department

1 that a portion of the withheld balances are in excess of the amount  
2 of enforceable obligations. The county auditor-controller shall  
3 distribute withheld funds to the successor agency only in  
4 accordance with a Recognized Obligation Payment Schedule  
5 approved by the department. County auditor-controllers shall lack  
6 the authority to withhold any other amounts from the allocations  
7 provided for under Section 34183 or 34188, unless required by a  
8 court order.

9 (n) Cause a postaudit of the financial transactions and records  
10 of the successor agency to be made at least annually by a certified  
11 public accountant.

12 SEC. 114. Section 34183.5 of the Health and Safety Code is  
13 amended to read:

14 34183.5. (a) The Legislature hereby finds and declares that  
15 due to the delayed implementation of this part due to the California  
16 Supreme Court's ruling in the case California Redevelopment  
17 Association v. Matosantos (2011) 53 Cal.4th 231, some disruption  
18 to the intended application of this part and other law with respect  
19 to passthrough payments may have occurred.

20 (1) If a redevelopment agency or successor agency did not pay  
21 any portion of an amount owed for the 2011–12 fiscal year to an  
22 affected taxing entity pursuant to Section 33401, 33492.140, 33607,  
23 33607.5, 33607.7, or 33676, or pursuant to any passthrough  
24 agreement entered into before January 1, 1994, between a  
25 redevelopment agency and an affected taxing entity, and to the  
26 extent the county auditor-controller did not remit the amounts  
27 owed for passthrough payments during the 2011–12 fiscal year,  
28 the county auditor-controller shall make the required payments to  
29 the taxing entities owed passthrough payments and shall reduce  
30 the amounts to which the successor agency would otherwise be  
31 entitled pursuant to paragraph (2) of subdivision (a) of Section  
32 34183 at the next allocation of property tax under this part, subject  
33 to subdivision (b) of Section 34183. If the amount of available  
34 property tax allocation to the successor agency is not sufficient to  
35 make the required payment, the county auditor-controller shall  
36 continue to reduce allocations to the successor agency under  
37 paragraph (2) of subdivision (a) of Section 34183 until the time  
38 that the owed amount is fully paid. Alternatively, the county  
39 auditor-controller may accept payment from the successor agency's

1 reserve funds for payments of passthrough payments owed as  
2 defined in this subdivision.

3 (2) If a redevelopment agency did not pay any portion of the  
4 amount owed for the 2011–12 fiscal year to an affected taxing  
5 entity pursuant to Section 33401, 33492.140, 33607, 33607.5,  
6 33607.7, or 33676, or pursuant to any passthrough agreement  
7 entered into before January 1, 1994, between a redevelopment  
8 agency and an affected taxing entity, but the county  
9 auditor-controller did pay the difference that was owing, the county  
10 auditor-controller shall deduct from the next allocation of property  
11 tax to the successor agency under paragraph (2) of subdivision (a)  
12 of Section 34183, the amount of the payment made on behalf of  
13 the successor agency by the county auditor-controller, not to exceed  
14 one-half the amount of passthrough payments owed for the  
15 2011–12 fiscal year. If the amount of available property tax  
16 allocation to the successor agency is not sufficient to make the  
17 required deduction, the county auditor-controller shall continue to  
18 reduce allocations to the successor agency under paragraph (2) of  
19 subdivision (a) of Section 34183 until the time that the amount is  
20 fully deducted. Alternatively, the auditor-controller may accept  
21 payment from the successor agency’s reserve funds for deductions  
22 of passthrough payments owed as defined in this subdivision.  
23 Amounts reduced from successor agency payments under this  
24 paragraph are available for the purposes of paragraphs (2) to (4),  
25 inclusive, of subdivision (a) of Section 34183 for the six-month  
26 period for which the property tax revenues are being allocated.

27 (b) In recognition of the fact that county auditor-controllers  
28 were unable to make the payments required by paragraph (4) of  
29 subdivision (a) of Section 34183 for the period January 1, 2012,  
30 through June 30, 2012, on January 16, 2012, due to the California  
31 Supreme Court’s ruling in the case of California Redevelopment  
32 Association v. Matosantos (2011) 53 Cal.4th 231, in addition to  
33 taking the actions specified in Section 34183 with respect to the  
34 June 1 property tax allocations, county auditor-controllers should  
35 have made allocations as provided in paragraph (1).

36 (1) From the allocations made on June 1, 2012, for the  
37 Recognized Obligation Payment Schedule covering the period  
38 July 1, 2012, through December 31, 2012, deduct from the amount  
39 that otherwise would be deposited in the Redevelopment Property  
40 Tax Trust Fund on behalf of the successor agency an amount

1 equivalent to the amount that each affected taxing entity was  
2 entitled to pursuant to paragraph (4) of subdivision (a) of Section  
3 34183 for the period January 1, 2012, through June 30, 2012. The  
4 amount to be retained by taxing entities pursuant to paragraph (4)  
5 of subdivision (a) of Section 34183 for the January 1, 2012, through  
6 June 30, 2012, period is determined based on the Recognized  
7 Obligation Payment Schedule approved by the Department of  
8 Finance pursuant to subdivision (h) of Section 34179 and any  
9 amount determined to be owed pursuant to this subdivision. Any  
10 amounts so computed shall not be offset by any shortages in  
11 funding for recognized obligations for the period covering July 1,  
12 2012, through December 31, 2012.

13 (2) (A) If an affected taxing entity has not received the full  
14 amount to which it was entitled pursuant to paragraph (4) of  
15 subdivision (a) of Section 34183 of the property tax distributed  
16 for the period January 1, 2012, through June 30, 2012, and  
17 paragraph (1), no later than July 9, 2012, the county  
18 auditor-controller shall determine the amount, if any, that is owed  
19 by each successor agency to taxing entities and send a demand for  
20 payment from the funds of the successor agency for the amount  
21 owed to taxing entities if it has distributed the June 1, 2012,  
22 allocation to the successor agencies. No later than July 12, 2012,  
23 successor agencies shall make payment of the amounts demanded  
24 to the county auditor-controller for deposit into the Redevelopment  
25 Property Tax Trust Fund and subsequent distribution to taxing  
26 entities. No later than July 16, 2012, the county auditor-controller  
27 shall make allocations of all money received by that date from  
28 successor agencies in amounts owed to taxing entities under this  
29 paragraph to taxing entities in accordance with Section 34183. The  
30 county auditor-controller shall make allocations of any money  
31 received after that date under this paragraph within five business  
32 days of receipt. These duties are not discretionary and shall be  
33 carried out with due diligence.

34 (B) If a county auditor-controller fails to determine the amounts  
35 owed to taxing entities and present a demand for payment by July  
36 9, 2012, to the successor agencies, the Department of Finance or  
37 any affected taxing entity may request a writ of mandate to require  
38 the county auditor-controller to immediately perform this duty.  
39 Such actions may be filed only in the County of Sacramento and  
40 shall have priority over other civil matters. Any county in which

1 the county auditor-controller fails to perform the duties under this  
2 paragraph shall be subject to a civil penalty of 10 percent of the  
3 amount owed to taxing entities plus 1.5 percent of the amount  
4 owed to taxing entities for each month that the duties are not  
5 performed. The civil penalties shall be payable to the taxing entities  
6 under Section 34183. Additionally, any county in which the county  
7 auditor-controller fails to make the required determinations and  
8 demands for payment under this paragraph by July 9, 2012, or fails  
9 to distribute the full amount of funds received from successor  
10 agencies as required by this paragraph shall not receive the  
11 distribution of sales and use tax scheduled for July 18, 2012, or  
12 any subsequent payment, up to the amount owed to taxing entities,  
13 until the county auditor-controller performs the duties required by  
14 this paragraph.

15 (C) If a successor agency fails to make the payment demanded  
16 under subparagraph (A) by July 12, 2012, the Department of  
17 Finance or any affected taxing entity may file for a writ of mandate  
18 to require the successor agency to immediately make this payment.  
19 Such actions may be filed only in the County of Sacramento and  
20 shall have priority over other civil matters. Any successor agency  
21 that fails to make payment by July 12, 2012, under this paragraph  
22 shall be subject to a civil penalty of 10 percent of the amount owed  
23 to taxing entities plus one and one-half percent of the amount owed  
24 to taxing entities for each month that the payments are not made.  
25 Additionally, the city or county or city and county that created the  
26 redevelopment agency shall also be subject to a civil penalty of  
27 10 percent of the amount owed to taxing entities plus 1.5 percent  
28 of the amount owed to taxing entities for each month the payment  
29 is late. The civil penalties shall be payable to the taxing entities  
30 under Section 34183. If the Department of Finance finds that the  
31 imposition of penalties will jeopardize the payment of enforceable  
32 obligations it may request the court to waive some or all of the  
33 penalties. A successor agency that does not pay the amount  
34 required under this subparagraph by July 12, 2012, shall not pay  
35 any obligations other than bond debt service until full payment is  
36 made to the county auditor-controller. Additionally, any city,  
37 county or city and county that created the redevelopment agency  
38 that fails to make the required payment under this paragraph by  
39 July 12, 2012, shall not receive the distribution of sales and use  
40 tax scheduled for July 18, 2012, or any subsequent payment, up

1 to the amount owed to taxing entities, until the payment required  
2 by this paragraph is made.

3 (D) The Legislature hereby finds and declares that time is of  
4 the essence. Funds that should have been received and were  
5 expected and spent in anticipation of receipt by community  
6 colleges, schools, counties, cities, and special districts have not  
7 been received resulting in significant fiscal impact to the state and  
8 taxing entities. Continued delay and uncertainty whether funds  
9 will be received warrants the availability of extraordinary relief  
10 as authorized herein.

11 (3) If an affected taxing entity has not received the full amount  
12 to which it was entitled pursuant to paragraph (4) of subdivision  
13 (a) of Section 34183 for the period January 1, 2012, through June  
14 30, 2012, and paragraph (1), the county auditor-controller shall  
15 reapply paragraph (1) to each subsequent property tax allocation  
16 until such time as the affected taxing entity has received the full  
17 amount to which it was entitled pursuant to paragraph (4) of  
18 subdivision (a) of Section 34183 for the period January 1, 2012,  
19 through June 30, 2012.

20 SEC. 115. Section 39053 of the Health and Safety Code is  
21 amended to read:

22 39053. "State board" means the State Air Resources Board.

23 SEC. 116. Section 39510 of the Health and Safety Code is  
24 amended to read:

25 39510. (a) The State Air Resources Board is continued in  
26 existence in the California Environmental Protection Agency. The  
27 state board shall consist of 12 members.

28 (b) The members shall be appointed by the Governor, with the  
29 consent of the Senate, on the basis of their demonstrated interest  
30 and proven ability in the field of air pollution control and their  
31 understanding of the needs of the general public in connection  
32 with air pollution problems.

33 (c) Six members shall have the following qualifications:

34 (1) One member shall have training and experience in  
35 automotive engineering or closely related fields.

36 (2) One member shall have training and experience in chemistry,  
37 meteorology, or related scientific fields, including agriculture or  
38 law.

39 (3) One member shall be a physician and surgeon or an authority  
40 on health effects of air pollution.

1 (4) Two members shall be public members.

2 (5) One member shall have the qualifications specified in  
3 paragraph (1), (2), or (3) or shall have experience in the field of  
4 air pollution control.

5 (d) Six members shall be board members from districts who  
6 shall reflect the qualitative requirements of subdivision (c) to the  
7 extent practicable. Of these members:

8 (1) One shall be a board member from the south coast district.

9 (2) One shall be a board member from the bay district.

10 (3) One shall be a board member from the San Joaquin Valley  
11 Unified Air Pollution Control District.

12 (4) One shall be a board member from the San Diego County  
13 Air Pollution Control District.

14 (5) One shall be a board member from the Sacramento district,  
15 the Placer County Air Pollution Control District, the Yolo-Solano  
16 Air Quality Management District, the Feather River Air Quality  
17 Management District, or the El Dorado County Air Pollution  
18 Control District.

19 (6) One shall be a board member of any other district.

20 (e) Any vacancy shall be filled by the Governor within 30 days  
21 of the date on which it occurs. If the Governor fails to make an  
22 appointment for any vacancy within the 30-day period, the Senate  
23 Committee on Rules may make the appointment to fill the vacancy  
24 in accordance with this section.

25 (f) While serving on the state board, all members shall exercise  
26 their independent judgment as officers of the state on behalf of the  
27 interests of the entire state in furthering the purposes of this  
28 division. A member of the state board shall not be precluded from  
29 voting or otherwise acting upon any matter solely because that  
30 member has voted or acted upon the matter in his or her capacity  
31 as a member of a district board, except that a member of the state  
32 board who is also a member of a district board shall not participate  
33 in any action regarding his or her district taken by the state board  
34 pursuant to Sections 41503 to 41505, inclusive.

35 SEC. 117. Section 39710 of the Health and Safety Code is  
36 amended to read:

37 39710. For purposes of this chapter, “fund” means the  
38 Greenhouse Gas Reduction Fund, created pursuant to Section  
39 16428.8 of the Government Code.

1 SEC. 118. Section 39712 of the Health and Safety Code is  
2 amended to read:

3 39712. (a) (1) It is the intent of the Legislature that moneys  
4 shall be appropriated from the fund only in a manner consistent  
5 with the requirements of this chapter and Article 9.7 (commencing  
6 with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title  
7 2 of the Government Code.

8 (2) The state shall not approve allocations for a measure or  
9 program using moneys appropriated from the fund except after  
10 determining, based on the available evidence, that the use of those  
11 moneys furthers the regulatory purposes of Division 25.5  
12 (commencing with Section 38500) and is consistent with law. If  
13 any expenditure of moneys from the fund for any measure or  
14 project is determined by a court to be inconsistent with law, the  
15 allocations for the remaining measures or projects shall be  
16 severable and shall not be affected.

17 (b) Moneys shall be used to facilitate the achievement of  
18 reductions of greenhouse gas emissions in this state consistent  
19 with Division 25.5 (commencing with Section 38500) and, where  
20 applicable and to the extent feasible:

21 (1) Maximize economic, environmental, and public health  
22 benefits to the state.

23 (2) Foster job creation by promoting in-state greenhouse gas  
24 emissions reduction projects carried out by California workers and  
25 businesses.

26 (3) Complement efforts to improve air quality.

27 (4) Direct investment toward the most disadvantaged  
28 communities and households in the state.

29 (5) Provide opportunities for businesses, public agencies,  
30 nonprofits, and other community institutions to participate in and  
31 benefit from statewide efforts to reduce greenhouse gas emissions.

32 (6) Lessen the impacts and effects of climate change on the  
33 state's communities, economy, and environment.

34 (c) Moneys appropriated from the fund may be allocated,  
35 consistent with subdivision (a), for the purpose of reducing  
36 greenhouse gas emissions in this state through investments that  
37 may include, but are not limited to, any of the following:

38 (1) Funding to reduce greenhouse gas emissions through energy  
39 efficiency, clean and renewable energy generation, distributed  
40 renewable energy generation, transmission and storage, and other



1 related actions, including, but not limited to, at public universities,  
2 state and local public buildings, and industrial and manufacturing  
3 facilities.

4 (2) Funding to reduce greenhouse gas emissions through the  
5 development of state-of-the-art systems to move goods and freight,  
6 advanced technology vehicles and vehicle infrastructure, advanced  
7 biofuels, and low-carbon and efficient public transportation.

8 (3) Funding to reduce greenhouse gas emissions associated with  
9 water use and supply, land and natural resource conservation and  
10 management, forestry, and sustainable agriculture.

11 (4) Funding to reduce greenhouse gas emissions through  
12 strategic planning and development of sustainable infrastructure  
13 projects, including, but not limited to, transportation and housing.

14 (5) Funding to reduce greenhouse gas emissions through  
15 increased in-state diversion of municipal solid waste from disposal  
16 through waste reduction, diversion, and reuse.

17 (6) Funding to reduce greenhouse gas emissions through  
18 investments in programs implemented by local and regional  
19 agencies, local and regional collaboratives, and nonprofit  
20 organizations coordinating with local governments.

21 (7) Funding research, development, and deployment of  
22 innovative technologies, measures, and practices related to  
23 programs and projects funded pursuant to this chapter.

24 SEC. 119. Section 39716 of the Health and Safety Code is  
25 amended to read:

26 39716. (a) The Department of Finance, on behalf of the  
27 Governor, and in consultation with the state board and any other  
28 relevant state entity, shall develop and submit to the Legislature  
29 at the time of the department's adjustments to the proposed  
30 2013–14 fiscal year budget pursuant to subdivision (e) of Section  
31 13308 of the Government Code a three-year investment plan.  
32 Commencing with the 2016–17 fiscal year budget and every three  
33 years thereafter, with the release of the Governor's budget proposal,  
34 the Department of Finance shall include updates to the investment  
35 plan following the public process described in subdivisions (b)  
36 and (c). The investment plan, consistent with the requirements of  
37 Section 39712, shall do all of the following:

38 (1) Identify the state's near-term and long-term greenhouse gas  
39 emissions reduction goals and targets by sector.

1 (2) Analyze gaps, where applicable, in current state strategies  
2 to meeting the state’s greenhouse gas emissions reduction goals  
3 and targets by sector.

4 (3) Identify priority programmatic investments of moneys that  
5 will facilitate the achievement of feasible and cost-effective  
6 greenhouse gas emissions reductions toward achievement of  
7 greenhouse gas reduction goals and targets by sector, consistent  
8 with subdivision (c) of Section 39712.

9 (b) (1) The state board shall hold at least two public workshops  
10 in different regions of the state and one public hearing prior to the  
11 Department of Finance submitting the investment plan.

12 (2) The state board shall, prior to the submission of each  
13 investment plan, consult with the Public Utilities Commission to  
14 ensure the investment plan is coordinated with, and does not  
15 conflict with or unduly overlap with, activities under the oversight  
16 or administration of the Public Utilities Commission undertaken  
17 pursuant to Part 5 (commencing with Section 38570) of Division  
18 25.5 or other activities under the oversight or administration of  
19 the Public Utilities Commission that facilitate greenhouse gas  
20 emissions reductions consistent with this division. The investment  
21 plan shall include a description of the use of any moneys generated  
22 by the sale of allowances received at no cost by the investor-owned  
23 utilities pursuant to a market-based compliance mechanism.

24 (c) The Climate Action Team, established under Executive  
25 Order S-3-05, shall provide information to the Department of  
26 Finance and the state board to assist in the development of each  
27 investment plan. The Climate Action Team shall participate in  
28 each public workshop held on an investment plan and provide  
29 testimony to the state board on each investment plan. For purposes  
30 of this section, the Secretary of Labor and Workforce Development  
31 shall assist the Climate Action Team in its efforts.

32 SEC. 120. Section 39718 of the Health and Safety Code is  
33 amended to read:

34 39718. (a) Moneys in the fund shall be appropriated through  
35 the annual Budget Act consistent with the investment plan  
36 developed and submitted pursuant to Section 39716.

37 (b) Upon appropriation, moneys in the fund shall be available  
38 to the state board and to administering agencies for administrative  
39 purposes in carrying out this chapter.

1 (c) Any repayment of loans, including interest payments and  
2 all interest earnings on or accruing to any moneys, resulting from  
3 implementation of this chapter shall be deposited in the fund for  
4 purposes of this chapter.

5 SEC. 121. Section 106985 of the Health and Safety Code is  
6 amended to read:

7 106985. (a) (1) Notwithstanding Section 2052 of the Business  
8 and Professions Code or any other law, a radiologic technologist  
9 certified pursuant to the Radiologic Technology Act (Section 27)  
10 may, under the direct supervision of a licensed physician and  
11 surgeon, and in accordance with the facility's protocol that meets,  
12 at a minimum, the requirements described in paragraph (2), perform  
13 venipuncture in an upper extremity to administer contrast materials,  
14 manually or by utilizing a mechanical injector, if the radiologic  
15 technologist has been deemed competent to perform that  
16 venipuncture, in accordance with paragraph (3), and issued a  
17 certificate, as described in subdivision (b).

18 (2) (A) In administering contrast materials, a radiologic  
19 technologist may, to ensure the security and integrity of the  
20 needle's placement or of an existing intravenous cannula, use a  
21 saline-based solution that conforms with the facility's protocol  
22 and that has been approved by a licensed physician and surgeon.  
23 The protocol shall specify that only contrast materials or  
24 pharmaceuticals approved by the United States Food and Drug  
25 Administration may be used and shall also specify that the use  
26 shall be in accordance with the labeling.

27 (B) A person who is currently certified as meeting the standards  
28 of competence in nuclear medicine technology pursuant to Article  
29 6 (commencing with Section 107150) and who is authorized to  
30 perform a computerized tomography scanner only on a dual-mode  
31 machine, as described in Section 106976, may perform the conduct  
32 described in this subdivision.

33 (3) Prior to performing venipuncture pursuant to paragraph (1),  
34 a radiologic technologist shall have performed at least 10  
35 venipunctures on live humans under the personal supervision of  
36 a licensed physician and surgeon, a registered nurse, or a person  
37 the physician or nurse has previously deemed qualified to provide  
38 personal supervision to the technologist for purposes of performing  
39 venipuncture pursuant to this paragraph. Only after completion of  
40 a minimum of 10 venipunctures may the supervising individual

1 evaluate whether the technologist is competent to perform  
 2 venipuncture under direct supervision. The number of  
 3 venipunctures required in this paragraph are in addition to those  
 4 performed for meeting the requirements of paragraph (2) of  
 5 subdivision (d). The facility shall document compliance with this  
 6 subdivision.

7 (b) The radiologic technologist shall be issued a certificate as  
 8 specified in subdivision (e) or by an instructor indicating  
 9 satisfactory completion of the training and education described in  
 10 subdivision (d). This certificate documents completion of the  
 11 required education and training and may not, by itself, be construed  
 12 to authorize a person to perform venipuncture or to administer  
 13 contrast materials.

14 (c) (1) “Direct supervision,” for purposes of this section, means  
 15 the direction of procedures authorized by this section by a licensed  
 16 physician and surgeon who shall be physically present within the  
 17 facility and available within the facility where the procedures are  
 18 performed, in order to provide immediate medical intervention to  
 19 prevent or mitigate injury to the patient in the event of adverse  
 20 reaction.

21 (2) “Personal supervision,” for purposes of this section, means  
 22 the oversight of the procedures authorized by this section by a  
 23 supervising individual identified in paragraph (3) of subdivision  
 24 (a) who is physically present to observe, and correct, as needed,  
 25 the performance of the individual who is performing the procedure.

26 (d) The radiologic technologist shall have completed both of  
 27 the following:

28 (1) Received a total of 10 hours of instruction, including all of  
 29 the following:

- 30 (A) Anatomy and physiology of venipuncture sites.
- 31 (B) Venipuncture instruments, intravenous solutions, and related  
 32 equipment.
- 33 (C) Puncture techniques.
- 34 (D) Techniques of intravenous line establishment.
- 35 (E) Hazards and complications of venipuncture.
- 36 (F) Postpuncture care.
- 37 (G) Composition and purpose of antianaphylaxis tray.
- 38 (H) First aid and basic cardiopulmonary resuscitation.

39 (2) Performed 10 venipunctures on a human or training  
 40 mannequin upper extremity (for example, an infusion arm or a

1 mannequin arm) under personal supervision. If performance is on  
2 a human, only an upper extremity may be used.

3 (e) Schools for radiologic technologists shall include the  
4 training and education specified in subdivision (d). Upon  
5 satisfactory completion of the training and education, the school  
6 shall issue to the student a completion document. This document  
7 may not be construed to authorize a person to perform venipuncture  
8 or to administer contrast materials.

9 (f) Nothing in this section shall be construed to authorize a  
10 radiologic technologist to perform arterial puncture, any central  
11 venous access procedures including repositioning of previously  
12 placed central venous catheter except as specified in paragraph (1)  
13 of subdivision (a), or cutdowns, or establish an intravenous line.

14 (g) This section shall not be construed to apply to a person who  
15 is currently certified as meeting the standards of competence in  
16 nuclear medicine technology pursuant to Article 6 (commencing  
17 with Section 107150), except as provided in subparagraph (B) of  
18 paragraph (2) of subdivision (a).

19 (h) Radiologic technologists who met the training and education  
20 requirements of subdivision (d) prior to January 1, 2013, need not  
21 repeat those requirements, or perform the venipunctures specified  
22 in paragraph (3) of subdivision (a), provided the facility documents  
23 that the radiologic technologist is competent to perform the tasks  
24 specified in paragraph (1) of subdivision (a).

25 SEC. 122. Section 114365.5 of the Health and Safety Code is  
26 amended to read:

27 114365.5. (a) The department shall adopt and post on its  
28 Internet Web site a list of nonpotentially hazardous foods and their  
29 ethnic variations that are approved for sale by a cottage food  
30 operation. A cottage food product shall not be potentially hazardous  
31 food, as defined in Section 113871.

32 (b) This list of nonpotentially hazardous foods shall include,  
33 but not be limited to, all of the following:

34 (1) Baked goods without cream, custard, or meat fillings, such  
35 as breads, biscuits, churros, cookies, pastries, and tortillas.

36 (2) Candy, such as brittle and toffee.

37 (3) Chocolate-covered nonperishable foods, such as nuts and  
38 dried fruit.

39 (4) Dried fruit.

40 (5) Dried pasta.

1 (6) Dry baking mixes.

2 (7) Fruit pies, fruit empanadas, and fruit tamales.

3 (8) Granola, cereals, and trail mixes.

4 (9) Herb blends and dried mole paste.

5 (10) Honey and sweet sorghum syrup.

6 (11) Jams, jellies, preserves, and fruit butter that comply with  
7 the standard described in Part 150 of Title 21 of the Code of  
8 Federal Regulations.

9 (12) Nut mixes and nut butters.

10 (13) Popcorn.

11 (14) Vinegar and mustard.

12 (15) Roasted coffee and dried tea.

13 (16) Waffle cones and pizelles.

14 (c) (1) The State Public Health Officer may add or delete food  
15 products to or from the list described in subdivision (b), which  
16 shall be known as the approved food products list. Notice of any  
17 change to the approved food products list shall be posted on the  
18 department's cottage food program Internet Web site, to also be  
19 known as the program Internet Web site for purposes of this  
20 chapter. Any change to the approved food products list shall  
21 become effective 30 days after the notice is posted. The notice  
22 shall state the reason for the change, the authority for the change,  
23 and the nature of the change. The notice will provide an opportunity  
24 for written comment by indicating the address to which to submit  
25 the comment and the deadline by which the comment is required  
26 to be received by the department. The address to which the  
27 comment is to be submitted may be an electronic site. The notice  
28 shall allow at least 20 calendar days for comments to be submitted.  
29 The department shall consider all comments submitted before the  
30 due date. The department may withdraw the proposed change at  
31 any time by notification on the program Internet Web site or  
32 through notification by other electronic means. The approved food  
33 products list described in subdivision (b), and any updates to the  
34 list, shall not be subject to the administrative rulemaking  
35 requirements of Chapter 3.5 (commencing with Section 11340) of  
36 Part 1 of Division 3 of Title 2 of the Government Code.

37 (2) The State Public Health Officer shall not remove any items  
38 from the approved food products list unless the State Public Health  
39 Officer also posts information on the program Internet Web site

1 explaining the basis upon which the removed food item has been  
2 determined to be potentially hazardous.

3 SEC. 123. Section 114380 of the Health and Safety Code is  
4 amended to read:

5 114380. (a) A person proposing to build or remodel a food  
6 facility shall submit complete, easily readable plans drawn to scale,  
7 and specifications to the enforcement agency for review, and shall  
8 receive plan approval before starting any new construction or  
9 remodeling of a facility for use as a retail food facility.

10 (b) Plans and specifications may also be required by the  
11 enforcement agency if the agency determines that they are  
12 necessary to ensure compliance with the requirements of this part,  
13 including, but not limited to, a menu change or change in the  
14 facility's method of operation.

15 (c) (1) All new school food facilities or school food facilities  
16 that undergo modernization or remodeling shall comply with all  
17 structural requirements of this part. Upon submission of plans by  
18 a public school authority, the Division of the State Architect and  
19 the local enforcement agency shall review and approve all new  
20 and remodeled school facilities for compliance with all applicable  
21 requirements.

22 (2) Notwithstanding subdivision (a), the Office of Statewide  
23 Health Planning and Development (OSHDP) shall maintain its  
24 primary jurisdiction over licensed skilled nursing facilities, and  
25 when new construction, modernization, or remodeling must be  
26 undertaken to repair existing systems or to keep up the course of  
27 normal or routine maintenance, the facility shall complete a  
28 building application and plan check process as required by OSHDP.  
29 Approval of the plans by OSHDP shall be deemed compliance  
30 with the plan approval process required by the local county  
31 enforcement agency described in this section.

32 (3) Except when a determination is made by the enforcement  
33 agency that the nonconforming structural conditions pose a public  
34 health hazard, existing public and private school cafeterias and  
35 licensed health care facilities shall be deemed to be in compliance  
36 with this part pending replacement or renovation.

37 (d) Except when a determination is made by the enforcement  
38 agency that the nonconforming structural conditions pose a public  
39 health hazard, existing food facilities that were in compliance with  
40 the law in effect on June 30, 2007, shall be deemed to be in

1 compliance with the law pending replacement or renovation. If a  
2 determination is made by the enforcement agency that a structural  
3 condition poses a public health hazard, the food facility shall  
4 remedy the deficiency to the satisfaction of the enforcement  
5 agency.

6 (e) The plans shall be approved or rejected within 20 working  
7 days after receipt by the enforcement agency and the applicant  
8 shall be notified of the decision. Unless the plans are approved or  
9 rejected within 20 working days, they shall be deemed approved.  
10 The building department shall not issue a building permit for a  
11 food facility until after it has received plan approval by the  
12 enforcement agency. Nothing in this section shall require that plans  
13 or specifications be prepared by someone other than the applicant.

14 SEC. 124. Section 116565 of the Health and Safety Code is  
15 amended to read:

16 116565. (a) Each public water system serving 1,000 or more  
17 service connections, and any public water system that treats water  
18 on behalf of one or more public water systems for the purpose of  
19 rendering it safe for human consumption, shall reimburse the  
20 department for the actual cost incurred by the department for  
21 conducting those activities mandated by this chapter relating to  
22 the issuance of domestic water supply permits, inspections,  
23 monitoring, surveillance, and water quality evaluation that relate  
24 to that specific public water system. The amount of reimbursement  
25 shall be sufficient to pay, but in no event shall exceed, the  
26 department's actual cost in conducting these activities.

27 (b) Each public water system serving fewer than 1,000 service  
28 connections shall pay an annual drinking water operating fee to  
29 the department as set forth in this subdivision for costs incurred  
30 by the department for conducting those activities mandated by this  
31 chapter relating to inspections, monitoring, surveillance, and water  
32 quality evaluation relating to public water systems. The total  
33 amount of fees shall be sufficient to pay, but in no event shall  
34 exceed, the department's actual cost in conducting these activities.  
35 Notwithstanding adjustment of actual fees collected pursuant to  
36 Section 100425 as authorized pursuant to subdivision (d) of Section  
37 116590, the amount that shall be paid annually by a public water  
38 system pursuant to this section shall be as follows:

39 (1) Community water systems, six dollars (\$6) per service  
40 connection, but not less than two hundred fifty dollars (\$250) per



1 water system, which may be increased by the department, as  
2 provided for in subdivision (f), to ten dollars (\$10) per service  
3 connection, but not less than two hundred fifty dollars (\$250) per  
4 water system.

5 (2) Nontransient noncommunity water systems pursuant to  
6 subdivision (k) of Section 116275, two dollars (\$2) per person  
7 served, but not less than four hundred fifty-six dollars (\$456) per  
8 water system, which may be increased by the department, as  
9 provided for in subdivision (f), to three dollars (\$3) per person  
10 served, but not less than four hundred fifty-six dollars (\$456) per  
11 water system.

12 (3) Transient noncommunity water systems pursuant to  
13 subdivision (o) of Section 116275, eight hundred dollars (\$800)  
14 per water system, which may be increased by the department, as  
15 provided for in subdivision (f), to one thousand three hundred  
16 thirty-five dollars (\$1,335) per water system.

17 (4) Noncommunity water systems in possession of a current  
18 exemption pursuant to former Section 116282 on January 1, 2012,  
19 one hundred two dollars (\$102) per water system.

20 (c) For purposes of determining the fees provided for in  
21 subdivision (a), the department shall maintain a record of its actual  
22 costs for pursuing the activities specified in subdivision (a) relative  
23 to each system required to pay the fees. The fee charged each  
24 system shall reflect the department's actual cost, or in the case of  
25 a local primacy agency the local primacy agency's actual cost, of  
26 conducting the specified activities.

27 (d) The department shall submit an invoice for cost  
28 reimbursement for the activities specified in subdivision (a) to the  
29 public water systems no more than twice a year.

30 (1) The department shall submit one estimated cost invoice to  
31 public water systems serving 1,000 or more service connections  
32 and any public water system that treats water on behalf of one or  
33 more public water systems for the purpose of rendering it safe for  
34 human consumption. This invoice shall include the actual hours  
35 expended during the first six months of the fiscal year. The hourly  
36 cost rate used to determine the amount of the estimated cost invoice  
37 shall be the rate for the previous fiscal year.

38 (2) The department shall submit a final invoice to the public  
39 water system before October 1 following the fiscal year that the  
40 costs were incurred. The invoice shall indicate the total hours

1 expended during the fiscal year, the reasons for the expenditure,  
2 the hourly cost rate of the department for the fiscal year, the  
3 estimated cost invoice, and payments received. The amount of the  
4 final invoice shall be determined using the total hours expended  
5 during the fiscal year and the actual hourly cost rate of the  
6 department for the fiscal year. The payment of the estimated  
7 invoice, exclusive of late penalty, if any, shall be credited toward  
8 the final invoice amount.

9 (3) Payment of the invoice issued pursuant to paragraphs (1)  
10 and (2) shall be made within 90 days of the date of the invoice.  
11 Failure to pay the amount of the invoice within 90 days shall result  
12 in a 10-percent late penalty that shall be paid in addition to the  
13 invoiced amount.

14 (e) Any public water system under the jurisdiction of a local  
15 primacy agency shall pay the fees specified in this section to the  
16 local primacy agency in lieu of the department. This section shall  
17 not preclude a local health officer from imposing additional fees  
18 pursuant to Section 101325.

19 (f) The department may increase the fees established in  
20 subdivision (b) as follows:

21 (1) By February 1 of the fiscal year prior to the fiscal year for  
22 which fees are proposed to be increased, the department shall  
23 publish a list of fees for the following fiscal year and a report  
24 showing the calculation of the amount of the fees.

25 (2) The department shall make the report and the list of fees  
26 available to the public by submitting them to the Legislature and  
27 posting them on the department's Internet Web site.

28 (3) The department shall establish the amount of fee increases  
29 subject to the approval and appropriation by the Legislature.

30 SEC. 125. Section 120365 of the Health and Safety Code is  
31 amended to read:

32 120365. (a) Immunization of a person shall not be required  
33 for admission to a school or other institution listed in Section  
34 120335 if the parent or guardian or adult who has assumed  
35 responsibility for his or her care and custody in the case of a minor,  
36 or the person seeking admission if an emancipated minor, files  
37 with the governing authority a letter or affidavit that documents  
38 which immunizations required by Section 120355 have been given  
39 and which immunizations have not been given on the basis that  
40 they are contrary to his or her beliefs.

1 (b) On and after January 1, 2014, a form prescribed by the State  
2 Department of Public Health shall accompany the letter or affidavit  
3 filed pursuant to subdivision (a). The form shall include both of  
4 the following:

5 (1) A signed attestation from the health care practitioner that  
6 indicates that the health care practitioner provided the parent or  
7 guardian of the person who is subject to the immunization  
8 requirements of this chapter, the adult who has assumed  
9 responsibility for the care and custody of the person, or the person  
10 if an emancipated minor, with information regarding the benefits  
11 and risks of the immunization and the health risks of the  
12 communicable diseases listed in Section 120335 to the person and  
13 to the community. This attestation shall be signed not more than  
14 six months before the date when the person first becomes subject  
15 to the immunization requirement for which exemption is being  
16 sought.

17 (2) A written statement signed by the parent or guardian of the  
18 person who is subject to the immunization requirements of this  
19 chapter, the adult who has assumed responsibility for the care and  
20 custody of the person, or the person if an emancipated minor, that  
21 indicates that the signer has received the information provided by  
22 the health care practitioner pursuant to paragraph (1). This  
23 statement shall be signed not more than six months before the date  
24 when the person first becomes subject to the immunization  
25 requirements as a condition of admittance to a school or institution  
26 pursuant to Section 120335.

27 (c) The following shall be accepted in lieu of the original form:

28 (1) A photocopy of the signed form.

29 (2) A letter signed by a health care practitioner that includes all  
30 information and attestations included on the form.

31 (d) Issuance and revision of the form shall be exempt from the  
32 rulemaking provisions of the Administrative Procedure Act  
33 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code).

35 (e) When there is good cause to believe that the person has been  
36 exposed to one of the communicable diseases listed in subdivision  
37 (a) of Section 120325, that person may be temporarily excluded  
38 from the school or institution until the local health officer is  
39 satisfied that the person is no longer at risk of developing the  
40 disease.

1 (f) For purposes of this section, “health care practitioner” means  
2 any of the following:

3 (1) A physician and surgeon, licensed pursuant to Section 2050  
4 of the Business and Professions Code.

5 (2) A nurse practitioner who is authorized to furnish drugs  
6 pursuant to Section 2836.1 of the Business and Professions Code.

7 (3) A physician assistant who is authorized to administer or  
8 provide medication pursuant to Section 3502.1 of the Business  
9 and Professions Code.

10 (4) An osteopathic physician and surgeon, as defined in the  
11 Osteopathic Initiative Act.

12 (5) A naturopathic doctor who is authorized to furnish or order  
13 drugs under a physician and surgeon’s supervision pursuant to  
14 Section 3640.5 of the Business and Professions Code.

15 (6) A credentialed school nurse, as described in Section 49426  
16 of the Education Code.

17 SEC. 126. Section 123327 of the Health and Safety Code is  
18 amended to read:

19 123327. (a) The department shall provide written notice to a  
20 retail food vendor if the department determines that the vendor  
21 has committed an initial violation for which a pattern of the  
22 violation must be established to impose a sanction. Notice shall  
23 be provided no later than 30 days after the department determines  
24 the first investigation that identified the violation is complete.

25 (b) The written notice shall be delivered to the vendor 30 days  
26 before the department conducts a second investigation for purposes  
27 of establishing a pattern of the violation to the vendor’s most recent  
28 business ownership address on file with the department or to the  
29 vendor location upon identification of a violation during vendor  
30 monitoring, as defined by Section 40743 of Title 22 of the  
31 California Code of Regulations.

32 (c) The written notice shall include a description of the initial  
33 violation and may include information to assist the vendor to take  
34 corrective action, including, but not limited to, a 60-day window  
35 that includes the date of the violation.

36 (d) For purposes of this section, “violation” means a violation  
37 set forth in Section 246.2 of Title 7 of the Code of Federal  
38 Regulations.

39 (e) It is the intent of the Legislature in enacting this section to  
40 clarify existing law.

1 SEC. 127. Section 123940 of the Health and Safety Code is  
2 amended to read:

3 123940. (a) (1) Annually, the board of supervisors shall  
4 appropriate a sum of money for services for handicapped children  
5 of the county, including diagnosis, treatment, and therapy services  
6 for physically handicapped children in public schools, equal to 25  
7 percent of the actual expenditures for the county program under  
8 this article for the 1990–91 fiscal year, except as specified in  
9 paragraph (2).

10 (2) If the state certifies that a smaller amount is needed in order  
11 for the county to pay 25 percent of costs of the county’s program  
12 from this source. The smaller amount certified by the state shall  
13 be the amount that the county shall appropriate.

14 (b) In addition to the amount required by subdivision (a), the  
15 county shall allocate an amount equal to the amount determined  
16 pursuant to subdivision (a) for purposes of this article from  
17 revenues allocated to the county pursuant to Chapter 6  
18 (commencing with Section 17600) of Division 9 of the Welfare  
19 and Institutions Code.

20 (c) (1) The state shall match county expenditures for this article  
21 from funding provided pursuant to subdivisions (a) and (b).

22 (2) County expenditures shall be waived for payment of services  
23 for children who are eligible pursuant to paragraph (2) of  
24 subdivision (a) of Section 123870.

25 (d) The county may appropriate and expend moneys in addition  
26 to those set forth in subdivisions (a) and (b) and the state shall  
27 match the expenditures, on a dollar-for-dollar basis, to the extent  
28 that state funds are available for this article.

29 (e) County appropriations under subdivisions (a) and (b) shall  
30 include county financial participation in the nonfederal share of  
31 expenditures for services for children who are enrolled in the  
32 Medi-Cal program pursuant to Section 14005.26 of the Welfare  
33 and Institutions Code, and who are eligible for services under this  
34 article pursuant to paragraph (1) of subdivision (a) of Section  
35 123870, to the extent that federal financial participation is available  
36 at the enhanced federal reimbursement rate under Title XXI of the  
37 federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) and  
38 funds are appropriated for the California Children’s Services  
39 Program in the State Budget.

1 (f) Nothing in this section shall require the county to expend  
2 more than the amount set forth in subdivision (a) plus the amount  
3 set forth in subdivision (b) nor shall it require the state to expend  
4 more than the amount of the match set forth in subdivision (c).

5 (g) Notwithstanding Chapter 3.5 (commencing with Section  
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
7 the department, without taking further regulatory action, shall  
8 implement this section by means of California Children's Services  
9 numbered letters.

10 SEC. 128. Section 123955 of the Health and Safety Code is  
11 amended to read:

12 123955. (a) The state and the counties shall share in the cost  
13 of administration of the California Children's Services Program  
14 at the local level.

15 (b) (1) The director shall adopt regulations establishing  
16 minimum standards for the administration, staffing, and local  
17 implementation of this article subject to reimbursement by the  
18 state.

19 (2) The standards shall allow necessary flexibility in the  
20 administration of county programs, taking into account the  
21 variability of county needs and resources, and shall be developed  
22 and revised jointly with state and county representatives.

23 (c) The director shall establish minimum standards for  
24 administration, staffing, and local operation of the program subject  
25 to reimbursement by the state.

26 (d) Until July 1, 1992, reimbursable administrative costs, to be  
27 paid by the state to counties, shall not exceed 4.1 percent of the  
28 gross total expenditures for diagnosis, treatment, and therapy by  
29 counties as specified in Section 123940.

30 (e) Beginning July 1, 1992, this subdivision shall apply with  
31 respect to all of the following:

32 (1) Counties shall be reimbursed by the state for 50 percent of  
33 the amount required to meet state administrative standards for that  
34 portion of the county caseload under this article that is ineligible  
35 for Medi-Cal to the extent funds are available in the State Budget  
36 for the California Children's Services Program.

37 (2) Counties shall be reimbursed by the state for 50 percent of  
38 the nonfederal share of the amount required to meet state  
39 administrative standards for that portion of the county caseload  
40 under this article that is enrolled in the Medi-Cal program pursuant

1 to Section 14005.26 of the Welfare and Institutions Code and who  
2 are eligible for services under this article pursuant to subdivision  
3 (a) of Section 123870, to the extent that federal financial  
4 participation is available at the enhanced federal reimbursement  
5 rate under Title XXI of the federal Social Security Act (42 U.S.C.  
6 Sec. 1397aa et seq.) and funds are appropriated for the California  
7 Children’s Services Program in the State Budget.

8 (3) On or before September 15 of each year, each county  
9 program implementing this article shall submit an application for  
10 the subsequent fiscal year that provides information as required  
11 by the state to determine if the county administrative staff and  
12 budget meet state standards.

13 (4) The state shall determine the maximum amount of state  
14 funds available for each county from state funds appropriated for  
15 CCS county administration. If the amount appropriated for any  
16 fiscal year in the Budget Act for county administration under this  
17 article differs from the amounts approved by the department, each  
18 county shall submit a revised application in a form and at the time  
19 specified by the department.

20 (f) The department and counties shall maximize the use of  
21 federal funds for administration of the programs implemented  
22 pursuant to this article, including using state and county funds to  
23 match funds claimable under Title XIX or Title XXI of the federal  
24 Social Security Act (42 U.S.C. Sec. 1396 et seq.; 42 U.S.C. Sec.  
25 1397aa et seq.).

26 SEC. 129. Section 125286.20 of the Health and Safety Code  
27 is amended to read:

28 125286.20. Unless the context otherwise requires, the following  
29 definitions shall apply for purposes of this article:

30 (a) “Assay” means the amount of a particular constituent of a  
31 mixture or of the biological or pharmacological potency of a drug.

32 (b) “Ancillary infusion equipment and supplies” means the  
33 equipment and supplies required to infuse a blood clotting product  
34 into a human vein, including, but not limited to, syringes, needles,  
35 sterile gauze, field pads, gloves, alcohol swabs, numbing creams,  
36 tourniquets, medical tape, sharps or equivalent biohazard waste  
37 containers, and cold compression packs.

38 (c) “Bleeding disorder” means a medical condition characterized  
39 by a deficiency or absence of one or more essential blood clotting  
40 proteins in the human blood, often called “factors,” including all

1 forms of hemophilia and other bleeding disorders that, without  
2 treatment, result in uncontrollable bleeding or abnormal blood  
3 clotting.

4 (d) “Blood clotting product” means an intravenously  
5 administered medicine manufactured from human plasma or  
6 recombinant biotechnology techniques, approved for distribution  
7 by the federal Food and Drug Administration, that is used for the  
8 treatment and prevention of symptoms associated with bleeding  
9 disorders. Blood clotting products include, but are not limited to,  
10 factor VII, factor VIIa, factor VIII, and factor IX products, von  
11 Willebrand factor products, bypass products for patients with  
12 inhibitors, and activated prothrombin complex concentrates.

13 (e) “Emergency” means care as defined in Section 1317.1.

14 (f) “Hemophilia” means a human bleeding disorder caused by  
15 a hereditary deficiency of the factor I, II, V, VIII, IX, XI, XII, or  
16 XIII blood clotting protein in human blood.

17 (g) “Hemophilia treatment center” means a facility for the  
18 treatment of bleeding disorders, including, but not limited to,  
19 hemophilia, that receives funding specifically for the treatment of  
20 patients with bleeding disorders from federal government sources,  
21 including, but not limited to, the federal Centers for Disease  
22 Control and Prevention and the federal Health Resources and  
23 Services Administration (HRSA) of the United States Department  
24 of Health and Human Services.

25 (h) “Home use” means infusion or other use of a blood clotting  
26 product in a place other than a state-recognized hemophilia  
27 treatment center or other clinical setting. Places where home use  
28 occurs include, without limitation, a home or other nonclinical  
29 setting.

30 (i) “Patient” means a person needing a blood clotting product  
31 for home use.

32 (j) (1) “Provider of blood clotting products for home use” means  
33 all the following pharmacies, except as described in Section  
34 125286.35, that dispense blood clotting factors for home use:

35 (A) Hospital pharmacies.

36 (B) Health system pharmacies.

37 (C) Pharmacies affiliated with hemophilia treatment centers.

38 (D) Specialty home care pharmacies.

39 (E) Retail pharmacies.



1 (2) The providers described in this subdivision shall include a  
2 health care service plan and all its affiliated providers if the health  
3 care service plan exclusively contracts with a single medical group  
4 in a specified geographic area to provide professional services to  
5 its enrollees.

6 SEC. 130. Section 128570 of the Health and Safety Code is  
7 amended to read:

8 128570. (a) Persons participating in the program shall be  
9 persons who agree in writing prior to completing an accredited  
10 medical or osteopathic school based in the United States to serve  
11 in an eligible practice setting, pursuant to subdivision (g) of Section  
12 128565, for at least three years. The program shall be used only  
13 for the purpose of promoting the education of medical doctors and  
14 doctors of osteopathy and related administrative costs.

15 (b) A program participant shall commit to three years of  
16 full-time professional practice once the participant has achieved  
17 full licensure pursuant to Article 4 (commencing with Section  
18 2080) of Chapter 5 of Division 2 of, or Section 2099.5 of, the  
19 Business and Professions Code and after completing an accredited  
20 residency program. The obligated professional service shall be in  
21 direct patient care in an eligible practice setting pursuant to  
22 subdivision (g) of Section 128565.

23 (1) Leaves of absence either during medical school or service  
24 obligation shall be permitted for serious illness, pregnancy, or  
25 other natural causes. The selection committee shall develop the  
26 process for determining the maximum permissible length of an  
27 absence, the maximum permissible leaves of absences, and the  
28 process for reinstatement. Awarding of scholarship funds shall be  
29 deferred until the participant is back to full-time status.

30 (2) Full-time status shall be defined by the selection committee.  
31 The selection committee may establish exemptions from this  
32 requirement on a case-by-case basis.

33 (c) The maximum allowable amount per total scholarship shall  
34 be one hundred five thousand dollars (\$105,000). These moneys  
35 shall be distributed over the course of a standard medical school  
36 curriculum. The distribution of funds shall increase over the course  
37 of medical school, increasing to ensure that at least 45 percent of  
38 the total scholarship award is distributed upon matriculation in the  
39 final year of school.

1 (d) In the event the program participant does not complete  
2 medical school and the minimum three years of professional service  
3 pursuant to the contractual agreement between the foundation and  
4 the participant, the office shall recover the funds awarded plus the  
5 maximum allowable interest for failure to begin or complete the  
6 service obligation.

7 SEC. 131. Section 129725 of the Health and Safety Code is  
8 amended to read:

9 129725. (a) (1) “Hospital building” includes any building  
10 not specified in subdivision (b) that is used, or designed to be used,  
11 for a health facility of a type required to be licensed pursuant to  
12 Chapter 2 (commencing with Section 1250) of Division 2.

13 (2) Except as provided in paragraph (7) of subdivision (b),  
14 hospital building includes a correctional treatment center, as  
15 defined in subdivision (j) of Section 1250, the construction of  
16 which was completed on or after March 7, 1973.

17 (b) “Hospital building” does not include any of the following:

18 (1) Any building where outpatient clinical services of a health  
19 facility licensed pursuant to Section 1250 are provided that is  
20 separated from a building in which hospital services are provided.  
21 If any one or more outpatient clinical services in the building  
22 provides services to inpatients, the building shall not be included  
23 as a “hospital building” if those services provided to inpatients  
24 represent no more than 25 percent of the total outpatient services  
25 provided at the building. Hospitals shall maintain on an ongoing  
26 basis, data on the patients receiving services in these buildings,  
27 including the number of patients seen, categorized by their inpatient  
28 or outpatient status. Hospitals shall submit this data annually to  
29 the State Department of Public Health.

30 (2) A building used, or designed to be used, for a skilled nursing  
31 facility or intermediate care facility if the building is of  
32 single-story, wood-frame, or light steel frame construction.

33 (3) A building of single-story, wood-frame, or light steel frame  
34 construction where only skilled nursing or intermediate care  
35 services are provided if the building is separated from a building  
36 housing other patients of the health facility receiving higher levels  
37 of care.

38 (4) A freestanding structure of a chemical dependency recovery  
39 hospital exempted under subdivision (c) of Section 1275.2.

1 (5) A building licensed to be used as an intermediate care  
2 facility/developmentally disabled habilitative with six beds or less  
3 and an intermediate care facility/developmentally disabled  
4 habilitative of 7 to 15 beds that is a single-story, wood-frame, or  
5 light steel frame building.

6 (6) A building subject to licensure as a correctional treatment  
7 center, as defined in subdivision (j) of Section 1250, the  
8 construction of which was completed before March 7, 1973.

9 (7) (A) A building that meets the definition of a correctional  
10 treatment center, pursuant to subdivision (j) of Section 1250, for  
11 which the final design documents were completed or the  
12 construction of which was initiated before January 1, 1994,  
13 operated by or to be operated by the Department of Corrections  
14 and Rehabilitation, or by a law enforcement agency of a city,  
15 county, or a city and county.

16 (B) In the case of reconstruction, alteration, or addition to, the  
17 facilities identified in this paragraph, and paragraph (6) or any  
18 other building subject to licensure as a general acute care hospital,  
19 acute psychiatric hospital, correctional treatment center, or nursing  
20 facility, as defined in subdivisions (a), (b), (j), and (k) of Section  
21 1250, operated or to be operated by the Department of Corrections  
22 and Rehabilitation, or by a law enforcement agency of a city,  
23 county, or city and county, only the reconstruction, alteration, or  
24 addition, itself, and not the building as a whole, nor any other  
25 aspect thereof, shall be required to comply with this chapter or the  
26 regulations adopted pursuant thereto.

27 (8) A freestanding building used, or designed to be used, as a  
28 congregate living health facility, as defined in subdivision (i) of  
29 Section 1250.

30 (9) A freestanding building used, or designed to be used, as a  
31 hospice facility, as defined in subdivision (n) of Section 1250.

32 SEC. 132. Section 136000 of the Health and Safety Code is  
33 amended to read:

34 136000. (a) (1) Effective July 1, 2012, there is hereby  
35 transferred from the Department of Managed Health Care the  
36 Office of Patient Advocate to be established within the California  
37 Health and Human Services Agency, to provide assistance to, and  
38 advocate on behalf of, individuals served by health care service  
39 plans regulated by the Department of Managed Health Care,  
40 insureds covered by health insurers regulated by the Department

1 of Insurance, and individuals who receive or are eligible for other  
2 health care coverage in California, including coverage available  
3 through the Medi-Cal program, the California Health Benefit  
4 Exchange, the Healthy Families Program, or any other county or  
5 state health care program. The goal of the office shall be to help  
6 those individuals secure the health care services to which they are  
7 entitled or for which they are eligible under the law.  
8 Notwithstanding any provision of this division, each regulator and  
9 health coverage program shall retain its respective authority,  
10 including its authority to resolve complaints, grievances, and  
11 appeals.

12 (2) The office shall be headed by a patient advocate appointed  
13 by the Governor. The patient advocate shall serve at the pleasure  
14 of the Governor.

15 (3) The provisions of this division affecting insureds covered  
16 by health insurers regulated by the Department of Insurance and  
17 individuals who receive or are eligible for coverage available  
18 through the Medi-Cal program, the California Health Benefit  
19 Exchange, the Healthy Families Program, or any other county or  
20 state health care program shall commence on January 1, 2013,  
21 except that for the period July 1, 2012, to January 1, 2013, the  
22 office shall continue with any duties, responsibilities, or activities  
23 of the office authorized as of July 1, 2011, which shall continue  
24 to be authorized.

25 (b) (1) The duties of the office shall include, but not be limited  
26 to, all of the following:

27 (A) Developing, in consultation with the Managed Risk Medical  
28 Insurance Board, the State Department of Health Care Services,  
29 the California Health Benefit Exchange, the Department of  
30 Managed Health Care, and the Department of Insurance,  
31 educational and informational guides for consumers describing  
32 their rights and responsibilities, and informing them on effective  
33 ways to exercise their rights to secure health care coverage. The  
34 guides shall be easy to read and understand and shall be made  
35 available in English and other threshold languages, using an  
36 appropriate literacy level, and in a culturally competent manner.  
37 The informational guides shall be made available to the public by  
38 the office, including being made accessible on the office's Internet  
39 Web site and through public outreach and educational programs.

1 (B) Compiling an annual publication, to be made available on  
2 the office's Internet Web site, of a quality of care report card,  
3 including, but not limited to, health care service plans.

4 (C) Rendering assistance to consumers regarding procedures,  
5 rights, and responsibilities related to the filing of complaints,  
6 grievances, and appeals, including appeals of coverage denials and  
7 information about any external appeal process.

8 (D) Making referrals to the appropriate state agency regarding  
9 studies, investigations, audits, or enforcement that may be  
10 appropriate to protect the interests of consumers.

11 (E) Coordinating and working with other government and  
12 nongovernment patient assistance programs and health care  
13 ombudsperson programs.

14 (2) The office shall employ necessary staff. The office may  
15 employ or contract with experts when necessary to carry out the  
16 functions of the office. The patient advocate shall make an annual  
17 budget request for the office which shall be identified in the annual  
18 Budget Act.

19 (3) Until January 1, 2013, the office shall have access to records  
20 of the Department of Managed Health Care, including, but not  
21 limited to, information related to health care service plan or health  
22 insurer audits, surveys, and enrollee or insured grievances.

23 (4) The patient advocate shall annually issue a public report on  
24 the activities of the office, and shall appear before the appropriate  
25 policy and fiscal committees of the Senate and Assembly, if  
26 requested, to report and make recommendations on the activities  
27 of the office.

28 (5) The office shall adopt standards for the organizations with  
29 which it contracts pursuant to this section to ensure compliance  
30 with the privacy and confidentiality laws of this state, including,  
31 but not limited to, the Information Practices Act of 1977 (Chapter  
32 1(commencing with Section 1798) of Division 3 of the Civil Code).  
33 The office shall conduct privacy trainings as necessary, and  
34 regularly verify that the organizations have measures in place to  
35 ensure compliance with this provision.

36 (c) In enacting this act, the Legislature recognizes that, because  
37 of the enactment of federal health care reform on March 23, 2010,  
38 and the implementation of various provisions by January 1, 2014,  
39 it is appropriate to transfer the Office of Patient Advocate and to  
40 confer new responsibilities on the Office of Patient Advocate,

1 including assisting consumers in obtaining health care coverage  
2 and obtaining health care through health coverage that is regulated  
3 by multiple regulators, both state and federal. The new  
4 responsibilities include assisting consumers in navigating both  
5 public and private health care coverage and assisting consumers  
6 in determining which regulator regulates the health care coverage  
7 of a particular consumer. In order to assist in implementing federal  
8 health care reform in California, commencing January 1, 2013,  
9 the office, in addition to the duties set forth in subdivision (b),  
10 shall also do all of the following:

11 (1) Receive and respond to all inquiries, complaints, and requests  
12 for assistance from individuals concerning health care coverage  
13 available in California.

14 (2) Provide, and assist in the provision of, outreach and  
15 education about health care coverage options as set forth in  
16 subparagraph (A) of paragraph (1) of subdivision (b), including,  
17 but not limited to:

18 (A) Information regarding applying for coverage; the cost of  
19 coverage; and renewal in, and transitions between, health coverage  
20 programs.

21 (B) Information and assistance regarding public programs, such  
22 as Medi-Cal, the Healthy Families Program, federal veterans health  
23 benefits, and Medicare; and private coverage, including  
24 employer-sponsored coverage, Exchange coverage; and other  
25 sources of care if the consumer is not eligible for coverage, such  
26 as county services, community clinics, discounted hospital care,  
27 or charity care.

28 (3) Coordinate with other state and federal agencies engaged in  
29 outreach and education regarding the implementation of federal  
30 health care reform.

31 (4) Render assistance to, and advocate on behalf of, consumers  
32 with problems related to health care services, including care and  
33 service problems and claims or payment problems.

34 (5) Refer consumers to the appropriate regulator of their health  
35 coverage programs for filing complaints, grievances, or claims, or  
36 for payment problems.

37 (d) (1) Commencing January 1, 2013, the office shall track and  
38 analyze data on problems and complaints by, and questions from,  
39 consumers about health care coverage for the purpose of providing  
40 public information about problems faced and information needed

1 by consumers in obtaining coverage and care. The data collected  
2 shall include demographic data, source of coverage, regulator, and  
3 resolution of complaints, including timeliness of resolution.

4 (2) The Department of Managed Health Care, the State  
5 Department of Health Care Services, the Department of Insurance,  
6 the Managed Risk Medical Insurance Board, the California Health  
7 Benefit Exchange, and other public coverage programs shall  
8 provide to the office data in the aggregate concerning consumer  
9 complaints and grievances. For the purpose of publicly reporting  
10 information about the problems faced by consumers in obtaining  
11 care and coverage, the office shall analyze data on consumer  
12 complaints and grievances resolved by these agencies, including  
13 demographic data, source of coverage, insurer or plan, resolution  
14 of complaints and other information intended to improve health  
15 care and coverage for consumers. The office shall develop and  
16 provide comprehensive and timely data and analysis based on the  
17 information provided by other agencies.

18 (3) The office shall collect and report data to the United States  
19 Secretary of Health and Human Services on complaints and  
20 consumer assistance as required to comply with requirements of  
21 the federal Patient Protection and Affordable Care Act (Public  
22 Law 111-148).

23 (e) Commencing January 1, 2013, in order to assist consumers  
24 in understanding the impact of federal health care reform as well  
25 as navigating and resolving questions and problems with health  
26 care coverage and programs, the office shall ensure that either the  
27 office or a state agency contracting with the office shall do the  
28 following:

29 (1) Operate a toll-free telephone hotline number that can route  
30 callers to the proper regulating body or public program for their  
31 question, their health plan, or the consumer assistance program in  
32 their area.

33 (2) Operate an Internet Web site, other social media, and  
34 up-to-date communication systems to give information regarding  
35 the consumer assistance programs.

36 (f) (1) The office may contract with community-based consumer  
37 assistance organizations to assist in any or all of the duties of  
38 subdivision (c) in accordance with Section 19130 of the  
39 Government Code or provide grants to community-based consumer  
40 assistance organizations for portions of these purposes.

1 (2) Commencing January 1, 2013, any local community-based  
2 nonprofit consumer assistance program with which the office  
3 contracts shall include in its mission the assistance of, and duty  
4 to, health care consumers. Contracting consumer assistance  
5 programs shall have experience in the following areas:

6 (A) Assisting consumers in navigating the local health care  
7 system.

8 (B) Advising consumers regarding their health care coverage  
9 options and helping consumers enroll in and retain health care  
10 coverage.

11 (C) Assisting consumers with problems in accessing health care  
12 services.

13 (D) Serving consumers with special needs, including, but not  
14 limited to, consumers with limited-English language proficiency,  
15 consumers requiring culturally competent services, low-income  
16 consumers, consumers with disabilities, consumers with low  
17 literacy rates, and consumers with multiple health conditions,  
18 including behavioral health.

19 (E) Collecting and reporting data, including demographic data,  
20 source of coverage, regulator, and resolution of complaints,  
21 including timeliness of resolution.

22 (3) Commencing January 1, 2013, the office shall develop  
23 protocols, procedures, and training modules for organizations with  
24 which it contracts.

25 (4) Commencing January 1, 2013, the office shall adopt  
26 standards for organizations with which it contracts regarding  
27 confidentiality and conduct.

28 (5) Commencing January 1, 2013, the office may contract with  
29 consumer assistance programs to develop a series of appropriate  
30 literacy level and culturally and linguistically appropriate  
31 educational materials in all threshold languages for consumers  
32 regarding health care coverage options and how to resolve  
33 problems.

34 (g) Commencing January 1, 2013, the office shall develop  
35 protocols and procedures for assisting in the resolution of consumer  
36 complaints, including both of the following:

37 (1) A procedure for referral of complaints and grievances to the  
38 appropriate regulator or health coverage program for resolution  
39 by the relevant regulator or public program.



1 (2) A protocol or procedure for reporting to the appropriate  
2 regulator and health coverage program regarding complaints and  
3 grievances relevant to that agency that the office received and was  
4 able to resolve without further action or referral.

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

6 (1) “Consumer” or “individual” includes the individual or his  
7 or her parent, guardian, conservator, or authorized representative.

8 (2) “Exchange” means the California Health Benefit Exchange  
9 established pursuant to Title 22 (commencing with Section 100500)  
10 of the Government Code.

11 (3) “Health care” includes behavioral health, including both  
12 mental health and substance abuse treatment.

13 (4) “Health care service plan” has the same meaning as that set  
14 forth in subdivision (f) of Section 1345. Health care service plan  
15 includes “specialized health care service plans,” including  
16 behavioral health plans.

17 (5) “Health coverage program” includes the Medi-Cal program,  
18 Healthy Families Program, tax subsidies and premium credits  
19 under the Exchange, the Basic Health Program, if enacted, county  
20 health coverage programs, and the Access for Infants and Mothers  
21 Program.

22 (6) “Health insurance” has the same meaning as set forth in  
23 Section 106 of the Insurance Code.

24 (7) “Health insurer” means an insurer that issues policies of  
25 health insurance.

26 (8) “Office” means the Office of Patient Advocate.

27 (9) “Threshold languages” shall have the same meaning as for  
28 Medi-Cal managed care.

29 SEC. 132.5. Section 395 of the Insurance Code is amended to  
30 read:

31 395. After a covered loss, an insurer shall provide, free of  
32 charge, a complete copy of the insured’s current insurance policy  
33 or certificate within 30 calendar days of receipt of a request from  
34 the insured. The time period for providing the insurance policy or  
35 certificate may be extended by the commissioner. An insured who  
36 does not experience a covered loss shall, upon request, be entitled  
37 to one free copy of his or her current insurance policy or certificate  
38 annually. The insurance policy or certificate provided to the insured  
39 shall include, where applicable, the policy declarations page. This  
40 section shall not apply to commercial policies issued pursuant to

1 Sections 675.5 and 676.6, and policies of workers' compensation  
2 insurance, as defined in Section 109.

3 SEC. 133. Section 676.75 of the Insurance Code is amended  
4 to read:

5 676.75. (a) No admitted insurer, licensed to issue and issuing  
6 homeowner's or tenant's policies, as described in Section 122,  
7 shall (1) fail or refuse to accept an application for that insurance  
8 or to issue that insurance to an applicant or (2) cancel that  
9 insurance, solely on the basis that the applicant or policyholder is  
10 engaged in foster home activities in a certified family home, as  
11 defined in Section 1506 of the Health and Safety Code.

12 (b) Coverage under policies described in subdivision (a) with  
13 respect to a foster child shall be the same as that provided for a  
14 natural child. However, unless specifically provided in the policy,  
15 there shall be no coverage expressly provided in the policy for any  
16 bodily injury arising out of the operation or use of any motor  
17 vehicle, aircraft, or watercraft owned or operated by, or rented or  
18 loaned to, any foster parent.

19 (c) It is against public policy for a policy of homeowner's or  
20 tenant's insurance subject to this section to provide liability  
21 coverage for any of the following losses:

22 (1) An insurer shall not be liable, under a policy of insurance  
23 subject to this section, to any governmental agency for damage  
24 arising from occurrences peculiar to the foster care relationship  
25 and the provision of foster care services.

26 (2) Alienation of affection of a foster child.

27 (3) Any loss arising out of licentious, immoral, or sexual  
28 behavior on the part of a foster parent intended to lead to, or  
29 culminating in, any sexual act.

30 (4) Any loss arising out of a dishonest, fraudulent, criminal, or  
31 intentional act.

32 (d) There shall be no penalty for violations of this section prior  
33 to January 1, 2013.

34 (e) Insurers may provide a special endorsement to a  
35 homeowner's or tenant's policy covering claims related to foster  
36 care that are not excluded by subdivision (c).

37 (f) Insurers may provide by a separate policy for some or all of  
38 the claims related to foster care that are excluded by subdivision  
39 (c).

1 SEC. 134. Section 922.41 of the Insurance Code is amended  
2 to read:

3 922.41. (a) Credit shall be allowed a domestic insurer when  
4 the reinsurance is ceded to an assuming insurer that has been  
5 certified by the commissioner as a reinsurer in this state and secures  
6 its obligations in accordance with the requirements of this section.  
7 Credit shall be allowed at all times for which statutory financial  
8 statement credit for reinsurance is claimed under this section. The  
9 credit allowed shall be based upon the security held by or on behalf  
10 of the ceding insurer in accordance with a rating assigned to the  
11 certified reinsurer by the commissioner. The security shall be in  
12 a form consistent with this section, any regulations promulgated  
13 by the commissioner, and Section 922.5.

14 (b) In order to be eligible for certification, the assuming insurer  
15 shall meet the following requirements:

16 (1) The assuming insurer shall be domiciled and licensed to  
17 transact insurance or reinsurance in a qualified jurisdiction, as  
18 determined by the commissioner pursuant to subdivisions (f) and  
19 (g).

20 (2) The assuming insurer shall maintain minimum capital and  
21 surplus, or its equivalent, in an amount to be determined by the  
22 commissioner, but no less than two hundred fifty million dollars  
23 (\$250,000,000) calculated in accordance with paragraph (4) of  
24 subdivision (f) of this section or Section 922.5. This requirement  
25 may also be satisfied by an association including incorporated and  
26 individual unincorporated underwriters having minimum capital  
27 and surplus equivalents (net of liabilities) of at least two hundred  
28 fifty million dollars (\$250,000,000) and a central fund containing  
29 a balance of at least two hundred fifty million dollars  
30 (\$250,000,000).

31 (3) The assuming insurer shall maintain financial strength ratings  
32 from two or more rating agencies deemed acceptable by the  
33 commissioner. These ratings shall be based on interactive  
34 communication between the rating agency and the assuming insurer  
35 and shall not be based solely on publicly available information.  
36 These financial strength ratings will be one factor used by the  
37 commissioner in determining the rating that is assigned to the  
38 assuming insurer. Acceptable rating agencies include the following:

39 (A) Standard & Poor's.

40 (B) Moody's Investors Service.

- 1 (C) Fitch Ratings.
- 2 (D) A.M. Best Company.
- 3 (E) Any other nationally recognized statistical rating
- 4 organization.

5 (4) The assuming insurer shall agree to submit to the jurisdiction  
6 of this state, appoint the commissioner or a designated attorney in  
7 this state as its agent for service of process in this state, and agree  
8 to provide security for 100 percent of the assuming insurer's  
9 liabilities attributable to reinsurance ceded by United States ceding  
10 insurers if it resists enforcement of a final United States judgment.

11 (5) The assuming insurer shall agree to meet applicable  
12 information filing requirements as determined by the commissioner,  
13 both with respect to an initial application for certification and on  
14 an ongoing basis.

15 (6) The certified reinsurer shall comply with any other  
16 requirements deemed relevant by the commissioner.

17 (c) (1) If an applicant for certification has been certified as a  
18 reinsurer in a National Association of Insurance Commissioners  
19 (NAIC) accredited jurisdiction, the commissioner may defer to  
20 that jurisdiction's certification, and has the discretion to defer to  
21 the rating assigned by that jurisdiction if the assuming insurer  
22 submits a properly executed Form CR-1 (as published on the  
23 department's Internet Web site), and such additional information  
24 as the commissioner requires. The commissioner, however, may  
25 perform an independent review and determination of any applicant.  
26 The assuming insurer shall then be considered to be a certified  
27 reinsurer in this state.

28 (2) If the commissioner defers to a certification determination  
29 by another state, any change in the certified reinsurer's status or  
30 rating in the other jurisdiction shall apply automatically in this  
31 state as of the date it takes effect in the other jurisdiction unless  
32 the commissioner otherwise determines. The certified reinsurer  
33 shall notify the commissioner of any change in its status or rating  
34 within 10 days after receiving notice of the change.

35 (3) The commissioner may withdraw recognition of the other  
36 jurisdiction's rating at any time and assign a new rating in  
37 accordance with subdivision (h).

38 (4) The commissioner may withdraw recognition of the other  
39 jurisdiction's certification at any time, with written notice to the  
40 certified reinsurer. Unless the commissioner suspends or revokes

1 the certified reinsurer's certification in accordance with this section  
2 and Section 922.42, the certified reinsurer's certification shall  
3 remain in good standing in this state for a period of three months,  
4 which shall be extended if additional time is necessary to consider  
5 the assuming insurer's application for certification in this state.

6 (d) An association, including incorporated and individual  
7 unincorporated underwriters, may be a certified reinsurer. In order  
8 to be eligible for certification, in addition to satisfying requirements  
9 of subdivision (b), the reinsurer shall meet all of the following  
10 requirements:

11 (1) The association shall satisfy its minimum capital and surplus  
12 requirements through the capital and surplus equivalents (net of  
13 liabilities) of the association and its members, which shall include  
14 a joint central fund that may be applied to any unsatisfied  
15 obligation of the association or any of its members, in an amount  
16 determined by the commissioner to provide adequate protection.

17 (2) The incorporated members of the association shall not be  
18 engaged in any business other than underwriting as a member of  
19 the association and shall be subject to the same level of regulation  
20 and solvency control by the association's domiciliary regulator as  
21 are the unincorporated members.

22 (3) Within 90 days after its financial statements are due to be  
23 filed with the association's domiciliary regulator, the association  
24 shall provide to the commissioner an annual certification by the  
25 association's domiciliary regulator of the solvency of each  
26 underwriter member or, if a certification is unavailable, financial  
27 statements, prepared by independent public accountants, of each  
28 underwriter member of the association.

29 (e) (1) The commissioner shall post notice on the department's  
30 Internet Web site promptly upon receipt of any application for  
31 certification, including instructions on how members of the public  
32 may respond to the application. The commissioner shall not take  
33 final action on the application until at least 90 days after posting  
34 the notice required by this subdivision.

35 (2) The commissioner shall issue written notice to an assuming  
36 insurer that has made application and has been approved as a  
37 certified reinsurer. Included in that notice shall be the rating  
38 assigned the certified reinsurer in accordance with subdivision (h).  
39 The commissioner shall publish a list of all certified reinsurers and  
40 their ratings.

1 (f) The certified reinsurer shall agree to meet applicable  
2 information filing requirements as determined by the commissioner,  
3 both with respect to an initial application for certification and on  
4 an ongoing basis. All information submitted by certified reinsurers  
5 that is not otherwise public information subject to disclosure shall  
6 be exempted from disclosure under Chapter 3.5 (commencing with  
7 Section 6250) of Division 7 of Title 1 of the Government Code,  
8 and shall be withheld from public disclosure. The applicable  
9 information filing requirements are as follows:

10 (1) Notification within 10 days of any regulatory actions taken  
11 against the certified reinsurer, any change in the provisions of its  
12 domiciliary license or any change in rating by an approved rating  
13 agency, including a statement describing those changes and the  
14 reasons for those changes.

15 (2) Annually, Form CR-F or CR-S, as applicable pursuant to  
16 the instructions published on the department's Internet Web site.

17 (3) Annually, the report of the independent auditor on the  
18 financial statements of the insurance enterprise, on the basis  
19 described in paragraph (4).

20 (4) Annually, audited financial statements, (audited United  
21 States Generally Accepted Accounting Principles basis, if available,  
22 audited International Financial Reporting Standards basis  
23 statements are allowed, but must include an audited footnote  
24 reconciling equity and net income to a United States Generally  
25 Accepted Accounting Principles basis, or, with the written  
26 permission of the commissioner, audited International Financial  
27 Reporting Standards statements with reconciliation to United States  
28 Generally Accepted Accounting Principles certified by an officer  
29 of the company), regulatory filings, and actuarial opinion (as filed  
30 with the certified reinsurer's supervisor). Upon the initial  
31 certification, audited financial statements for the last three years  
32 filed with the certified reinsurer's supervisor.

33 (5) At least annually, an updated list of all disputed and overdue  
34 reinsurance claims regarding reinsurance assumed from United  
35 States domestic ceding insurers.

36 (6) A certification from the certified reinsurer's domestic  
37 regulator that the certified reinsurer is in good standing and  
38 maintains capital in excess of the jurisdiction's highest regulatory  
39 action level.

1 (7) Any other information that the commissioner may reasonably  
2 require.

3 (g) If the commissioner certifies a non-United States domiciled  
4 insurer, the commissioner shall create and publish a list of qualified  
5 jurisdictions, under which an assuming insurer licensed and  
6 domiciled in that jurisdiction is eligible to be considered for  
7 certification by the commissioner as a certified reinsurer.

8 (1) In order to determine whether the domiciliary jurisdiction  
9 of a non-United States assuming insurer is eligible to be recognized  
10 as a qualified jurisdiction, the commissioner shall evaluate the  
11 appropriateness and effectiveness of the reinsurance supervisory  
12 system of the jurisdiction, both initially and on an ongoing basis,  
13 and consider the rights, benefits, and the extent of reciprocal  
14 recognition afforded by the non-United States jurisdiction to  
15 reinsurers licensed and domiciled in the United States. The  
16 commissioner shall determine the appropriate process for  
17 evaluating the qualifications of those jurisdictions. Prior to its  
18 listing, a qualified jurisdiction shall agree in writing to share  
19 information and cooperate with the commissioner with respect to  
20 all certified reinsurers domiciled within that jurisdiction. A  
21 jurisdiction may not be recognized as a qualified jurisdiction if the  
22 commissioner has determined that the jurisdiction does not  
23 adequately and promptly enforce final United States judgments  
24 and arbitration awards. Additional factors may be considered in  
25 the discretion of the commissioner, including, but not limited to,  
26 the following:

27 (A) The framework under which the assuming insurer is  
28 regulated.

29 (B) The structure and authority of the domiciliary regulator with  
30 regard to solvency regulation requirements and financial  
31 surveillance.

32 (C) The substance of financial and operating standards for  
33 assuming insurers in the domiciliary jurisdiction.

34 (D) The form and substance of financial reports required to be  
35 filed or made publicly available by reinsurers in the domiciliary  
36 jurisdiction and the accounting principles used.

37 (E) The domiciliary regulator's willingness to cooperate with  
38 United States regulators in general and the commissioner in  
39 particular.

1 (F) The history of performance by assuming insurers in the  
2 domiciliary jurisdiction.

3 (G) Any documented evidence of substantial problems with the  
4 enforcement of final United States judgments in the domiciliary  
5 jurisdiction.

6 (H) Any relevant international standards or guidance with  
7 respect to mutual recognition of reinsurance supervision adopted  
8 by the International Association of Insurance Supervisors or a  
9 successor organization.

10 (I) Any other matters deemed relevant by the commissioner.

11 (2) The commissioner shall consider the list of qualified  
12 jurisdictions published through the NAIC committee process in  
13 determining qualified jurisdictions. The commissioner may include  
14 on the list published pursuant to this section, any jurisdiction on  
15 the NAIC list of qualified jurisdictions, or on any equivalent list  
16 of the United States Treasury.

17 (3) If the commissioner approves a jurisdiction as qualified that  
18 does not appear on either the NAIC list of qualified jurisdictions,  
19 or the United States Treasury list, the commissioner shall provide  
20 thoroughly documented justification in accordance with criteria  
21 to be developed under this section.

22 (4) United States jurisdictions that meet the requirements for  
23 accreditation under the NAIC financial standards and accreditation  
24 program shall be recognized as qualified jurisdictions.

25 (5) If a certified reinsurer's domiciliary jurisdiction ceases to  
26 be a qualified jurisdiction, the commissioner has the discretion to  
27 suspend the reinsurer's certification indefinitely, in lieu of  
28 revocation.

29 (h) The commissioner shall assign a rating to each certified  
30 reinsurer, giving due consideration to the financial strength ratings  
31 that have been assigned by rating agencies deemed acceptable to  
32 the commissioner pursuant to this section. The commissioner shall  
33 publish a list of all certified reinsurers and their ratings.

34 (1) Each certified reinsurer shall be rated on a legal entity basis,  
35 with due consideration being given to the group rating where  
36 appropriate, except that an association including incorporated and  
37 individual unincorporated underwriters that has been approved to  
38 do business as a single certified reinsurer may be evaluated on the  
39 basis of its group rating. Factors that may be considered as part of  
40 the evaluation process include, but are not limited to, the following:



1 (A) The certified reinsurer’s financial strength rating from an  
2 acceptable rating agency. The maximum rating that a certified  
3 reinsurer may be assigned shall correspond to its financial strength  
4 rating as set forth in clauses (i) to (vi), inclusive. The commissioner  
5 shall use the lowest financial strength rating received from an  
6 approved rating agency in establishing the maximum rating of a  
7 certified reinsurer. A failure to obtain or maintain at least two  
8 financial strength ratings from acceptable rating agencies shall  
9 result in loss of eligibility for certification.

10 (i) Ratings category “Secure - 1” corresponds to A.M. Best  
11 Company rating A++; Standard & Poor’s rating AAA; Moody’s  
12 Investors Service rating Aaa; and Fitch Ratings rating AAA.

13 (ii) Ratings category “Secure - 2” corresponds to A.M. Best  
14 Company rating A+; Standard & Poor’s rating AA+, AA, or AA-;  
15 Moody’s Investors Service rating Aa1, Aa2, or Aa3; and Fitch  
16 Ratings rating AA+, AA, or AA-.

17 (iii) Ratings category “Secure - 3” corresponds to A.M. Best  
18 Company rating A; Standard & Poor’s rating A+ or A; Moody’s  
19 Investors Service rating A1 or A2; and Fitch Ratings rating A+ or  
20 A.

21 (iv) Ratings category “Secure - 4” corresponds to A.M. Best  
22 Company rating A-; Standard & Poor’s rating A-; Moody’s  
23 Investors Service rating A3; and Fitch Ratings rating A-.

24 (v) Ratings category “Secure - 5” corresponds to A.M. Best  
25 Company rating B++ or B+; Standard & Poor’s rating BBB+,  
26 BBB, or BBB-; Moody’s Investors Service rating Baa1, Baa2, or  
27 Baa3; and Fitch Ratings rating BBB+, BBB, or BBB-.

28 (vi) Ratings category “Vulnerable - 6” corresponds to A.M.  
29 Best Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard  
30 & Poor’s rating BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R;  
31 Moody’s Investors Service rating Ba1, Ba2, Ba3, B1, B2, B3, Caa,  
32 Ca, or C; and Fitch Ratings rating BB+, BB, BB-, B+, B, B-,  
33 CCC+, CC, CCC-, or DD.

34 (B) The business practices of the certified reinsurer in dealing  
35 with its ceding insurers, including its record of compliance with  
36 reinsurance contractual terms and obligations.

37 (C) For certified reinsurers domiciled in the United States, a  
38 review of the most recent applicable NAIC Annual Statement  
39 Blank, either Schedule F (for property/casualty reinsurers) or  
40 Schedule S (for life and health reinsurers).

1 (D) For certified reinsurers not domiciled in the United States,  
2 a review annually of Form CR-F (for property/casualty reinsurers)  
3 or Form CR-S (for life and health reinsurers) (as published on the  
4 department's Internet Web site).

5 (E) The reputation of the certified reinsurer for prompt payment  
6 of claims under reinsurance agreements, based on an analysis of  
7 ceding insurers' Schedule F reporting of overdue reinsurance  
8 recoverables, including the proportion of obligations that are more  
9 than 90 days past due or are in dispute, with specific attention  
10 given to obligations payable to companies that are in administrative  
11 supervision or receivership.

12 (F) Regulatory actions against the certified reinsurer.

13 (G) The report of the independent auditor on the financial  
14 statements of the insurance enterprise, on the basis described in  
15 subparagraph (H).

16 (H) For certified reinsurers not domiciled in the United States,  
17 audited financial statements, (audited United States Generally  
18 Accepted Accounting Principles basis, if available, audited  
19 International Financial Reporting Standards basis statements are  
20 allowed, but must include an audited footnote reconciling equity  
21 and net income to a United States Generally Accepted Accounting  
22 Principles basis, or, with the written permission of the  
23 commissioner, audited International Financial Reporting Standards  
24 statements with reconciliation to United States Generally Accepted  
25 Accounting Principles certified by an officer of the company),  
26 regulatory filings, and actuarial opinion (as filed with the  
27 non-United States jurisdiction supervisor). Upon the initial  
28 application for certification, the commissioner shall consider  
29 audited financial statements for the last three years filed with its  
30 non-United States jurisdiction supervisor.

31 (I) The liquidation priority of obligations to a ceding insurer in  
32 the certified reinsurer's domiciliary jurisdiction in the context of  
33 an insolvency proceeding.

34 (J) A certified reinsurer's participation in any solvent scheme  
35 of arrangement, or similar procedure, which involves United States  
36 ceding insurers. The commissioner shall receive prior notice from  
37 a certified reinsurer that proposes participation by the certified  
38 reinsurer in a solvent scheme of arrangement.

39 (K) Any other information deemed relevant by the  
40 commissioner.

1 (2) Based on the analysis conducted under subparagraph (E) of  
2 paragraph (1) of a certified reinsurer's reputation for prompt  
3 payment of claims, the commissioner may make appropriate  
4 adjustments in the security the certified reinsurer is required to  
5 post to protect its liabilities to United States ceding insurers,  
6 provided that the commissioner shall, at a minimum, increase the  
7 security the certified reinsurer is required to post by one rating  
8 level under regulations promulgated by the commissioner, if the  
9 commissioner finds either of the following:

10 (A) More than 15 percent of the certified reinsurer's ceding  
11 insurance clients have overdue reinsurance recoverables on paid  
12 losses of 90 days or more that are not in dispute and that exceed  
13 one hundred thousand dollars (\$100,000) for each ceding insurer.

14 (B) The aggregate amount of reinsurance recoverables on paid  
15 losses that are not in dispute and that are overdue by 90 days or  
16 more exceeds fifty million dollars (\$50,000,000).

17 (3) The assuming insurer shall submit a properly executed Form  
18 CR-1 (as published on the department's Internet Web site) as  
19 evidence of its submission to the jurisdiction of this state,  
20 appointment of the commissioner as an agent for service of process  
21 in this state, and agreement to provide security for 100 percent of  
22 the assuming insurer's liabilities attributable to reinsurance ceded  
23 by United States ceding insurers if it resists enforcement of a final  
24 United States judgment. The commissioner shall not certify any  
25 assuming insurer that is domiciled in a jurisdiction that the  
26 commissioner has determined does not adequately and promptly  
27 enforce final United States judgments or arbitration awards.

28 (4) (A) In the case of a downgrade by a rating agency or other  
29 disqualifying circumstance, the commissioner shall, upon written  
30 notice, assign a new rating to the certified reinsurer in accordance  
31 with the requirements of this subdivision.

32 (B) The commissioner shall have the authority to suspend,  
33 revoke, or otherwise modify a certified reinsurer's certification at  
34 any time if the certified reinsurer fails to meet its obligations or  
35 security requirements under this section, or if other financial or  
36 operating results of the certified reinsurer, or documented  
37 significant delays in payment by the certified reinsurer, lead the  
38 commissioner to reconsider the certified reinsurer's ability or  
39 willingness to meet its contractual obligations.

1 (C) If the rating of a certified reinsurer is upgraded by the  
2 commissioner, the certified reinsurer may meet the security  
3 requirements applicable to its new rating on a prospective basis,  
4 but the commissioner shall require the certified reinsurer to post  
5 security under the previously applicable security requirements as  
6 to all contracts in force on or before the effective date of the  
7 upgraded rating. If the rating of a certified reinsurer is downgraded  
8 by the commissioner, the commissioner shall require the certified  
9 reinsurer to meet the security requirements applicable to its new  
10 rating for all business it has assumed as a certified reinsurer.

11 (D) Upon revocation of the certification of a certified reinsurer  
12 by the commissioner, the assuming insurer shall be required to  
13 post security in accordance with Section 922.5 in order for the  
14 ceding insurer to continue to take credit for reinsurance ceded to  
15 the assuming insurer. If funds continue to be held in trust in  
16 accordance with subdivision (d) of Section 922.4, the commissioner  
17 may allow additional credit equal to the ceding insurer's pro rata  
18 share of those funds, discounted to reflect the risk of  
19 uncollectibility and anticipated expenses of trust administration.  
20 Notwithstanding the change of a certified reinsurer's rating or  
21 revocation of its certification, a domestic insurer that has ceded  
22 reinsurance to that certified reinsurer shall not be denied credit for  
23 reinsurance for a period of three months for all reinsurance ceded  
24 to that certified reinsurer, unless the reinsurance is found by the  
25 commissioner to be at high risk of uncollectibility.

26 (i) A certified reinsurer shall secure obligations assumed from  
27 United States ceding insurers under this subdivision at a level  
28 consistent with its rating. The amount of security required in order  
29 for full credit to be allowed shall correspond with the following  
30 requirements:

31 Ratings security required  
32 Secure - 1: 0%  
33 Secure - 2: 10%  
34 Secure - 3: 20%  
35 Secure - 4: 50%  
36 Secure - 5: 75%  
37 Vulnerable - 6: 100%

38 (1) In order for a domestic ceding insurer to qualify for full  
39 financial statement credit for reinsurance ceded to a certified  
40 reinsurer, the certified reinsurer shall maintain security in a form

1 acceptable to the commissioner and consistent with Section 922.5,  
2 or in a multibeneficiary trust in accordance with subdivision (d)  
3 of Section 922.4, except as otherwise provided in this subdivision.  
4 In order for a domestic insurer to qualify for full financial statement  
5 credit, reinsurance contracts entered into or renewed under this  
6 section shall include a proper funding clause that requires the  
7 certified reinsurer to provide and maintain security in an amount  
8 sufficient to avoid the imposition of any financial statement penalty  
9 on the ceding insurer under this section for reinsurance ceded to  
10 the certified reinsurer.

11 (2) If a certified reinsurer maintains a trust to fully secure its  
12 obligations subject to subdivision (d) of Section 922.4, and chooses  
13 to secure its obligations incurred as a certified reinsurer in the form  
14 of a multibeneficiary trust, the certified reinsurer shall maintain  
15 separate trust accounts for its obligations incurred under  
16 reinsurance agreements issued or renewed as a certified reinsurer  
17 with reduced security as permitted by this subdivision or  
18 comparable laws of other United States jurisdictions and for its  
19 obligations subject to subdivision (d) of Section 922.4. It shall be  
20 a condition to the grant of certification under this section that the  
21 certified reinsurer shall have bound itself, by the language of the  
22 trust and agreement with the commissioner with principal  
23 regulatory oversight of each of those trust accounts, to fund, upon  
24 termination of any of those trust accounts, out of the remaining  
25 surplus of those trusts any deficiency of any other of those trust  
26 accounts.

27 (3) The minimum trusteed surplus requirements provided in  
28 subdivision (d) of Section 922.4 are not applicable with respect to  
29 a multibeneficiary trust maintained by a certified reinsurer for the  
30 purpose of securing obligations incurred under this subdivision,  
31 except that the trust shall maintain a minimum trusteed surplus of  
32 ten million dollars (\$10,000,000).

33 (4) With respect to obligations incurred by a certified reinsurer  
34 under this subdivision, if the security is insufficient, the  
35 commissioner shall reduce the allowable credit by an amount  
36 proportionate to the deficiency, and have the discretion to impose  
37 further reductions in allowable credit upon finding that there is a  
38 material risk that the certified reinsurer's obligations will not be  
39 paid in full when due.

1 (5) For purposes of this subdivision, a certified reinsurer whose  
2 certification has been terminated for any reason shall be treated  
3 as a certified reinsurer required to secure 100 percent of its  
4 obligations.

5 (A) As used in this subdivision, the term “terminated” means  
6 revocation, suspension, voluntary surrender, and inactive status.

7 (B) If the commissioner continues to assign a higher rating as  
8 permitted by other provisions of this section, this requirement shall  
9 not apply to a certified reinsurer in inactive status or to a reinsurer  
10 whose certification has been suspended.

11 (6) The commissioner shall require the certified reinsurer to  
12 post 100-percent security in accordance with Section 922.5, for  
13 the benefit of the ceding insurer or its estate, upon the entry of an  
14 order of rehabilitation, liquidation, or conservation against the  
15 ceding insurer.

16 (7) Affiliated reinsurance transactions shall receive the same  
17 opportunity for reduced security requirements as all other  
18 reinsurance transactions.

19 (8) In order to facilitate the prompt payment of claims, a certified  
20 reinsurer shall not be required to post security for catastrophe  
21 recoverables for a period of one year from the date of the first  
22 instance of a liability reserve entry by the ceding company as a  
23 result of a loss from a catastrophic occurrence that is likely to result  
24 in significant insured losses, as recognized by the commissioner.  
25 The one-year deferral period is contingent upon the certified  
26 reinsurer continuing to pay claims in a timely manner, as  
27 determined by the commissioner, in writing. Reinsurance  
28 recoverables for only the following lines of business as reported  
29 on the NAIC annual financial statement related specifically to the  
30 catastrophic occurrence shall be included in the deferral:

31 (A) Line 1: Fire.

32 (B) Line 2: Allied lines.

33 (C) Line 3: Farmowners’ multiple peril.

34 (D) Line 4: Homeowners’ multiple peril.

35 (E) Line 5: Commercial multiple peril.

36 (F) Line 9: Inland marine.

37 (G) Line 12: Earthquake.

38 (H) Line 21: Auto physical damage.

39 (9) Credit for reinsurance under this section shall apply only to  
40 reinsurance contracts entered into or renewed on or after the

1 effective date of the certification of the assuming insurer. Any  
2 reinsurance contract entered into prior to the effective date of the  
3 certification of the assuming insurer that is subsequently amended  
4 by mutual agreement of the parties to the reinsurance contract after  
5 the effective date of the certification of the assuming insurer, or a  
6 new reinsurance contract, covering any risk for which collateral  
7 was provided previously, shall only be subject to this section with  
8 respect to losses incurred and reserves reported from and after the  
9 effective date of the amendment or new contract.

10 (10) Nothing in this section shall be construed to prohibit the  
11 parties to a reinsurance agreement from agreeing to provisions  
12 establishing security requirements that exceed the minimum  
13 security requirements established for certified reinsurers under  
14 this section.

15 (j) A certified reinsurer that ceases to assume new business in  
16 this state may request to maintain its certification in inactive status  
17 in order to continue to qualify for a reduction in security for its  
18 in-force business. An inactive certified reinsurer shall continue to  
19 comply with all applicable requirements of this section, and the  
20 commissioner shall assign a rating that takes into account, if  
21 relevant, the reasons why the reinsurer is not assuming new  
22 business.

23 (k) Notwithstanding this section, credit for reinsurance or  
24 deduction from liability by a domestic ceding insurer for cessions  
25 to a certified reinsurer may be disallowed upon a finding by the  
26 commissioner that the application of the literal provisions of this  
27 section does not accomplish its intent, or either the financial  
28 condition of the reinsurer or the collateral or other security provided  
29 by the reinsurer does not, in substance, satisfy the credit for  
30 reinsurance requirements in Section 922.4.

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

34 SEC. 135. Section 1063.1 of the Insurance Code is amended  
35 to read:

36 1063.1. As used in this article:

37 (a) "Member insurer" means an insurer required to be a member  
38 of the association in accordance with subdivision (a) of Section  
39 1063, except and to the extent that the insurer is participating in  
40 an insolvency program adopted by the United States government.

1 (b) “Insolvent insurer” means an insurer that was a member  
2 insurer of the association, consistent with paragraph (11) of  
3 subdivision (c), either at the time the policy was issued or when  
4 the insured event occurred, and against which an order of  
5 liquidation with a finding of insolvency has been entered by a court  
6 of competent jurisdiction, or, in the case of the State Compensation  
7 Insurance Fund, if a finding of insolvency is made by a duly  
8 enacted legislative measure.

9 (c) (1) “Covered claims” means the obligations of an insolvent  
10 insurer, including the obligation for unearned premiums, that satisfy  
11 all of the following requirements:

12 (A) Imposed by law and within the coverage of an insurance  
13 policy of the insolvent insurer.

14 (B) Which were unpaid by the insolvent insurer.

15 (C) Which are presented as a claim to the liquidator in the state  
16 of domicile of the insolvent insurer or to the association on or  
17 before the last date fixed for the filing of claims in the domiciliary  
18 liquidating proceedings.

19 (D) Which were incurred prior to the date coverage under the  
20 policy terminated and prior to, on, or within 30 days after the date  
21 the liquidator was appointed.

22 (E) For which the assets of the insolvent insurer are insufficient  
23 to discharge in full.

24 (F) In the case of a policy of workers’ compensation insurance,  
25 to provide workers’ compensation benefits under the workers’  
26 compensation law of this state.

27 (G) In the case of other classes of insurance if the claimant or  
28 insured is a resident of this state at the time of the insured  
29 occurrence, or the property from which the claim arises is  
30 permanently located in this state.

31 (2) “Covered claims” also includes the obligations assumed by  
32 an assuming insurer from a ceding insurer where the assuming  
33 insurer subsequently becomes an insolvent insurer if, at the time  
34 of the insolvency of the assuming insurer, the ceding insurer is no  
35 longer admitted to transact business in this state. Both the assuming  
36 insurer and the ceding insurer shall have been member insurers at  
37 the time the assumption was made. “Covered claims” under this  
38 paragraph shall be required to satisfy the requirements of  
39 subparagraphs (A) to (G), inclusive, of paragraph (1), except for  
40 the requirement that the claims be against policies of the insolvent



1 insurer. The association shall have a right to recover any deposit,  
2 bond, or other assets that may have been required to be posted by  
3 the ceding company to the extent of covered claim payments and  
4 shall be subrogated to any rights the policyholders may have  
5 against the ceding insurer.

6 (3) “Covered claims” does not include obligations arising from  
7 the following:

8 (A) Life, annuity, health, or disability insurance.

9 (B) Mortgage guaranty, financial guaranty, or other forms of  
10 insurance offering protection against investment risks.

11 (C) Fidelity or surety insurance including fidelity or surety  
12 bonds, or any other bonding obligations.

13 (D) Credit insurance.

14 (E) Title insurance.

15 (F) Ocean marine insurance or ocean marine coverage under  
16 an insurance policy including claims arising from the following:  
17 the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore  
18 and Harbor Workers’ Compensation Act (33 U.S.C. Sec. 901 et  
19 seq.), or any other similar federal statutory enactment, or an  
20 endorsement or policy affording protection and indemnity  
21 coverage.

22 (G) Any claims servicing agreement or insurance policy  
23 providing retroactive insurance of a known loss or losses, except  
24 a special excess workers’ compensation policy issued pursuant to  
25 subdivision (c) of Section 3702.8 of the Labor Code that covers  
26 all or any part of workers’ compensation liabilities of an employer  
27 that is issued, or was previously issued, a certificate of consent to  
28 self-insure pursuant to subdivision (b) of Section 3700 of the Labor  
29 Code.

30 (4) “Covered claims” does not include any obligations of the  
31 insolvent insurer arising out of any reinsurance contracts, nor any  
32 obligations incurred after the expiration date of the insurance policy  
33 or after the insurance policy has been replaced by the insured or  
34 canceled at the insured’s request, or after the insurance policy has  
35 been canceled by the liquidator, nor any obligations to a state or  
36 to the federal government.

37 (5) “Covered claims” does not include any obligations to  
38 insurers, insurance pools, or underwriting associations, nor their  
39 claims for contribution, indemnity, or subrogation, equitable or  
40 otherwise, except as otherwise provided in this chapter.

1 An insurer, insurance pool, or underwriting association may not  
2 maintain, in its own name or in the name of its insured, a claim or  
3 legal action against the insured of the insolvent insurer for  
4 contribution, indemnity, or by way of subrogation, except insofar  
5 as, and to the extent only, that the claim exceeds the policy limits  
6 of the insolvent insurer's policy. In those claims or legal actions,  
7 the insured of the insolvent insurer is entitled to a credit or setoff  
8 in the amount of the policy limits of the insolvent insurer's policy,  
9 or in the amount of the limits remaining, where those limits have  
10 been diminished by the payment of other claims.

11 (6) "Covered claims," except in cases involving a claim for  
12 workers' compensation benefits or for unearned premiums, does  
13 not include a claim in an amount of one hundred dollars (\$100) or  
14 less, nor that portion of a claim that is in excess of any applicable  
15 limits provided in the insurance policy issued by the insolvent  
16 insurer.

17 (7) "Covered claims" does not include that portion of a claim,  
18 other than a claim for workers' compensation benefits, that is in  
19 excess of five hundred thousand dollars (\$500,000).

20 (8) "Covered claims" does not include any amount awarded as  
21 punitive or exemplary damages, nor any amount awarded by the  
22 Workers' Compensation Appeals Board pursuant to Section 5814  
23 or 5814.5 of the Labor Code because payment of compensation  
24 was unreasonably delayed or refused by the insolvent insurer.

25 (9) "Covered claims" does not include (A) a claim to the extent  
26 it is covered by any other insurance of a class covered by this  
27 article available to the claimant or insured or (B) a claim by a  
28 person other than the original claimant under the insurance policy  
29 in his or her own name, his or her assignee as the person entitled  
30 thereto under a premium finance agreement as defined in Section  
31 673 and entered into prior to insolvency, his or her executor,  
32 administrator, guardian, or other personal representative or trustee  
33 in bankruptcy, and does not include a claim asserted by an assignee  
34 or one claiming by right of subrogation, except as otherwise  
35 provided in this chapter.

36 (10) "Covered claims" does not include any obligations arising  
37 out of the issuance of an insurance policy written by the separate  
38 division of the State Compensation Insurance Fund pursuant to  
39 Sections 11802 and 11803.

1 (11) “Covered claims” does not include any obligations of the  
2 insolvent insurer arising from a policy or contract of insurance  
3 issued or renewed prior to the insolvent insurer’s admission to  
4 transact insurance in the State of California.

5 (12) “Covered claims” does not include surplus deposits of  
6 subscribers as defined in Section 1374.1.

7 (13) “Covered claims” shall also include obligations arising  
8 under an insurance policy written to indemnify a permissibly  
9 self-insured employer pursuant to subdivision (b) or (c) of Section  
10 3700 of the Labor Code for its liability to pay workers’  
11 compensation benefits in excess of a specific or aggregate retention.  
12 However, for purposes of this article, those claims shall not be  
13 considered workers’ compensation claims and therefore are subject  
14 to the per-claim limit in paragraph (7), and any payments and  
15 expenses related thereto shall be allocated to category (c) for claims  
16 other than workers’ compensation, homeowners, and automobile,  
17 as provided in Section 1063.5.

18 These provisions shall apply to obligations arising under a policy  
19 as described herein issued to a permissibly self-insured employer  
20 or group of self-insured employers pursuant to Section 3700 of  
21 the Labor Code and notwithstanding any other provision of this  
22 code, those obligations shall be governed by this provision in the  
23 event that the Self-Insurers’ Security Fund is ordered to assume  
24 the liabilities of a permissibly self-insured employer or group of  
25 self-insured employers pursuant to Section 3701.5 of the Labor  
26 Code. The provisions of this paragraph apply only to insurance  
27 policies written to indemnify a permissibly self-insured employer  
28 or group of self-insured employers under subdivision (b) or (c) of  
29 Section 3700 of the Labor Code, for its liability to pay workers’  
30 compensation benefits in excess of a specific or aggregate retention,  
31 and this paragraph does not apply to special excess workers’  
32 compensation insurance policies unless issued pursuant to authority  
33 granted in subdivision (c) of Section 3702.8 of the Labor Code,  
34 and as provided for in subparagraph (G) of paragraph (3). In  
35 addition, this paragraph does not apply to any claims servicing  
36 agreement or insurance policy providing retroactive insurance of  
37 a known loss or losses as are excluded in subparagraph (G) of  
38 paragraph (3).

39 Each permissibly self-insured employer or group of self-insured  
40 employers, or the Self-Insurers’ Security Fund, shall, to the extent

1 required by the Labor Code, be responsible for paying, adjusting,  
2 and defending each claim arising under policies of insurance  
3 covered under this section, unless the benefits paid on a claim  
4 exceed the specific or aggregate retention, in which case:

5 (A) If the benefits paid on the claim exceed the specific or  
6 aggregate retention, and the policy requires the insurer to defend  
7 and adjust the claim, the California Insurance Guarantee  
8 Association (CIGA) shall be solely responsible for adjusting and  
9 defending the claim, and shall make all payments due under the  
10 claim, subject to the limitations and exclusions of this article with  
11 regard to covered claims. As to each claim subject to this  
12 paragraph, notwithstanding any other provisions of this code or  
13 the Labor Code, and regardless of whether the amount paid by  
14 CIGA is adequate to discharge a claim obligation, neither the  
15 self-insured employer, group of self-insured employers, nor the  
16 Self-Insurers' Security Fund shall have any obligation to pay  
17 benefits over and above the specific or aggregate retention, except  
18 as provided in this subdivision.

19 (B) If the benefits paid on the claim exceed the specific or  
20 aggregate retention, and the policy does not require the insurer to  
21 defend and adjust the claim, the permissibly self-insured employer  
22 or group of self-insured employers, or the Self-Insurers' Security  
23 Fund, shall not have any further payment obligations with respect  
24 to the claim, but shall continue defending and adjusting the claim,  
25 and shall have the right, but not the obligation, in any proceeding  
26 to assert all applicable statutory limitations and exclusions as  
27 contained in this article with regard to the covered claim. CIGA  
28 shall have the right, but not the obligation, to intervene in any  
29 proceeding where the self-insured employer, group of self-insured  
30 employers, or the Self-Insurers' Security Fund is defending a claim  
31 and shall be permitted to raise the appropriate statutory limitations  
32 and exclusions as contained in this article with respect to covered  
33 claims. Regardless of whether the self-insured employer or group  
34 of self-insured employers, or the Self-Insurers' Security Fund,  
35 asserts the applicable statutory limitations and exclusions, or  
36 whether CIGA intervenes in a proceeding, CIGA shall be solely  
37 responsible for paying all benefits due on the claim, subject to the  
38 exclusions and limitations of this article with respect to covered  
39 claims. As to each claim subject to this paragraph, notwithstanding  
40 any other provision of the Insurance Code or the Labor Code and

1 regardless of whether the amount paid by CIGA is adequate to  
2 discharge a claim obligation, neither the self-insured employer,  
3 group of self-insured employers, nor the Self-Insurers' Security  
4 Fund, shall have an obligation to pay benefits over and above the  
5 specific or aggregate retention, except as provided in this  
6 subdivision.

7 (C) In the event that the benefits paid on the covered claim  
8 exceed the per-claim limit in paragraph (7), the responsibility for  
9 paying, adjusting, and defending the claim shall be returned to the  
10 permissibly self-insured employer or group of employers, or the  
11 Self-Insurers' Security Fund.

12 These provisions shall apply to all pending and future  
13 insolvencies. For purposes of this paragraph, a pending insolvency  
14 is one involving a company that is currently receiving benefits  
15 from the guarantee association.

16 (d) "Admitted to transact insurance in this state" means an  
17 insurer possessing a valid certificate of authority issued by the  
18 department.

19 (e) "Affiliate" means a person who directly or indirectly, through  
20 one or more intermediaries, controls, is controlled by, or is under  
21 common control with an insolvent insurer on December 31 of the  
22 year next preceding the date the insurer becomes an insolvent  
23 insurer.

24 (f) "Control" means the possession, direct or indirect, of the  
25 power to direct or cause the direction of the management and  
26 policies of a person, whether through the ownership of voting  
27 securities, by contract other than a commercial contract for goods  
28 or nonmanagement services, or otherwise, unless the power is the  
29 result of an official position with or corporate office held by the  
30 person. Control is presumed to exist if a person, directly or  
31 indirectly, owns, controls, holds with the power to vote, or holds  
32 proxies representing, 10 percent or more of the voting securities  
33 of any other person. This presumption may be rebutted by showing  
34 that control does not in fact exist.

35 (g) "Claimant" means an insured making a first party claim or  
36 a person instituting a liability claim. However, no person who is  
37 an affiliate of the insolvent insurer may be a claimant.

38 (h) "Ocean marine insurance" includes marine insurance as  
39 defined in Section 103, except for inland marine insurance, as well  
40 as any other form of insurance, regardless of the name, label, or

1 marketing designation of the insurance policy, that insures against  
2 maritime perils or risks and other related perils or risks, that are  
3 usually insured against by traditional marine insurance such as  
4 hull and machinery, marine builders' risks, and marine protection  
5 and indemnity. Those perils and risks insured against include,  
6 without limitation, loss, damage, or expense or legal liability of  
7 the insured arising out of or incident to ownership, operation,  
8 chartering, maintenance, use, repair, or construction of a vessel,  
9 craft, or instrumentality in use in ocean or inland waterways,  
10 including liability of the insured for personal injury, illness, or  
11 death for loss or damage to the property of the insured or another  
12 person.

13 (i) "Unearned premium" means that portion of a premium as  
14 calculated by the liquidator that had not been earned because of  
15 the cancellation of the insolvent insurer's policy and is that  
16 premium remaining for the unexpired term of the insolvent  
17 insurer's policy. "Unearned premium" does not include any amount  
18 sought as return of a premium under a policy providing retroactive  
19 insurance of a known loss or return of a premium under a  
20 retrospectively rated policy or a policy subject to a contingent  
21 surcharge or a policy in which the final determination of the  
22 premium cost is computed after expiration of the policy and is  
23 calculated on the basis of actual loss experienced during the policy  
24 period.

25 SEC. 136. Section 1754 of the Insurance Code is amended to  
26 read:

27 1754. Transaction of travel insurance under the license of an  
28 organization holding a limited lines travel insurance agent license  
29 shall be subject to the following conditions:

30 (a) A limited lines travel insurance agent may authorize a travel  
31 retailer to transact travel insurance on behalf of and under its  
32 authority under the following conditions:

33 (1) The limited lines travel insurance agent is clearly identified  
34 on marketing materials and fulfillment packages distributed by the  
35 travel retailers to customers. The marketing materials and  
36 fulfillment packages shall include the agent's name, business  
37 address, email address, telephone number, license number, and  
38 the availability of the department's toll-free consumer hotline.

39 (2) The limited lines travel insurance agent, at the time of  
40 licensure and thereafter, maintains a register noting each travel

1 retailer that transacts travel insurance on the licensee’s behalf. The  
2 register shall be maintained and updated annually by the licensee  
3 in a form prescribed by, or format acceptable to, the commissioner  
4 and shall include the name and contact information of the travel  
5 retailer and an officer or person who directs or controls the travel  
6 retailer’s operations, and the travel retailer’s federal employer  
7 identification number (FEIN). The licensee shall also certify that  
8 the registered travel retailer complies with Section 1033 of Title  
9 18 of the United States Code. The licensee shall submit the register  
10 for review and inspection upon request by the department.

11 (3) The limited lines travel insurance agent has designated one  
12 of its employees to be responsible for its compliance with the  
13 insurance laws, rules, and regulations of the state. The limited lines  
14 travel insurance agent and its designated responsible employees  
15 shall hold property, casualty, life-only, and accident and health  
16 agent licenses, to the extent required by this chapter, based upon  
17 the types of insurance transacted by the licensee.

18 (4) The employee designated by the limited lines travel  
19 insurance agent, pursuant to paragraph (3), and any of the  
20 organization’s partners, members, controlling persons, officers,  
21 directors, and managers comply with the background check  
22 requirements as required by the commissioner.

23 (5) The limited lines travel insurance agent has paid all  
24 applicable licensing fees required under California law.

25 (6) The limited lines travel insurance agent uses all reasonable  
26 means at its disposal to ensure compliance by the travel retailer  
27 and the travel retailer’s employees with their obligations under  
28 this article. This includes requiring each employee of the travel  
29 retailer whose duties include transacting travel insurance to receive  
30 training. The training shall be provided whenever there is a material  
31 change that requires a modification to the training materials, but  
32 in no event less frequently than every three years. Training  
33 materials used by or on behalf of the limited lines travel insurance  
34 agent to train the employees of a travel retailer shall be submitted  
35 to the department at the time the travel insurance agent applies for  
36 a license under this article, and whenever modified thereafter. The  
37 training materials, at a minimum, should contain instruction on  
38 the types of insurance offered, ethical sales practices, and  
39 disclosures to prospective insurance customers. Any changes to  
40 previously submitted training materials shall be submitted to the

1 department with the changes highlighted 30 days prior to their use  
2 by the limited lines travel insurance agent. Training materials and  
3 changes to those materials submitted to the department pursuant  
4 to this subdivision shall be deemed approved for use by the limited  
5 lines travel insurance agent unless it is notified by the department  
6 to the contrary. Failure by a limited lines travel insurance agent to  
7 submit training materials or changes for departmental review or  
8 use of unapproved or disapproved training materials shall constitute  
9 grounds for denial of an application for a license, nonrenewal of  
10 a license, or suspension of a license, or other action as deemed  
11 appropriate by the commissioner.

12 (7) The limited lines travel insurance agent or the travel retailer  
13 provides disclosure to the consumer, in either the marketing  
14 materials or fulfillment packages, that is substantively similar to  
15 the following:

16 This plan provides insurance coverage that only applies during  
17 the covered trip. You may have coverage from other sources that  
18 provides you with similar benefits but may be subject to different  
19 restrictions depending upon your other coverages. You may wish  
20 to compare the terms of this policy with your existing life, health,  
21 home, and automobile insurance policies. If you have any questions  
22 about your current coverage, call your insurer or insurance agent  
23 or broker.

24 (8) The limited lines travel insurance agent or the travel retailer  
25 makes all of the following disclosures to the prospective insured,  
26 which shall be acknowledged in writing by the purchaser or  
27 displayed by clear and conspicuous signs that are posted at every  
28 location where contracts are executed, including, but not limited  
29 to, the counter where the purchaser signs the service agreement,  
30 or provided in writing to the purchaser:

31 (A) That purchasing travel insurance is not required in order to  
32 purchase any other product or service offered by the travel retailer.

33 (B) If not individually licensed, that the travel retailer's  
34 employee is not qualified or authorized to:

35 (i) Answer technical questions about the benefits, exclusions,  
36 and conditions of any of the insurance offered by the travel retailer.

37 (ii) Evaluate the adequacy of the prospective insured's existing  
38 insurance coverage.

39 (b) A travel retailer that meets the requirements set forth in this  
40 section and whose activities are limited to offering and selling



1 travel insurance on behalf of a licensed limited lines travel  
2 insurance agent is authorized to receive compensation.

3 (c) (1) If the commissioner determines that a travel retailer, or  
4 a travel retailer's employee, has violated any provision of this  
5 article or any other provision of this code, the commissioner may:

6 (A) Direct the limited lines travel insurance agent to implement  
7 a corrective action plan with the travel retailer.

8 (B) Direct the limited lines travel insurance agent to revoke the  
9 authorization of the travel retailer to transact travel insurance on  
10 its behalf and under its license and to remove the travel retailer's  
11 name from its register.

12 (2) If the commissioner determines that a travel retailer, or a  
13 travel retailer's employee, has violated any provision in this article  
14 or any other provision of this code, the commissioner, after notice  
15 and hearing, may:

16 (A) Suspend or revoke the license of the limited lines travel  
17 insurance agent as authorized under this code.

18 (B) Impose a monetary fine on the limited lines travel insurance  
19 agent.

20 (3) A limited lines travel insurance agent who aids and abets a  
21 travel retailer in the transaction of travel insurance, as defined in  
22 this code, or aids and abets a travel retailer in any activity  
23 concerning travel insurance after being directed to revoke the travel  
24 retailer's authorization, in addition to any other action authorized  
25 under this code, shall be subject to a monetary penalty pursuant  
26 to paragraph (3) of subdivision (a) of Section 12921.8.

27 (d) The conduct of employees of the travel retailer who have  
28 been designated to transact travel insurance on behalf of the  
29 licensed limited lines travel insurance agent shall be deemed the  
30 conduct of the licensed limited lines travel insurance agent for  
31 purposes of this article.

32 SEC. 137. Section 10113.71 of the Insurance Code is amended  
33 to read:

34 10113.71. (a) Each life insurance policy issued or delivered  
35 in this state shall contain a provision for a grace period of not less  
36 than 60 days from the premium due date. The 60-day grace period  
37 shall not run concurrently with the period of paid coverage. The  
38 provision shall provide that the policy shall remain in force during  
39 the grace period.

1 (b) (1) A notice of pending lapse and termination of a life  
2 insurance policy shall not be effective unless mailed by the insurer  
3 to the named policy owner, a designee named pursuant to Section  
4 10113.72 for an individual life insurance policy, and a known  
5 assignee or other person having an interest in the individual life  
6 insurance policy, at least 30 days prior to the effective date of  
7 termination if termination is for nonpayment of premium.

8 (2) This subdivision shall not apply to nonrenewal.

9 (3) Notice shall be given to the policy owner and to the designee  
10 by first-class United States mail within 30 days after a premium  
11 is due and unpaid. However, notices made to assignees pursuant  
12 to this section may be done electronically with the consent of the  
13 assignee.

14 (c) For purposes of this section, a life insurance policy includes,  
15 but is not limited to, an individual life insurance policy and a group  
16 life insurance policy, except where otherwise provided.

17 SEC. 138. Section 10124 of the Insurance Code is amended  
18 to read:

19 10124. (a) A self-insured employee welfare benefit plan  
20 delivered or issued for delivery in this state more than 120 days  
21 after the effective date of this section, which provides that coverage  
22 of a dependent child of an employee shall terminate upon  
23 attainment of the limiting age for dependent children specified in  
24 the policy or contract, shall also provide in substance that  
25 attainment of the limiting age shall not operate to terminate the  
26 coverage of the child while the child is and continues to be both  
27 (1) incapable of self-sustaining employment by reason of an  
28 intellectual disability or physical handicap and (2) chiefly  
29 dependent upon the employee for support and maintenance,  
30 provided proof of the incapacity and dependency is furnished to  
31 the employer or employee organization providing the plan or  
32 program of benefits by the employee within 31 days of the child's  
33 attainment of the limiting age and subsequently as may be required  
34 by the employer or employee organization, but not more frequently  
35 than annually after the two-year period following the child's  
36 attainment of the limiting age.

37 (b) As used in this section, "self-insured employee welfare  
38 benefit plan" means a plan or program of benefits provided by an  
39 employer or an employee organization, or both, for the purpose  
40 of providing hospital, medical, surgical, nursing, or dental services,

1 or indemnification for the costs incurred for these services, to the  
2 employer's employees or their dependents.

3 SEC. 139. Section 10271 of the Insurance Code is amended  
4 to read:

5 10271. (a) Except as set forth in this section, this chapter shall  
6 not apply to, or in any way affect, provisions in life insurance,  
7 endowment, or annuity contracts, or contracts supplemental thereto,  
8 that provide additional benefits in case of death or dismemberment  
9 or loss of sight by accident, or that operate to safeguard those  
10 contracts against lapse, as described in subdivision (a) of Section  
11 10271.1, or give a special surrender benefit, as defined in  
12 subdivision (b) of Section 10271.1, or a special benefit, in the  
13 event that the owner, insured, or annuitant, as applicable, meets  
14 the benefit triggers specified in the life insurance or annuity  
15 contract or supplemental contract.

16 (b) (1) A provision or supplemental contract described in  
17 subdivision (a) shall contain all of the provisions set forth in  
18 paragraph (2). However, an insurer, at its option, may substitute  
19 for one or more of the provisions a corresponding provision of  
20 different wording approved by the commissioner that is not less  
21 favorable in any respect to the owner, insured, or annuitant, as  
22 applicable. The provisions required by paragraph (2) shall be  
23 preceded individually by the appropriate caption, or, at the option  
24 of the insurer, by the appropriate individual or group captions or  
25 subcaptions as the commissioner may approve.

26 (2) With respect to the benefit standards described in  
27 subdivisions (a) and (b) of Section 10271.1, the following  
28 requirements apply to the supplemental contracts with these  
29 benefits:

30 (A) Either the contract or supplemental contract shall provide  
31 that the contract and the supplemental contract constitute the entire  
32 insurance or annuity contract consistent with paragraph (7) of  
33 subdivision (c) of Section 2534.3 of Title 10 of the California Code  
34 of Regulations, and shall also provide that no agent has the  
35 authority to change the contract or to waive any of its provisions.  
36 This requirement applies without regard to whether the contract  
37 is a variable or nonvariable contract, or a group or individual  
38 contract. This provision shall be preceded individually by a caption  
39 stating "ENTIRE CONTRACT: CHANGES:" or other appropriate  
40 caption as the commissioner may approve.

1 (B) Either the contract or supplemental contract shall provide  
 2 for reinstatement consistent with paragraph (3) of subdivision (c)  
 3 of Section 2534.3 of Title 10 of the California Code of Regulations.  
 4 This requirement applies without regard to whether the contract  
 5 is a variable or nonvariable contract, or a group or individual  
 6 contract. This provision shall be preceded individually by a caption  
 7 stating “REINSTATEMENT:” or other appropriate caption as the  
 8 commissioner may approve.

9 (C) Supplemental contracts subject to underwriting shall include  
 10 an incontestability statement that provides that the insurer shall  
 11 not contest the supplemental contract after it has been in force  
 12 during the lifetime of the insured for two years from its date of  
 13 issue, and may only be contested based on a statement made in  
 14 the application for the supplemental contract, if the statement is  
 15 attached to the contract. The statement upon which the contest is  
 16 made shall be material to the risk accepted or the hazard assumed  
 17 by the insurer. This provision shall be preceded individually by a  
 18 caption stating “INCONTESTABLE:” or other appropriate caption  
 19 as the commissioner may approve.

20 (D) A provision or supplemental contract described in  
 21 subdivision (a) shall also include:

22 (i) NOTICE OF CLAIM: The insurer may require written notice  
 23 of claim no less than 20 days after an occurrence covered by the  
 24 provision or supplemental contract, or commencement of any loss  
 25 covered by the provision or supplemental contract. Notice given  
 26 by or on behalf of the insured or the beneficiary, as applicable to  
 27 the insurer at the insurer’s address or telephone number, or to any  
 28 authorized agent of the insurer, with information sufficient to  
 29 identify the insured, shall be deemed notice to the insurer.

30 (ii) CLAIM FORMS: The insurer, upon receipt of a notice of  
 31 claim, shall furnish to the claimant such forms as are usually  
 32 furnished by it for filing a proof of occurrence or a proof of loss.  
 33 If the forms are not furnished within 15 days after giving notice,  
 34 the claimant shall be deemed to have complied with the  
 35 requirements of the provision or supplemental contract as to proof  
 36 of occurrence or proof of loss upon submitting, within the time  
 37 fixed in the provision or supplemental contract for filing proof of  
 38 occurrence or proof of loss, written proof covering the character  
 39 and the extent of the occurrence or loss.

1 (iii) PROOF OF LOSS: The insurer may require that the insured  
2 provide written proof of occurrence or proof of loss no less than  
3 90 days after the termination of the period for which the insurer  
4 is liable, and, in the case of claim for any other occurrence or loss,  
5 within 90 days after the date of the occurrence or loss. Failure to  
6 furnish proof within the time required shall not invalidate or reduce  
7 the claim if it was not reasonably possible to give proof within the  
8 time, provided proof is furnished as soon as reasonably possible  
9 and, except in the absence of legal capacity, no later than one year  
10 from the time proof is otherwise required.

11 (iv) PHYSICAL EXAMINATIONS: The insurer, at its own  
12 expense, shall have the right and opportunity to examine the person  
13 of the insured when and as often as the insurer may reasonably  
14 require during the pendency of a claim.

15 (c) The commissioner shall review contracts and supplemental  
16 contracts to ensure that the language can be readily understood  
17 and interpreted, and shall not approve any contract or supplemental  
18 contract for insurance or delivery in this state if the commissioner  
19 finds that the contract or supplemental contract does any of the  
20 following:

21 (1) Contains any provision, label, description of its contents,  
22 title, heading, backing, or other indication of its provisions that is  
23 unintelligible, uncertain, ambiguous, or abstruse, or likely to  
24 mislead a person to whom the contract or supplemental contract  
25 is offered, delivered, or issued.

26 (2) Constitutes fraud, unfair trade practices, and insurance  
27 economically unsound to the owner, insured, or annuitant, as  
28 applicable.

29 (d) A provision or supplemental contract described in  
30 subdivision (a) shall not contain any title, description, or any other  
31 indication that would describe or imply that the policy or  
32 supplemental contract provides long-term care coverage.

33 (e) Commencing two years from the date of the issuance of the  
34 provision or supplemental contract, no claim for loss incurred or  
35 disability, as defined in the provision or supplemental contract,  
36 may be reduced or denied on the grounds that a disease or physical  
37 condition not excluded from coverage by name or specific  
38 description effective on the date of loss had existed prior to the  
39 effective date on the coverage of the provision or supplemental  
40 contract.

1 (f) With regard to benefits set forth in Section 10271.1, the  
2 provisions and supplemental contracts shall specify any applicable  
3 exclusions, which shall be limited to the following:

4 (1) Total disability caused or substantially contributed to by any  
5 attempt at suicide or intentionally self-inflicted injury, while sane  
6 or insane.

7 (2) Total disability caused or substantially contributed to by  
8 war or an act of war, as defined in the exclusion provisions of the  
9 contract.

10 (3) Total disability caused or substantially contributed to by  
11 active participation in a riot, insurrection, or terrorist activity.

12 (4) Total disability caused or substantially contributed to by  
13 committing or attempting to commit a felony.

14 (5) Total disability caused or substantially contributed to by  
15 voluntary intake of either:

16 (A) Any drug, unless prescribed or administered by a physician  
17 and taken in accordance with the physician’s instructions.

18 (B) Poison, gas, or fumes, unless they are the direct result of an  
19 occupational accident.

20 (6) Total disability occurring after the policy anniversary or  
21 supplemental contract anniversary, as applicable and as defined  
22 in the policy or supplemental contract, on which the insured attains  
23 a specified age of no less than 65 years.

24 (7) Total disability in consequence of the insured being  
25 intoxicated, as defined by the jurisdiction where the total disability  
26 occurred.

27 (8) Total disability caused or materially contributed to by  
28 engaging in an illegal occupation.

29 (g) If the commissioner notifies the insurer, in writing, that the  
30 filed form does not comply with the requirements of law and  
31 specifies the reasons for his or her opinion, it is unlawful for an  
32 insurer to issue any policy in that form.

33 SEC. 140. Section 11665 of the Insurance Code is amended  
34 to read:

35 11665. (a) An insurer who issues a workers’ compensation  
36 insurance policy to a roofing contractor holding a C-39 license  
37 from the Contractors’ State License Board shall perform an annual  
38 payroll audit for the contractor. This audit shall include an  
39 in-person visit to the place of business of the roofing contractor  
40 to verify whether the number of employees reported by the

1 contractor is accurate. The insurer may impose a surcharge on each  
 2 policyholder audited under this subdivision in an amount necessary  
 3 to recoup the reasonable costs of conducting the annual payroll  
 4 audits.

5 (b) The commissioner shall direct the rating organization  
 6 designated as his or her statistical agent to compile pertinent  
 7 statistical data on those holding C-39 licenses, as reported by the  
 8 appropriate state entity, on an annual basis and provide a report to  
 9 him or her each year. The data shall track the total annual payroll  
 10 and loss data reported on those holding C-39 licenses in accordance  
 11 with the standard workers' compensation insurance classifications  
 12 applicable to roofing operations. The data shall include the number  
 13 of employers, total payroll, total losses, and the losses per one  
 14 hundred dollars (\$100) of payroll by the employers' annual payroll  
 15 intervals as follows:

16		
17		
18	1 to	4,999
19	5,000 to	9,999
20	10,000 to	14,999
21	15,000 to	19,999
22	20,000 to	24,999
23	25,000 to	29,999
24	30,000 to	39,999
25	40,000 to	49,999
26	50,000 to	74,999
27	75,000 to	99,999
28	100,000 to	199,999
29	200,000 to	299,999
30	300,000 to	399,999
31	400,000 to	499,999
32	500,000 to	599,999
33	600,000 to	699,999
34	700,000 to	799,999
35	800,000 to	899,999
36	900,000 to	999,999
37	1,000,000 to	1,099,999
38	1,100,000 to	1,199,999
39	1,200,000 to	1,299,999
40	1,300,000 to	1,399,999

1		1,400,000 to	1,499,999
2		1,500,000 or more	
3			
4			

5 The report shall also be provided to the Legislature by the  
6 commissioner, in compliance with Section 9795 of the Government  
7 Code.

8 SEC. 141. Section 12694.1 of the Insurance Code is amended  
9 to read:

10 12694.1. (a) Pursuant to Sections 14005.26 and 14005.27 of  
11 the Welfare and Institutions Code, subscribers enrolled in the  
12 Healthy Families Program pursuant to this part shall, no sooner  
13 than January 1, 2013, transition to the Medi-Cal program pursuant  
14 to Sections 14005.26 and 14005.27 of the Welfare and Institutions  
15 Code to the extent they are otherwise eligible. AIM-linked infants,  
16 as defined in Section 12695.03, with incomes above 250 percent  
17 of the federal poverty level are exempt from this transition.

18 (b) The board shall coordinate with the State Department of  
19 Health Care Services to implement Sections 14005.26 and  
20 14005.27 of the Welfare and Institutions Code.

21 (c) The board’s actions to coordinate with the State Department  
22 of Health Care Services to implement Sections 14005.26 and  
23 14005.27 of the Welfare and Institutions Code, as specified in  
24 subdivision (b), shall include, but not be limited to, all of the  
25 following:

26 (1) Notwithstanding Section 12693.74, disenrollment of  
27 subscribers in the manner, and at the times, specified in Section  
28 14005.27 of the Welfare and Institutions Code. The board may  
29 retain a subscriber in the program for longer than 12 months if  
30 needed to ensure a smooth transition to the Medi-Cal program.

31 (2) In coordination with the State Department of Health Care  
32 Services, provision of reasonable notice to applicants concerning  
33 disenrollment of subscribers consistent with Section 14005.27 of  
34 the Welfare and Institutions Code.

35 (3) Notwithstanding Section 12693.51, transfers of subscribers  
36 from one participating plan to another at the times and under the  
37 conditions prescribed by the board, without the obligation that the  
38 board provide an annual opportunity for subscribers to transfer  
39 from one participating plan to another.



1 (d) Nothing in subdivision (e) of Section 12693.43 shall be  
2 construed to require any refund or adjustment of family  
3 contributions if an applicant has paid for three months of required  
4 family contributions in advance and the subscriber for whom the  
5 applicant has paid these family contributions is disenrolled pursuant  
6 to this section, or for any other reason, without receiving a fourth  
7 consecutive month of coverage.

8 (e) (1) Notwithstanding Chapter 3.5 (commencing with Section  
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
10 the board shall, without taking any further regulatory action,  
11 implement, interpret, or make specific this section by means of  
12 business rules, program bulletins, program correspondence to  
13 subscribers and contractors, letters, or similar instructions.

14 (2) The board may adopt and readopt emergency regulations  
15 implementing this section. The adoption and readoption, by the  
16 board, of regulations implementing this section shall be deemed  
17 an emergency and necessary to avoid serious harm to the public  
18 peace, health, safety, or general welfare for purposes of Sections  
19 11346.1 and 11349.6 of the Government Code, and the board is  
20 hereby exempted from the requirement that it describe facts  
21 showing the need for immediate action and from review by the  
22 Office of Administrative Law.

23 (f) The Healthy Families Program, pursuant to this part, shall  
24 cease to enroll new subscribers no sooner than the date transition  
25 begins pursuant to subdivision (a), and any transition of children  
26 shall be in compliance with the implementation plan or plans as  
27 contained in Section 14005.27 of the Welfare and Institutions  
28 Code.

29 SEC. 142. Section 980 of the Labor Code is amended to read:

30 980. (a) As used in this chapter, “social media” means an  
31 electronic service or account, or electronic content, including, but  
32 not limited to, videos, still photographs, blogs, video blogs,  
33 podcasts, instant and text messages, email, online services or  
34 accounts, or Internet Web site profiles or locations.

35 (b) An employer shall not require or request an employee or  
36 applicant for employment to do any of the following:

37 (1) Disclose a username or password for the purpose of  
38 accessing personal social media.

39 (2) Access personal social media in the presence of the  
40 employer.

1 (3) Divulge any personal social media, except as provided in  
2 subdivision (c).

3 (c) Nothing in this section shall affect an employer's existing  
4 rights and obligations to request an employee to divulge personal  
5 social media reasonably believed to be relevant to an investigation  
6 of allegations of employee misconduct or employee violation of  
7 applicable laws and regulations, provided that the social media is  
8 used solely for purposes of that investigation or a related  
9 proceeding.

10 (d) Nothing in this section precludes an employer from requiring  
11 or requesting an employee to disclose a username, password, or  
12 other method for the purpose of accessing an employer-issued  
13 electronic device.

14 (e) An employer shall not discharge, discipline, threaten to  
15 discharge or discipline, or otherwise retaliate against an employee  
16 or applicant for not complying with a request or demand by the  
17 employer that violates this section. However, this section does not  
18 prohibit an employer from terminating or otherwise taking an  
19 adverse action against an employee or applicant if otherwise  
20 permitted by law.

21 SEC. 143. Section 4709 of the Labor Code is amended to read:

22 4709. (a) Notwithstanding any other law, a dependent of a  
23 peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31,  
24 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39,  
25 830.4, 830.5, or 830.6 of the Penal Code, or a Sheriff's Special  
26 Officer of the County of Orange, who is killed in the performance  
27 of duty or who dies or is totally disabled as a result of an accident  
28 or an injury caused by external violence or physical force, incurred  
29 in the performance of duty, when the death, accident, or injury is  
30 compensable under this division or Division 4.5 (commencing  
31 with Section 6100) shall be entitled to a scholarship at any  
32 qualifying institution described in subdivision (l) of Section  
33 69432.7 of the Education Code. The scholarship shall be in an  
34 amount equal to the amount provided a student who has been  
35 awarded a Cal Grant scholarship as specified in Chapter 1.7  
36 (commencing with Section 69430) of Part 42 of Division 5 of Title  
37 3 of the Education Code.

38 (b) A dependent of an officer or employee of the Department  
39 of Corrections and Rehabilitation or the Department of Corrections  
40 and Rehabilitation, Division of Juvenile Justice, described in

1 Section 20403 of the Government Code, who is killed in the  
2 performance of duty, or who dies or is totally disabled as a result  
3 of an accident or an injury incurred in the performance of duty,  
4 when the death, accident, or injury is caused by the direct action  
5 of an inmate, and is compensable under this division or Division  
6 4.5 (commencing with Section 6100), shall also be entitled to a  
7 scholarship specified in this section.

8 (c) Notwithstanding any other law, a dependent of a firefighter  
9 employed by a county, city, city and county, district, or other  
10 political subdivision of the state, who is killed in the performance  
11 of duty or who dies or is totally disabled as a result of an accident  
12 or injury incurred in the performance of duty, when the death,  
13 accident, or injury is compensable under this division or Division  
14 4.5 (commencing with Section 6100), shall also be entitled to a  
15 scholarship specified in this section.

16 (d) Nothing in this section shall be interpreted to allow the  
17 admittance of the dependent into a college or university unless the  
18 dependent is otherwise qualified to gain admittance to the college  
19 or university.

20 (e) The scholarship provided for by this section shall be paid  
21 out of funds annually appropriated in the Budget Act to the Student  
22 Aid Commission established by Article 2 (commencing with  
23 Section 69510) of Chapter 2 of Part 42 of Division 5 of Title 3 of  
24 the Education Code.

25 (f) The receipt of a scholarship provided for by this section shall  
26 not preclude a dependent from receiving a Cal Grant award  
27 pursuant to Chapter 1.7 (commencing with Section 69430) of Part  
28 42 of Division 5 of Title 3 of the Education Code, any other grant,  
29 or any fee waivers that may be provided by an institution of higher  
30 education. The receipt of a Cal Grant award pursuant to Chapter  
31 1.7 (commencing with Section 69430) of Part 42 of Division 5 of  
32 Title 3 of the Education Code, any other grant, or any fee waivers  
33 that may be provided by an institution of higher education shall  
34 not preclude a dependent from receiving a scholarship provided  
35 for by this section.

36 (g) As used in this section, “dependent” means the children  
37 (natural or adopted) or spouse, at the time of the death or injury,  
38 of the peace officer, law enforcement officer, or firefighter.

39 (h) Eligibility for a scholarship under this section shall be limited  
40 to a person who demonstrates financial need as determined by the

1 Student Aid Commission pursuant to Article 1.5 (commencing  
2 with Section 69503) of Chapter 2 of Part 42 of Division 5 of Title  
3 3 of the Education Code. For purposes of determining financial  
4 need, the proceeds of death benefits received by the dependent,  
5 including, but not limited to, a continuation of income received  
6 from the Public Employees' Retirement System, the proceeds from  
7 the federal Public Safety Officers' Benefits Act, life insurance  
8 policies, proceeds from Sections 4702 and 4703.5, any private  
9 scholarship where receipt is predicated upon the recipient being  
10 the survivor of a deceased public safety officer, the scholarship  
11 awarded pursuant to Section 68120 of the Education Code, and  
12 any interest received from these benefits, shall not be considered.

13 SEC. 144. Section 5502 of the Labor Code is amended to read:

14 5502. (a) Except as provided in subdivisions (b) and (d), the  
15 hearing shall be held not less than 10 days, and not more than 60  
16 days, after the date a declaration of readiness to proceed, on a form  
17 prescribed by the appeals board, is filed. If a claim form has been  
18 filed for an injury occurring on or after January 1, 1990, and before  
19 January 1, 1994, an application for adjudication shall accompany  
20 the declaration of readiness to proceed.

21 (b) The administrative director shall establish a priority calendar  
22 for issues requiring an expedited hearing and decision. A hearing  
23 shall be held and a determination as to the rights of the parties  
24 shall be made and filed within 30 days after the declaration of  
25 readiness to proceed is filed if the issues in dispute are any of the  
26 following, provided that if an expedited hearing is requested, no  
27 other issue may be heard until the medical provider network dispute  
28 is resolved:

29 (1) The employee's entitlement to medical treatment pursuant  
30 to Section 4600, except for treatment issues determined pursuant  
31 to Sections 4610 and 4610.5.

32 (2) Whether the injured employee is required to obtain treatment  
33 within a medical provider network.

34 (3) A medical treatment appointment or medical-legal  
35 examination.

36 (4) The employee's entitlement to, or the amount of, temporary  
37 disability indemnity payments.

38 (5) The employee's entitlement to compensation from one or  
39 more responsible employers when two or more employers dispute  
40 liability as among themselves.

1 (6) Any other issues requiring an expedited hearing and  
2 determination as prescribed in rules and regulations of the  
3 administrative director.

4 (c) The administrative director shall establish a priority  
5 conference calendar for cases in which the employee is represented  
6 by an attorney and the issues in dispute are employment or injury  
7 arising out of employment or in the course of employment. The  
8 conference shall be conducted by a workers' compensation  
9 administrative law judge within 30 days after the declaration of  
10 readiness to proceed. If the dispute cannot be resolved at the  
11 conference, a trial shall be set as expeditiously as possible, unless  
12 good cause is shown why discovery is not complete, in which case  
13 status conferences shall be held at regular intervals. The case shall  
14 be set for trial when discovery is complete, or when the workers'  
15 compensation administrative law judge determines that the parties  
16 have had sufficient time in which to complete reasonable discovery.  
17 A determination as to the rights of the parties shall be made and  
18 filed within 30 days after the trial.

19 (d) (1) In all cases, a mandatory settlement conference, except  
20 a lien conference or a mandatory settlement lien conference, shall  
21 be conducted not less than 10 days, and not more than 30 days,  
22 after the filing of a declaration of readiness to proceed. If the  
23 dispute is not resolved, the regular hearing, except a lien trial, shall  
24 be held within 75 days after the declaration of readiness to proceed  
25 is filed.

26 (2) The settlement conference shall be conducted by a workers'  
27 compensation administrative law judge or by a referee who is  
28 eligible to be a workers' compensation administrative law judge  
29 or eligible to be an arbitrator under Section 5270.5. At the  
30 mandatory settlement conference, the referee or workers'  
31 compensation administrative law judge shall have the authority to  
32 resolve the dispute, including the authority to approve a  
33 compromise and release or issue a stipulated finding and award,  
34 and if the dispute cannot be resolved, to frame the issues and  
35 stipulations for trial. The appeals board shall adopt any regulations  
36 needed to implement this subdivision. The presiding workers'  
37 compensation administrative law judge shall supervise settlement  
38 conference referees in the performance of their judicial functions  
39 under this subdivision.

1 (3) If the claim is not resolved at the mandatory settlement  
2 conference, the parties shall file a pretrial conference statement  
3 noting the specific issues in dispute, each party's proposed  
4 permanent disability rating, and listing the exhibits, and disclosing  
5 witnesses. Discovery shall close on the date of the mandatory  
6 settlement conference. Evidence not disclosed or obtained  
7 thereafter shall not be admissible unless the proponent of the  
8 evidence can demonstrate that it was not available or could not  
9 have been discovered by the exercise of due diligence prior to the  
10 settlement conference.

11 (e) In cases involving the Director of Industrial Relations in his  
12 or her capacity as administrator of the Uninsured Employers Fund,  
13 this section shall not apply unless proof of service, as specified in  
14 paragraph (1) of subdivision (d) of Section 3716, has been filed  
15 with the appeals board and provided to the Director of Industrial  
16 Relations, valid jurisdiction has been established over the employer,  
17 and the fund has been joined.

18 (f) Except as provided in subdivision (a) and in Section 4065,  
19 the provisions of this section shall apply irrespective of the date  
20 of injury.

21 SEC. 145. Section 136.2 of the Penal Code is amended to read:

22 136.2. (a) Except as provided in subdivision (c), upon a good  
23 cause belief that harm to, or intimidation or dissuasion of, a victim  
24 or witness has occurred or is reasonably likely to occur, a court  
25 with jurisdiction over a criminal matter may issue orders, including,  
26 but not limited to, the following:

27 (1) An order issued pursuant to Section 6320 of the Family  
28 Code.

29 (2) An order that a defendant shall not violate any provision of  
30 Section 136.1.

31 (3) An order that a person before the court other than a  
32 defendant, including, but not limited to, a subpoenaed witness or  
33 other person entering the courtroom of the court, shall not violate  
34 any provisions of Section 136.1.

35 (4) An order that a person described in this section shall have  
36 no communication whatsoever with a specified witness or a victim,  
37 except through an attorney under reasonable restrictions that the  
38 court may impose.

39 (5) An order calling for a hearing to determine if an order as  
40 described in paragraphs (1) to (4), inclusive, should be issued.

1 (6) (A) An order that a particular law enforcement agency  
2 within the jurisdiction of the court provide protection for a victim  
3 or a witness, or both, or for immediate family members of a victim  
4 or a witness who reside in the same household as the victim or  
5 witness or within reasonable proximity of the victim's or witness'  
6 household, as determined by the court. The order shall not be made  
7 without the consent of the law enforcement agency except for  
8 limited and specified periods of time and upon an express finding  
9 by the court of a clear and present danger of harm to the victim or  
10 witness or immediate family members of the victim or witness.

11 (B) For purposes of this paragraph, "immediate family  
12 members" include the spouse, children, or parents of the victim  
13 or witness.

14 (7) (A) An order protecting victims of violent crime from all  
15 contact by the defendant, or contact, with the intent to annoy,  
16 harass, threaten, or commit acts of violence, by the defendant. The  
17 court or its designee shall transmit orders made under this  
18 paragraph to law enforcement personnel within one business day  
19 of the issuance, modification, extension, or termination of the  
20 order, pursuant to subdivision (a) of Section 6380 of the Family  
21 Code. It is the responsibility of the court to transmit the  
22 modification, extension, or termination orders made under this  
23 paragraph to the same agency that entered the original protective  
24 order into the Domestic Violence Restraining Order System.

25 (B) (i) If a court does not issue an order pursuant to  
26 subparagraph (A) in a case in which the defendant is charged with  
27 a crime of domestic violence as defined in Section 13700, the court  
28 on its own motion shall consider issuing a protective order upon  
29 a good cause belief that harm to, or intimidation or dissuasion of,  
30 a victim or witness has occurred or is reasonably likely to occur,  
31 that provides as follows:

32 (I) The defendant shall not own, possess, purchase, receive, or  
33 attempt to purchase or receive, a firearm while the protective order  
34 is in effect.

35 (II) The defendant shall relinquish any firearms that he or she  
36 owns or possesses pursuant to Section 527.9 of the Code of Civil  
37 Procedure.

38 (ii) Every person who owns, possesses, purchases, or receives,  
39 or attempts to purchase or receive, a firearm while this protective  
40 order is in effect is punishable pursuant to Section 29825.

1 (C) An order issued, modified, extended, or terminated by a  
2 court pursuant to this paragraph shall be issued on forms adopted  
3 by the Judicial Council and that have been approved by the  
4 Department of Justice pursuant to subdivision (i) of Section 6380  
5 of the Family Code. However, the fact that an order issued by a  
6 court pursuant to this section was not issued on forms adopted by  
7 the Judicial Council and approved by the Department of Justice  
8 shall not, in and of itself, make the order unenforceable.

9 (D) A protective order under this paragraph may require the  
10 defendant to be placed on electronic monitoring if the local  
11 government, with the concurrence of the county sheriff or the chief  
12 probation officer with jurisdiction, adopts a policy to authorize  
13 electronic monitoring of defendants and specifies the agency with  
14 jurisdiction for this purpose. If the court determines that the  
15 defendant has the ability to pay for the monitoring program, the  
16 court shall order the defendant to pay for the monitoring. If the  
17 court determines that the defendant does not have the ability to  
18 pay for the electronic monitoring, the court may order electronic  
19 monitoring to be paid for by the local government that adopted  
20 the policy to authorize electronic monitoring. The duration of  
21 electronic monitoring shall not exceed one year from the date the  
22 order is issued. At no time shall the electronic monitoring be in  
23 place if the protective order is not in place.

24 (b) A person violating an order made pursuant to paragraphs  
25 (1) to (7), inclusive, of subdivision (a) may be punished for any  
26 substantive offense described in Section 136.1, or for a contempt  
27 of the court making the order. A finding of contempt shall not be  
28 a bar to prosecution for a violation of Section 136.1. However, a  
29 person so held in contempt shall be entitled to credit for punishment  
30 imposed therein against a sentence imposed upon conviction of  
31 an offense described in Section 136.1. A conviction or acquittal  
32 for a substantive offense under Section 136.1 shall be a bar to a  
33 subsequent punishment for contempt arising out of the same act.

34 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency  
35 protective order issued pursuant to Chapter 2 (commencing with  
36 Section 6250) of Part 3 of Division 10 of the Family Code or  
37 Section 646.91 of this code shall have precedence in enforcement  
38 over any other restraining or protective order, provided that the  
39 emergency protective order meets all of the following requirements:



1 (A) The emergency protective order is issued to protect one or  
2 more individuals who are already protected persons under another  
3 restraining or protective order.

4 (B) The emergency protective order restrains the individual who  
5 is the restrained person in the other restraining or protective order  
6 specified in subparagraph (A).

7 (C) The provisions of the emergency protective order are more  
8 restrictive in relation to the restrained person than are the provisions  
9 of the other restraining or protective order specified in  
10 subparagraph (A).

11 (2) An emergency protective order that meets the requirements  
12 of paragraph (1) shall have precedence in enforcement over the  
13 provisions of any other restraining or protective order only with  
14 respect to those provisions of the emergency protective order that  
15 are more restrictive in relation to the restrained person.

16 (d) (1) A person subject to a protective order issued under this  
17 section shall not own, possess, purchase, receive, or attempt to  
18 purchase or receive a firearm while the protective order is in effect.

19 (2) The court shall order a person subject to a protective order  
20 issued under this section to relinquish any firearms he or she owns  
21 or possesses pursuant to Section 527.9 of the Code of Civil  
22 Procedure.

23 (3) A person who owns, possesses, purchases, or receives, or  
24 attempts to purchase or receive, a firearm while the protective  
25 order is in effect is punishable pursuant to Section 29825.

26 (e) (1) In all cases where the defendant is charged with a crime  
27 of domestic violence, as defined in Section 13700, the court shall  
28 consider issuing the above-described orders on its own motion.  
29 All interested parties shall receive a copy of those orders. In order  
30 to facilitate this, the court's records of all criminal cases involving  
31 domestic violence shall be marked to clearly alert the court to this  
32 issue.

33 (2) In those cases in which a complaint, information, or  
34 indictment charging a crime of domestic violence, as defined in  
35 Section 13700, has been issued, a restraining order or protective  
36 order against the defendant issued by the criminal court in that  
37 case has precedence in enforcement over a civil court order against  
38 the defendant, unless a court issues an emergency protective order  
39 pursuant to Chapter 2 (commencing with Section 6250) of Part 3  
40 of Division 10 of the Family Code or Section 646.91 of this code,

1 in which case the emergency protective order shall have precedence  
2 in enforcement over any other restraining or protective order,  
3 provided that the emergency protective order meets the following  
4 requirements:

5 (A) The emergency protective order is issued to protect one or  
6 more individuals who are already protected persons under another  
7 restraining or protective order.

8 (B) The emergency protective order restrains the individual who  
9 is the restrained person in the other restraining or protective order  
10 specified in subparagraph (A).

11 (C) The provisions of the emergency protective order are more  
12 restrictive in relation to the restrained person than are the provisions  
13 of the other restraining or protective order specified in  
14 subparagraph (A).

15 (3) Custody and visitation with respect to the defendant and his  
16 or her minor children may be ordered by a family or juvenile court  
17 consistent with the protocol established pursuant to subdivision  
18 (f), but if ordered after a criminal protective order has been issued  
19 pursuant to this section, the custody and visitation order shall make  
20 reference to, and acknowledge the precedence of enforcement of,  
21 an appropriate criminal protective order. On or before July 1, 2006,  
22 the Judicial Council shall modify the criminal and civil court forms  
23 consistent with this subdivision.

24 (f) On or before January 1, 2003, the Judicial Council shall  
25 promulgate a protocol, for adoption by each local court in  
26 substantially similar terms, to provide for the timely coordination  
27 of all orders against the same defendant and in favor of the same  
28 named victim or victims. The protocol shall include, but shall not  
29 be limited to, mechanisms for assuring appropriate communication  
30 and information sharing between criminal, family, and juvenile  
31 courts concerning orders and cases that involve the same parties,  
32 and shall permit a family or juvenile court order to coexist with a  
33 criminal court protective order subject to the following conditions:

34 (1) An order that permits contact between the restrained person  
35 and his or her children shall provide for the safe exchange of the  
36 children and shall not contain language either printed or  
37 handwritten that violates a “no contact order” issued by a criminal  
38 court.

39 (2) Safety of all parties shall be the courts’ paramount concern.  
40 The family or juvenile court shall specify the time, day, place, and

1 manner of transfer of the child, as provided in Section 3100 of the  
2 Family Code.

3 (g) On or before January 1, 2003, the Judicial Council shall  
4 modify the criminal and civil court protective order forms  
5 consistent with this section.

6 (h) In any case in which a complaint, information, or indictment  
7 charging a crime of domestic violence, as defined in Section 13700,  
8 has been filed, the court may consider, in determining whether  
9 good cause exists to issue an order under paragraph (1) of  
10 subdivision (a), the underlying nature of the offense charged, and  
11 the information provided to the court pursuant to Section 273.75.

12 (i) (1) In all cases in which a criminal defendant has been  
13 convicted of a crime of domestic violence as defined in Section  
14 13700, the court, at the time of sentencing, shall consider issuing  
15 an order restraining the defendant from any contact with the victim.  
16 The order may be valid for up to 10 years, as determined by the  
17 court. This protective order may be issued by the court regardless  
18 of whether the defendant is sentenced to the state prison or a county  
19 jail, or whether imposition of sentence is suspended and the  
20 defendant is placed on probation. It is the intent of the Legislature  
21 in enacting this subdivision that the duration of any restraining  
22 order issued by the court be based upon the seriousness of the facts  
23 before the court, the probability of future violations, and the safety  
24 of the victim and his or her immediate family.

25 (2) An order under this subdivision may include provisions for  
26 electronic monitoring if the local government, upon receiving the  
27 concurrence of the county sheriff or the chief probation officer  
28 with jurisdiction, adopts a policy authorizing electronic monitoring  
29 of defendants and specifies the agency with jurisdiction for this  
30 purpose. If the court determines that the defendant has the ability  
31 to pay for the monitoring program, the court shall order the  
32 defendant to pay for the monitoring. If the court determines that  
33 the defendant does not have the ability to pay for the electronic  
34 monitoring, the court may order the electronic monitoring to be  
35 paid for by the local government that adopted the policy authorizing  
36 electronic monitoring. The duration of the electronic monitoring  
37 shall not exceed one year from the date the order is issued.

38 (j) For purposes of this section, "local government" means the  
39 county that has jurisdiction over the protective order.

40 SEC. 145.3. Section 166 of the Penal Code is amended to read:

1 166. (a) Except as provided in subdivisions (b), (c), and (d),  
2 a person guilty of any of the following contempts of court is guilty  
3 of a misdemeanor:

4 (1) Disorderly, contemptuous, or insolent behavior committed  
5 during the sitting of a court of justice, in the immediate view and  
6 presence of the court, and directly tending to interrupt its  
7 proceedings or to impair the respect due to its authority.

8 (2) Behavior specified in paragraph (1) that is committed in the  
9 presence of a referee, while actually engaged in a trial or hearing,  
10 pursuant to the order of a court, or in the presence of any jury while  
11 actually sitting for the trial of a cause, or upon an inquest or other  
12 proceeding authorized by law.

13 (3) A breach of the peace, noise, or other disturbance directly  
14 tending to interrupt the proceedings of the court.

15 (4) Willful disobedience of the terms as written of any process  
16 or court order or out-of-state court order, lawfully issued by a  
17 court, including orders pending trial.

18 (5) Resistance willfully offered by any person to the lawful  
19 order or process of a court.

20 (6) Willful disobedience by a juror of a court admonishment  
21 related to the prohibition on any form of communication or research  
22 about the case, including all forms of electronic or wireless  
23 communication or research.

24 (7) The contumacious and unlawful refusal of a person to be  
25 sworn as a witness or, when so sworn, the like refusal to answer  
26 a material question.

27 (8) The publication of a false or grossly inaccurate report of the  
28 proceedings of a court.

29 (9) Presenting to a court having power to pass sentence upon a  
30 prisoner under conviction, or to a member of the court, an affidavit,  
31 testimony, or representation of any kind, verbal or written, in  
32 aggravation or mitigation of the punishment to be imposed upon  
33 the prisoner, except as provided in this code.

34 (10) Willful disobedience of the terms of an injunction that  
35 restrains the activities of a criminal street gang or any of its  
36 members, lawfully issued by a court, including an order pending  
37 trial.

38 (b) (1) A person who is guilty of contempt of court under  
39 paragraph (4) of subdivision (a) by willfully contacting a victim  
40 by telephone or mail, or directly, and who has been previously

1 convicted of a violation of Section 646.9 shall be punished by  
2 imprisonment in a county jail for not more than one year, by a fine  
3 of five thousand dollars (\$5,000), or by both that fine and  
4 imprisonment.

5 (2) For the purposes of sentencing under this subdivision, each  
6 contact shall constitute a separate violation of this subdivision.

7 (3) The present incarceration of a person who makes contact  
8 with a victim in violation of paragraph (1) is not a defense to a  
9 violation of this subdivision.

10 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a  
11 willful and knowing violation of a protective order or stay-away  
12 court order issued pursuant to Section 136.2, in a pending criminal  
13 proceeding involving domestic violence, as defined in Section  
14 13700, or issued as a condition of probation after a conviction in  
15 a criminal proceeding involving domestic violence, as defined in  
16 Section 13700, or elder or dependent adult abuse, as defined in  
17 Section 368, or that is an order described in paragraph (3), shall  
18 constitute contempt of court, a misdemeanor, punishable by  
19 imprisonment in a county jail for not more than one year, by a fine  
20 of not more than one thousand dollars (\$1,000), or by both that  
21 imprisonment and fine.

22 (2) If a violation of paragraph (1) results in a physical injury,  
23 the person shall be imprisoned in a county jail for at least 48 hours,  
24 whether a fine or imprisonment is imposed, or the sentence is  
25 suspended.

26 (3) Paragraphs (1) and (2) apply to the following court orders:

27 (A) An order issued pursuant to Section 6320 or 6389 of the  
28 Family Code.

29 (B) An order excluding one party from the family dwelling or  
30 from the dwelling of the other.

31 (C) An order enjoining a party from specified behavior that the  
32 court determined was necessary to effectuate the orders described  
33 in paragraph (1).

34 (4) A second or subsequent conviction for a violation of an order  
35 described in paragraph (1) occurring within seven years of a prior  
36 conviction for a violation of any of those orders and involving an  
37 act of violence or “a credible threat” of violence, as provided in  
38 subdivisions ~~(b)~~ and (c) and (d) of Section 139, is punishable by  
39 imprisonment in a county jail not to exceed one year, or in the  
40 state prison for 16 months or two or three years.

1 (5) The prosecuting agency of each county shall have the  
2 primary responsibility for the enforcement of the orders described  
3 in paragraph (1).

4 (d) (1) A person who owns, possesses, purchases, or receives  
5 a firearm knowing he or she is prohibited from doing so by the  
6 provisions of a protective order, as defined in Section 136.2 of this  
7 code, Section 6218 of the Family Code, or Section 527.6 or 527.8  
8 of the Code of Civil Procedure, shall be punished under Section  
9 29825.

10 (2) A person subject to a protective order described in paragraph  
11 (1) shall not be prosecuted under this section for owning,  
12 possessing, purchasing, or receiving a firearm to the extent that  
13 firearm is granted an exemption pursuant to subdivision (h) of  
14 Section 6389 of the Family Code.

15 (e) (1) If probation is granted upon conviction of a violation of  
16 subdivision (c), the court shall impose probation consistent with  
17 Section 1203.097.

18 (2) If probation is granted upon conviction of a violation of  
19 subdivision (c), the conditions of probation may include, in lieu  
20 of a fine, one or both of the following requirements:

21 (A) That the defendant make payments to a battered women's  
22 shelter, up to a maximum of one thousand dollars (\$1,000).

23 (B) That the defendant provide restitution to reimburse the  
24 victim for reasonable costs of counseling and other reasonable  
25 expenses that the court finds are the direct result of the defendant's  
26 offense.

27 (3) For an order to pay a fine, make payments to a battered  
28 women's shelter, or pay restitution as a condition of probation  
29 under this subdivision or subdivision (c), the court shall make a  
30 determination of the defendant's ability to pay. In no event shall  
31 an order to make payments to a battered women's shelter be made  
32 if it would impair the ability of the defendant to pay direct  
33 restitution to the victim or court-ordered child support.

34 (4) If the injury to a married person is caused in whole, or in  
35 part, by the criminal acts of his or her spouse in violation of  
36 subdivision (c), the community property shall not be used to  
37 discharge the liability of the offending spouse for restitution to the  
38 injured spouse required by Section 1203.04, as operative on or  
39 before August 2, 1995, or Section 1202.4, or to a shelter for costs  
40 with regard to the injured spouse and dependents required by this

1 subdivision, until all separate property of the offending spouse is  
2 exhausted.

3 (5) A person violating an order described in subdivision (c) may  
4 be punished for any substantive offenses described under Section  
5 136.1 or 646.9. A finding of contempt shall not be a bar to  
6 prosecution for a violation of Section 136.1 or 646.9. However, a  
7 person held in contempt for a violation of subdivision (c) shall be  
8 entitled to credit for any punishment imposed as a result of that  
9 violation against any sentence imposed upon conviction of an  
10 offense described in Section 136.1 or 646.9. A conviction or  
11 acquittal for a substantive offense under Section 136.1 or 646.9  
12 shall be a bar to a subsequent punishment for contempt arising out  
13 of the same act.

14 SEC. 145.5. Section 171c of the Penal Code is amended to  
15 read:

16 171c. (a) (1) Any person who brings a loaded firearm into,  
17 or possesses a loaded firearm within, the State Capitol, any  
18 legislative office, any office of the Governor or other constitutional  
19 officer, or any hearing room in which any committee of the Senate  
20 or Assembly is conducting a hearing, or upon the grounds of the  
21 State Capitol, which is bounded by 10th, L, 15th, and N Streets in  
22 the City of Sacramento, shall be punished by imprisonment in a  
23 county jail for a period of not more than one year, a fine of not  
24 more than one thousand dollars (\$1,000), or both such  
25 imprisonment and fine, or by imprisonment pursuant to subdivision  
26 (h) of Section 1170.

27 (2) Any person who brings or possesses, within the State Capitol,  
28 any legislative office, any hearing room in which any committee  
29 of the Senate or Assembly is conducting a hearing, the Legislative  
30 Office Building at 1020 N Street in the City of Sacramento, or  
31 upon the grounds of the State Capitol, which is bounded by 10th,  
32 L, 15th, and N Streets in the City of Sacramento, any of the  
33 following, is guilty of a misdemeanor punishable by imprisonment  
34 in a county jail for a period not to exceed one year, or by a fine  
35 not exceeding one thousand dollars (\$1,000), or by both that fine  
36 and imprisonment, if the area is posted with a statement providing  
37 reasonable notice that prosecution may result from possession of  
38 any of these items:

39 (A) Any firearm.

1 (B) Any deadly weapon described in Section 21510 or in any  
2 provision listed in Section 16590.

3 (C) Any knife with a blade length in excess of four inches, the  
4 blade of which is fixed or is capable of being fixed in an unguarded  
5 position by the use of one or two hands.

6 (D) Any unauthorized tear gas weapon.

7 (E) Any stun gun, as defined in Section 244.5.

8 (F) Any instrument that expels a metallic projectile, such as a  
9 BB or pellet, through the force of air pressure, CO<sub>2</sub> pressure, or  
10 spring action, or any spot marker gun or paint gun.

11 (G) Any ammunition as defined in Sections 16150 and 16650.

12 (H) Any explosive as defined in Section 12000 of the Health  
13 and Safety Code.

14 (b) Subdivision (a) shall not apply to, or affect, any of the  
15 following:

16 (1) A duly appointed peace officer as defined in Chapter 4.5  
17 (commencing with Section 830) of Title 3 of Part 2, a retired peace  
18 officer with authorization to carry concealed weapons as described  
19 in Article 2 (commencing with Section 25450) of Chapter 2 of  
20 Division 5 of Title 4 of Part 6, a full-time paid peace officer of  
21 another state or the federal government who is carrying out official  
22 duties while in California, or any person summoned by any of  
23 these officers to assist in making arrests or preserving the peace  
24 while he or she is actually engaged in assisting the officer.

25 (2) A person holding a valid license to carry the firearm pursuant  
26 to Chapter 4 (commencing with Section 26150) of Division 5 of  
27 Title 4 of Part 6, and who has permission granted by the Chief  
28 Sergeants at Arms of the State Assembly and the State Senate to  
29 possess a concealed weapon upon the premises described in  
30 subdivision (a).

31 (3) A person who has permission granted by the Chief Sergeants  
32 at Arms of the State Assembly and the State Senate to possess a  
33 weapon upon the premises described in subdivision (a).

34 (c) (1) Nothing in this section shall preclude prosecution under  
35 Chapter 2 (commencing with Section 29800) or Chapter 3  
36 (commencing with Section 29900) of Division 9 of Title 4 of Part  
37 6 of this code, Section 8100 or 8103 of the Welfare and Institutions  
38 Code, or any other law with a penalty greater than is set forth in  
39 this section.



1 (2) The provisions of this section are cumulative, and shall not  
2 be construed as restricting the application of any other law.  
3 However, an act or omission punishable in different ways by  
4 different provisions of law shall not be punished under more than  
5 one provision.

6 SEC. 145.7. Section 273.6 of the Penal Code is amended to  
7 read:

8 273.6. (a) Any intentional and knowing violation of a  
9 protective order, as defined in Section 6218 of the Family Code,  
10 or of an order issued pursuant to Section 527.6, 527.8, or 527.85  
11 of the Code of Civil Procedure, or Section 15657.03 of the Welfare  
12 and Institutions Code, is a misdemeanor punishable by a fine of  
13 not more than one thousand dollars (\$1,000), or by imprisonment  
14 in a county jail for not more than one year, or by both that fine and  
15 imprisonment.

16 (b) In the event of a violation of subdivision (a) that results in  
17 physical injury, the person shall be punished by a fine of not more  
18 than two thousand dollars (\$2,000), or by imprisonment in a county  
19 jail for not less than 30 days nor more than one year, or by both  
20 that fine and imprisonment. However, if the person is imprisoned  
21 in a county jail for at least 48 hours, the court may, in the interest  
22 of justice and for reasons stated on the record, reduce or eliminate  
23 the 30-day minimum imprisonment required by this subdivision.  
24 In determining whether to reduce or eliminate the minimum  
25 imprisonment pursuant to this subdivision, the court shall consider  
26 the seriousness of the facts before the court, whether there are  
27 additional allegations of a violation of the order during the  
28 pendency of the case before the court, the probability of future  
29 violations, the safety of the victim, and whether the defendant has  
30 successfully completed or is making progress with counseling.

31 (c) Subdivisions (a) and (b) shall apply to the following court  
32 orders:

33 (1) Any order issued pursuant to Section 6320 or 6389 of the  
34 Family Code.

35 (2) An order excluding one party from the family dwelling or  
36 from the dwelling of the other.

37 (3) An order enjoining a party from specified behavior that the  
38 court determined was necessary to effectuate the order described  
39 in subdivision (a).

1 (4) Any order issued by another state that is recognized under  
2 Part 5 (commencing with Section 6400) of Division 10 of the  
3 Family Code.

4 (d) A subsequent conviction for a violation of an order described  
5 in subdivision (a), occurring within seven years of a prior  
6 conviction for a violation of an order described in subdivision (a)  
7 and involving an act of violence or “a credible threat” of violence,  
8 as defined in subdivision (c) of Section 139, is punishable by  
9 imprisonment in a county jail not to exceed one year, or pursuant  
10 to subdivision (h) of Section 1170.

11 (e) In the event of a subsequent conviction for a violation of an  
12 order described in subdivision (a) for an act occurring within one  
13 year of a prior conviction for a violation of an order described in  
14 subdivision (a) that results in physical injury to a victim, the person  
15 shall be punished by a fine of not more than two thousand dollars  
16 (\$2,000), or by imprisonment in a county jail for not less than six  
17 months nor more than one year, by both that fine and  
18 imprisonment, or by imprisonment pursuant to subdivision (h) of  
19 Section 1170. However, if the person is imprisoned in a county  
20 jail for at least 30 days, the court may, in the interest of justice and  
21 for reasons stated in the record, reduce or eliminate the six-month  
22 minimum imprisonment required by this subdivision. In  
23 determining whether to reduce or eliminate the minimum  
24 imprisonment pursuant to this subdivision, the court shall consider  
25 the seriousness of the facts before the court, whether there are  
26 additional allegations of a violation of the order during the  
27 pendency of the case before the court, the probability of future  
28 violations, the safety of the victim, and whether the defendant has  
29 successfully completed or is making progress with counseling.

30 (f) The prosecuting agency of each county shall have the primary  
31 responsibility for the enforcement of orders described in  
32 subdivisions (a), (b), (d), and (e).

33 (g) (1) Every person who owns, possesses, purchases, or  
34 receives a firearm knowing he or she is prohibited from doing so  
35 by the provisions of a protective order as defined in Section 136.2  
36 of this code, Section 6218 of the Family Code, or Section 527.6,  
37 527.8, or 527.85 of the Code of Civil Procedure, or Section  
38 15657.03 of the Welfare and Institutions Code, shall be punished  
39 under Section 29825.

1 (2) Every person subject to a protective order described in  
2 paragraph (1) shall not be prosecuted under this section for owning,  
3 possessing, purchasing, or receiving a firearm to the extent that  
4 firearm is granted an exemption pursuant to subdivision (f) of  
5 Section 527.9 of the Code of Civil Procedure, or subdivision (h)  
6 of Section 6389 of the Family Code.

7 (h) If probation is granted upon conviction of a violation of  
8 subdivision (a), (b), (c), (d), or (e), the court shall impose probation  
9 consistent with Section 1203.097, and the conditions of probation  
10 may include, in lieu of a fine, one or both of the following  
11 requirements:

12 (1) That the defendant make payments to a battered women's  
13 shelter or to a shelter for abused elder persons or dependent adults,  
14 up to a maximum of five thousand dollars (\$5,000), pursuant to  
15 Section 1203.097.

16 (2) That the defendant reimburse the victim for reasonable costs  
17 of counseling and other reasonable expenses that the court finds  
18 are the direct result of the defendant's offense.

19 (i) For any order to pay a fine, make payments to a battered  
20 women's shelter, or pay restitution as a condition of probation  
21 under subdivision (e), the court shall make a determination of the  
22 defendant's ability to pay. In no event shall any order to make  
23 payments to a battered women's shelter be made if it would impair  
24 the ability of the defendant to pay direct restitution to the victim  
25 or court-ordered child support. Where the injury to a married person  
26 is caused in whole or in part by the criminal acts of his or her  
27 spouse in violation of this section, the community property may  
28 not be used to discharge the liability of the offending spouse for  
29 restitution to the injured spouse, required by Section 1203.04, as  
30 operative on or before August 2, 1995, or Section 1202.4, or to a  
31 shelter for costs with regard to the injured spouse and dependents,  
32 required by this section, until all separate property of the offending  
33 spouse is exhausted.

34 SEC. 146. Section 289.6 of the Penal Code is amended to read:

35 289.6. (a) (1) An employee or officer of a public entity health  
36 facility, or an employee, officer, or agent of a private person or  
37 entity that provides a health facility or staff for a health facility  
38 under contract with a public entity, who engages in sexual activity  
39 with a consenting adult who is confined in a health facility is guilty  
40 of a public offense. As used in this paragraph, "health facility"

1 means a health facility as defined in subdivisions (b), (e), (g), (h),  
2 and (j) of, and subparagraph (C) of paragraph (2) of subdivision  
3 (i) of, Section 1250 of the Health and Safety Code, in which the  
4 victim has been confined involuntarily.

5 (2) An employee or officer of a public entity detention facility,  
6 or an employee, officer, or agent of a private person or entity that  
7 provides a detention facility or staff for a detention facility, a  
8 person or agent of a public or private entity under contract with a  
9 detention facility, a volunteer of a private or public entity detention  
10 facility, or a peace officer who engages in sexual activity with a  
11 consenting adult who is confined in a detention facility is guilty  
12 of a public offense.

13 (3) An employee with a department, board, or authority under  
14 the Department of Corrections and Rehabilitation or a facility  
15 under contract with a department, board, or authority under the  
16 Department of Corrections and Rehabilitation, who, during the  
17 course of his or her employment directly provides treatment, care,  
18 control, or supervision of inmates, wards, or parolees, and who  
19 engages in sexual activity with a consenting adult who is an inmate,  
20 ward, or parolee, is guilty of a public offense.

21 (b) As used in this section, the term “public entity” means the  
22 state, the federal government, a city, a county, a city and county,  
23 a joint county jail district, or any entity created as a result of a joint  
24 powers agreement between two or more public entities.

25 (c) As used in this section, the term “detention facility” means:

26 (1) A prison, jail, camp, or other correctional facility used for  
27 the confinement of adults or both adults and minors.

28 (2) A building or facility used for the confinement of adults or  
29 adults and minors pursuant to a contract with a public entity.

30 (3) A room that is used for holding persons for interviews,  
31 interrogations, or investigations and that is separate from a jail or  
32 located in the administrative area of a law enforcement facility.

33 (4) A vehicle used to transport confined persons during their  
34 period of confinement, including transporting a person after he or  
35 she has been arrested but has not been booked.

36 (5) A court holding facility located within or adjacent to a court  
37 building that is used for the confinement of persons for the purpose  
38 of court appearances.

39 (d) As used in this section, “sexual activity” means:

40 (1) Sexual intercourse.

1 (2) Sodomy, as defined in subdivision (a) of Section 286.

2 (3) Oral copulation, as defined in subdivision (a) of Section  
3 288a.

4 (4) Sexual penetration, as defined in subdivision (k) of Section  
5 289.

6 (5) The rubbing or touching of the breasts or sexual organs of  
7 another, or of oneself in the presence of and with knowledge of  
8 another, with the intent of arousing, appealing to, or gratifying the  
9 lust, passions, or sexual desires of oneself or another.

10 (e) Consent by a confined person or parolee to sexual activity  
11 proscribed by this section is not a defense to a criminal prosecution  
12 for violation of this section.

13 (f) This section does not apply to sexual activity between  
14 consenting adults that occurs during an overnight conjugal visit  
15 that takes place pursuant to a court order or with the written  
16 approval of an authorized representative of the public entity that  
17 operates or contracts for the operation of the detention facility  
18 where the conjugal visit takes place, to physical contact or  
19 penetration made pursuant to a lawful search, or bona fide medical  
20 examinations or treatments, including clinical treatments.

21 (g) Any violation of paragraph (1) of subdivision (a), or a  
22 violation of paragraph (2) or (3) of subdivision (a) as described in  
23 paragraph (5) of subdivision (d), is a misdemeanor.

24 (h) Any violation of paragraph (2) or (3) of subdivision (a), as  
25 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall  
26 be punished by imprisonment in a county jail not exceeding one  
27 year, or in the state prison, or by a fine of not more than ten  
28 thousand dollars (\$10,000), or by both that fine and imprisonment.

29 (i) Any person previously convicted of a violation of this section  
30 shall, upon a subsequent violation, be guilty of a felony.

31 (j) Anyone who is convicted of a felony violation of this section  
32 who is employed by a department, board, or authority within the  
33 Department of Corrections and Rehabilitation shall be terminated  
34 in accordance with the State Civil Service Act (Part 2 (commencing  
35 with Section 18500) of Division 5 of Title 2 of the Government  
36 Code). Anyone who has been convicted of a felony violation of  
37 this section shall not be eligible to be hired or reinstated by a  
38 department, board, or authority within the Department of  
39 Corrections and Rehabilitation.

40 SEC. 147. Section 496a of the Penal Code is amended to read:

1 496a. (a) Every person who is a dealer in or collector of junk,  
2 metals, or secondhand materials, or the agent, employee, or  
3 representative of such dealer or collector, and who buys or receives  
4 any wire, cable, copper, lead, solder, mercury, iron, or brass which  
5 he or she knows or reasonably should know is ordinarily used by  
6 or ordinarily belongs to a railroad or other transportation,  
7 telephone, telegraph, gas, water, or electric light company, or a  
8 county, city, city and county, or other political subdivision of this  
9 state engaged in furnishing public utility service, without using  
10 due diligence to ascertain that the person selling or delivering the  
11 same has a legal right to do so, is guilty of criminally receiving  
12 that property, and shall be punished by imprisonment in a county  
13 jail for not more than one year, or by imprisonment pursuant to  
14 subdivision (h) of Section 1170, or by a fine of not more than one  
15 thousand dollars (\$1,000), or by both that fine and imprisonment.

16 (b) Any person who buys or receives material pursuant to  
17 subdivision (a) shall obtain evidence of his or her identity from  
18 the seller, including, but not limited to, that person's full name,  
19 signature, address, driver's license number, and vehicle license  
20 number, and the license number of the vehicle delivering the  
21 material.

22 (c) The record of the transaction shall include an appropriate  
23 description of the material purchased and the record shall be  
24 maintained pursuant to Section 21607 of the Business and  
25 Professions Code.

26 SEC. 147.3. Section 626.95 of the Penal Code is amended to  
27 read:

28 626.95. (a) Any person who is in violation of paragraph (2)  
29 of subdivision (a), or subdivision (b), of Section 417, or Section  
30 25400 or 25850, upon the grounds of or within a playground, or  
31 a public or private youth center during hours in which the facility  
32 is open for business, classes, or school-related programs, or at any  
33 time when minors are using the facility, knowing that he or she is  
34 on or within those grounds, shall be punished by imprisonment  
35 pursuant to subdivision (h) of Section 1170 for one, two, or three  
36 years, or in a county jail not exceeding one year.

37 (b) State and local authorities are encouraged to cause signs to  
38 be posted around playgrounds and youth centers giving warning  
39 of prohibition of the possession of firearms upon the grounds of  
40 or within playgrounds or youth centers.

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

3 (1) “Playground” means any park or recreational area  
4 specifically designed to be used by children that has play equipment  
5 installed, including public grounds designed for athletic activities  
6 such as baseball, football, soccer, or basketball, or any similar  
7 facility located on public or private school grounds, or on city or  
8 county parks.

9 (2) “Youth center” means any public or private facility that is  
10 used to host recreational or social activities for minors while minors  
11 are present.

12 (d) It is the Legislature’s intent that only an actual conviction  
13 of a felony of one of the offenses specified in this section would  
14 subject the person to firearms disabilities under the federal Gun  
15 Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921 et seq.).

16 SEC. 147.5. Section 626.10 of the Penal Code is amended to  
17 read:

18 626.10. (a) (1) Any person, except a duly appointed peace  
19 officer as defined in Chapter 4.5 (commencing with Section 830)  
20 of Title 3 of Part 2, a full-time paid peace officer of another state  
21 or the federal government who is carrying out official duties while  
22 in this state, a person summoned by any officer to assist in making  
23 arrests or preserving the peace while the person is actually engaged  
24 in assisting any officer, or a member of the military forces of this  
25 state or the United States who is engaged in the performance of  
26 his or her duties, who brings or possesses any dirk, dagger, ice  
27 pick, knife having a blade longer than 2½ inches, folding knife  
28 with a blade that locks into place, razor with an unguarded blade,  
29 taser, or stun gun, as defined in subdivision (a) of Section 244.5,  
30 any instrument that expels a metallic projectile, such as a BB or a  
31 pellet, through the force of air pressure, CO<sub>2</sub> pressure, or spring  
32 action, or any spot marker gun, upon the grounds of, or within,  
33 any public or private school providing instruction in kindergarten  
34 or any of grades 1 to 12, inclusive, is guilty of a public offense,  
35 punishable by imprisonment in a county jail not exceeding one  
36 year, or by imprisonment pursuant to subdivision (h) of Section  
37 1170.

38 (2) Any person, except a duly appointed peace officer as defined  
39 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part  
40 2, a full-time paid peace officer of another state or the federal

1 government who is carrying out official duties while in this state,  
2 a person summoned by any officer to assist in making arrests or  
3 preserving the peace while the person is actually engaged in  
4 assisting any officer, or a member of the military forces of this  
5 state or the United States who is engaged in the performance of  
6 his or her duties, who brings or possesses a razor blade or a box  
7 cutter upon the grounds of, or within, any public or private school  
8 providing instruction in kindergarten or any of grades 1 to 12,  
9 inclusive, is guilty of a public offense, punishable by imprisonment  
10 in a county jail not exceeding one year.

11 (b) Any person, except a duly appointed peace officer as defined  
12 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part  
13 2, a full-time paid peace officer of another state or the federal  
14 government who is carrying out official duties while in this state,  
15 a person summoned by any officer to assist in making arrests or  
16 preserving the peace while the person is actually engaged in  
17 assisting any officer, or a member of the military forces of this  
18 state or the United States who is engaged in the performance of  
19 his or her duties, who brings or possesses any dirk, dagger, ice  
20 pick, or knife having a fixed blade longer than 2½ inches upon  
21 the grounds of, or within, any private university, the University of  
22 California, the California State University, or the California  
23 Community Colleges is guilty of a public offense, punishable by  
24 imprisonment in a county jail not exceeding one year, or by  
25 imprisonment pursuant to subdivision (h) of Section 1170.

26 (c) Subdivisions (a) and (b) do not apply to any person who  
27 brings or possesses a knife having a blade longer than 2½ inches,  
28 a razor with an unguarded blade, a razor blade, or a box cutter  
29 upon the grounds of, or within, a public or private school providing  
30 instruction in kindergarten or any of grades 1 to 12, inclusive, or  
31 any private university, state university, or community college at  
32 the direction of a faculty member of the private university, state  
33 university, or community college, or a certificated or classified  
34 employee of the school for use in a private university, state  
35 university, community college, or school-sponsored activity or  
36 class.

37 (d) Subdivisions (a) and (b) do not apply to any person who  
38 brings or possesses an ice pick, a knife having a blade longer than  
39 2½ inches, a razor with an unguarded blade, a razor blade, or a  
40 box cutter upon the grounds of, or within, a public or private school



1 providing instruction in kindergarten or any of grades 1 to 12,  
2 inclusive, or any private university, state university, or community  
3 college for a lawful purpose within the scope of the person's  
4 employment.

5 (e) Subdivision (b) does not apply to any person who brings or  
6 possesses an ice pick or a knife having a fixed blade longer than  
7 2½ inches upon the grounds of, or within, any private university,  
8 state university, or community college for lawful use in or around  
9 a residence or residential facility located upon those grounds or  
10 for lawful use in food preparation or consumption.

11 (f) Subdivision (a) does not apply to any person who brings an  
12 instrument that expels a metallic projectile, such as a BB or a pellet,  
13 through the force of air pressure, CO<sub>2</sub> pressure, or spring action,  
14 or any spot marker gun, or any razor blade or box cutter upon the  
15 grounds of, or within, a public or private school providing  
16 instruction in kindergarten or any of grades 1 to 12, inclusive, if  
17 the person has the written permission of the school principal or  
18 his or her designee.

19 (g) Any certificated or classified employee or school peace  
20 officer of a public or private school providing instruction in  
21 kindergarten or any of grades 1 to 12, inclusive, may seize any of  
22 the weapons described in subdivision (a), and any certificated or  
23 classified employee or school peace officer of any private  
24 university, state university, or community college may seize any  
25 of the weapons described in subdivision (b), from the possession  
26 of any person upon the grounds of, or within, the school if he or  
27 she knows, or has reasonable cause to know, the person is  
28 prohibited from bringing or possessing the weapon upon the  
29 grounds of, or within, the school.

30 (h) As used in this section, "dirk" or "dagger" means a knife or  
31 other instrument with or without a handguard that is capable of  
32 ready use as a stabbing weapon that may inflict great bodily injury  
33 or death.

34 (i) Any person who, without the written permission of the  
35 college or university president or chancellor or his or her designee,  
36 brings or possesses a less lethal weapon, as defined in Section  
37 16780, or a stun gun, as defined in Section 17230, upon the grounds  
38 of, or within, a public or private college or university campus is  
39 guilty of a misdemeanor.

40 SEC. 148. Section 781 of the Penal Code is amended to read:

1 781. Except as provided in Section 923, when a public offense  
2 is committed in part in one jurisdictional territory and in part in  
3 another jurisdictional territory, or the acts or effects thereof  
4 constituting or requisite to the consummation of the offense occur  
5 in two or more jurisdictional territories, the jurisdiction for the  
6 offense is in any competent court within either jurisdictional  
7 territory.

8 SEC. 149. Section 830.41 of the Penal Code is amended to  
9 read:

10 830.41. Notwithstanding any other provision of law, the City  
11 of Tulelake, California, is authorized to enter into a mutual aid  
12 agreement with the City of Malin, Oregon, for the purpose of  
13 permitting their police departments to provide mutual aid to each  
14 other when necessary. Before the effective date of the agreement,  
15 the agreement shall be reviewed and approved by the  
16 Commissioner of the California Highway Patrol.

17 SEC. 150. Section 830.55 of the Penal Code is amended to  
18 read:

19 830.55. (a) (1) As used in this section, a correctional officer  
20 is a peace officer, employed by a city, county, or city and county  
21 that operates a facility described in Section 2910.5 of this code or  
22 Section 1753.3 of the Welfare and Institutions Code or facilities  
23 operated by counties pursuant to Section 6241 or 6242 of this code  
24 under contract with the Department of Corrections and  
25 Rehabilitation or the Division of Juvenile Justice within the  
26 department, who has the authority and responsibility for  
27 maintaining custody of specified state prison inmates or wards,  
28 and who performs tasks related to the operation of a detention  
29 facility used for the detention of persons who have violated parole  
30 or are awaiting parole back into the community or, upon court  
31 order, either for their own safekeeping or for the specific purpose  
32 of serving a sentence therein.

33 (2) As used in this section, a correctional officer is also a peace  
34 officer, employed by a city, county, or city and county that operates  
35 a facility described in Section 4115.55, who has the authority and  
36 responsibility for maintaining custody of inmates sentenced to or  
37 housed in that facility, and who performs tasks related to the  
38 operation of that facility.

39 (b) A correctional officer shall have no right to carry or possess  
40 firearms in the performance of his or her prescribed duties, except,

1 under the direction of the superintendent of the facility, while  
2 engaged in transporting prisoners, guarding hospitalized prisoners,  
3 or suppressing riots, lynchings, escapes, or rescues in or about a  
4 detention facility established pursuant to Section 2910.5 or 4115.55  
5 of this code or Section 1753.3 of the Welfare and Institutions Code.

6 (c) Each person described in this section as a correctional officer,  
7 within 90 days following the date of the initial assignment to that  
8 position, shall satisfactorily complete the training course specified  
9 in Section 832. In addition, each person designated as a correctional  
10 officer, within one year following the date of the initial assignment  
11 as an officer, shall have satisfactorily met the minimum selection  
12 and training standards prescribed by the Board of State and  
13 Community Corrections pursuant to Section 6035. Persons  
14 designated as correctional officers, before the expiration of the  
15 90-day and one-year periods described in this subdivision, who  
16 have not yet completed the required training, may perform the  
17 duties of a correctional officer only while under the direct  
18 supervision of a correctional officer who has completed the training  
19 required in this section, and shall not carry or possess firearms in  
20 the performance of their prescribed duties.

21 (d) This section shall not be construed to confer any authority  
22 upon a correctional officer except while on duty.

23 (e) A correctional officer may use reasonable force in  
24 establishing and maintaining custody of persons delivered to him  
25 or her by a law enforcement officer, may make arrests for  
26 misdemeanors and felonies within the local detention facility  
27 pursuant to a duly issued warrant, and may make warrantless arrests  
28 pursuant to Section 836.5 only during the duration of his or her  
29 job.

30 SEC. 151. Section 1001.20 of the Penal Code is amended to  
31 read:

32 1001.20. As used in this chapter:

33 (a) “Cognitive Developmental Disability” means any of the  
34 following:

35 (1) “Intellectual disability” means a condition of significantly  
36 subaverage general intellectual functioning existing concurrently  
37 with deficits in adaptive behavior and manifested during the  
38 developmental period.

39 (2) “Autism” means a diagnosed condition of markedly  
40 abnormal or impaired development in social interaction, in

1 communication, or in both, with a markedly restricted repertoire  
2 of activity and interests.

3 (3) Disabling conditions found to be closely related to  
4 intellectual disability or autism, or that require treatment similar  
5 to that required for individuals with intellectual disability or autism,  
6 and that would qualify an individual for services provided under  
7 the Lanterman Developmental Disabilities Services Act.

8 (b) “Diversion-related treatment and habilitation” means, but  
9 is not limited to, specialized services or special adaptations of  
10 generic services, directed toward the alleviation of cognitive  
11 developmental disability or toward social, personal, physical, or  
12 economic habilitation or rehabilitation of an individual with a  
13 cognitive developmental disability, and includes, but is not limited  
14 to, diagnosis, evaluation, treatment, personal care, day care,  
15 domiciliary care, special living arrangements, physical,  
16 occupational, and speech therapy, training, education, sheltered  
17 employment, mental health services, recreation, counseling of the  
18 individual with this disability and of his or her family, protective  
19 and other social and sociolegal services, information and referral  
20 services, follow-along services, and transportation services  
21 necessary to ensure delivery of services to persons with cognitive  
22 developmental disabilities.

23 (c) “Regional center” means a regional center for the  
24 developmentally disabled established under the Lanterman  
25 Developmental Disabilities Services Act that is organized as a  
26 private nonprofit community agency to plan, purchase, and  
27 coordinate the delivery of services that cannot be provided by state  
28 agencies to developmentally disabled persons residing in a  
29 particular geographic catchment area, and that is licensed and  
30 funded by the State Department of Developmental Services.

31 (d) “Director of a regional center” means the executive director  
32 of a regional center for the developmentally disabled or his or her  
33 designee.

34 (e) “Agency” means the prosecutor, the probation department,  
35 and the regional center involved in a particular defendant’s case.

36 (f) “Dual agency diversion” means a treatment and habilitation  
37 program developed with court approval by the regional center,  
38 administered jointly by the regional center and by the probation  
39 department, that is individually tailored to the needs of the  
40 defendant as derived from the defendant’s individual program plan

1 pursuant to Section 4646 of the Welfare and Institutions Code,  
2 and that includes, but is not limited to, treatment specifically  
3 addressed to the criminal offense charged, for a specified period  
4 of time as prescribed in Section 1001.28.

5 (g) “Single agency diversion” means a treatment and habilitation  
6 program developed with court approval by the regional center,  
7 administered solely by the regional center without involvement  
8 by the probation department, that is individually tailored to the  
9 needs of the defendant as derived from the defendant’s individual  
10 program plan pursuant to Section 4646 of the Welfare and  
11 Institutions Code, and that includes, but is not limited to, treatment  
12 specifically addressed to the criminal offense charged, for a  
13 specified period of time as prescribed in Section 1001.28.

14 SEC. 152. Section 1170 of the Penal Code, as amended by  
15 Section 2 of Chapter 828 of the Statutes of 2012, is amended to  
16 read:

17 1170. (a) (1) The Legislature finds and declares that the  
18 purpose of imprisonment for crime is punishment. This purpose  
19 is best served by terms proportionate to the seriousness of the  
20 offense with provision for uniformity in the sentences of offenders  
21 committing the same offense under similar circumstances. The  
22 Legislature further finds and declares that the elimination of  
23 disparity and the provision of uniformity of sentences can best be  
24 achieved by determinate sentences fixed by statute in proportion  
25 to the seriousness of the offense as determined by the Legislature  
26 to be imposed by the court with specified discretion.

27 (2) Notwithstanding paragraph (1), the Legislature further finds  
28 and declares that programs should be available for inmates,  
29 including, but not limited to, educational programs, that are  
30 designed to prepare nonviolent felony offenders for successful  
31 reentry into the community. The Legislature encourages the  
32 development of policies and programs designed to educate and  
33 rehabilitate nonviolent felony offenders. In implementing this  
34 section, the Department of Corrections and Rehabilitation is  
35 encouraged to give priority enrollment in programs to promote  
36 successful return to the community to an inmate with a short  
37 remaining term of commitment and a release date that would allow  
38 him or her adequate time to complete the program.

39 (3) In any case in which the punishment prescribed by statute  
40 for a person convicted of a public offense is a term of imprisonment

1 in the state prison of any specification of three time periods, the  
2 court shall sentence the defendant to one of the terms of  
3 imprisonment specified unless the convicted person is given any  
4 other disposition provided by law, including a fine, jail, probation,  
5 or the suspension of imposition or execution of sentence or is  
6 sentenced pursuant to subdivision (b) of Section 1168 because he  
7 or she had committed his or her crime prior to July 1, 1977. In  
8 sentencing the convicted person, the court shall apply the  
9 sentencing rules of the Judicial Council. The court, unless it  
10 determines that there are circumstances in mitigation of the  
11 punishment prescribed, shall also impose any other term that it is  
12 required by law to impose as an additional term. Nothing in this  
13 article shall affect any provision of law that imposes the death  
14 penalty, that authorizes or restricts the granting of probation or  
15 suspending the execution or imposition of sentence, or expressly  
16 provides for imprisonment in the state prison for life, except as  
17 provided in paragraph (2) of subdivision (d). In any case in which  
18 the amount of preimprisonment credit under Section 2900.5 or any  
19 other provision of law is equal to or exceeds any sentence imposed  
20 pursuant to this chapter, the entire sentence shall be deemed to  
21 have been served and the defendant shall not be actually delivered  
22 to the custody of the secretary. The court shall advise the defendant  
23 that he or she shall serve a period of parole and order the defendant  
24 to report to the parole office closest to the defendant's last legal  
25 residence, unless the in-custody credits equal the total sentence,  
26 including both confinement time and the period of parole. The  
27 sentence shall be deemed a separate prior prison term under Section  
28 667.5, and a copy of the judgment and other necessary  
29 documentation shall be forwarded to the secretary.

30 (b) When a judgment of imprisonment is to be imposed and the  
31 statute specifies three possible terms, the court shall order  
32 imposition of the middle term, unless there are circumstances in  
33 aggravation or mitigation of the crime. At least four days prior to  
34 the time set for imposition of judgment, either party or the victim,  
35 or the family of the victim if the victim is deceased, may submit  
36 a statement in aggravation or mitigation to dispute facts in the  
37 record or the probation officer's report, or to present additional  
38 facts. In determining whether there are circumstances that justify  
39 imposition of the upper or lower term, the court may consider the  
40 record in the case, the probation officer's report, other reports,

1 including reports received pursuant to Section 1203.03, and  
2 statements in aggravation or mitigation submitted by the  
3 prosecution, the defendant, or the victim, or the family of the victim  
4 if the victim is deceased, and any further evidence introduced at  
5 the sentencing hearing. The court shall set forth on the record the  
6 facts and reasons for imposing the upper or lower term. The court  
7 may not impose an upper term by using the fact of any  
8 enhancement upon which sentence is imposed under any provision  
9 of law. A term of imprisonment shall not be specified if imposition  
10 of sentence is suspended.

11 (c) The court shall state the reasons for its sentence choice on  
12 the record at the time of sentencing. The court shall also inform  
13 the defendant that as part of the sentence after expiration of the  
14 term he or she may be on parole for a period as provided in Section  
15 3000.

16 (d) (1) When a defendant subject to this section or subdivision  
17 (b) of Section 1168 has been sentenced to be imprisoned in the  
18 state prison and has been committed to the custody of the secretary,  
19 the court may, within 120 days of the date of commitment on its  
20 own motion, or at any time upon the recommendation of the  
21 secretary or the Board of Parole Hearings, recall the sentence and  
22 commitment previously ordered and resentence the defendant in  
23 the same manner as if he or she had not previously been sentenced,  
24 provided the new sentence, if any, is no greater than the initial  
25 sentence. The court resentencing under this subdivision shall apply  
26 the sentencing rules of the Judicial Council so as to eliminate  
27 disparity of sentences and to promote uniformity of sentencing.  
28 Credit shall be given for time served.

29 (2) (A) (i) When a defendant who was under 18 years of age  
30 at the time of the commission of the offense for which the  
31 defendant was sentenced to imprisonment for life without the  
32 possibility of parole has served at least 15 years of that sentence,  
33 the defendant may submit to the sentencing court a petition for  
34 recall and resentencing.

35 (ii) Notwithstanding clause (i), this paragraph shall not apply  
36 to defendants sentenced to life without parole for an offense where  
37 the defendant tortured, as described in Section 206, his or her  
38 victim or the victim was a public safety official, including any law  
39 enforcement personnel mentioned in Chapter 4.5 (commencing  
40 with Section 830) of Title 3, or any firefighter as described in

1 Section 245.1, as well as any other officer in any segment of law  
2 enforcement who is employed by the federal government, the state,  
3 or any of its political subdivisions.

4 (B) The defendant shall file the original petition with the  
5 sentencing court. A copy of the petition shall be served on the  
6 agency that prosecuted the case. The petition shall include the  
7 defendant's statement that he or she was under 18 years of age at  
8 the time of the crime and was sentenced to life in prison without  
9 the possibility of parole, the defendant's statement describing his  
10 or her remorse and work towards rehabilitation, and the defendant's  
11 statement that one of the following is true:

12 (i) The defendant was convicted pursuant to felony murder or  
13 aiding and abetting murder provisions of law.

14 (ii) The defendant does not have juvenile felony adjudications  
15 for assault or other felony crimes with a significant potential for  
16 personal harm to victims prior to the offense for which the sentence  
17 is being considered for recall.

18 (iii) The defendant committed the offense with at least one adult  
19 codefendant.

20 (iv) The defendant has performed acts that tend to indicate  
21 rehabilitation or the potential for rehabilitation, including, but not  
22 limited to, availing himself or herself of rehabilitative, educational,  
23 or vocational programs, if those programs have been available at  
24 his or her classification level and facility, using self-study for  
25 self-improvement, or showing evidence of remorse.

26 (C) If any of the information required in subparagraph (B) is  
27 missing from the petition, or if proof of service on the prosecuting  
28 agency is not provided, the court shall return the petition to the  
29 defendant and advise the defendant that the matter cannot be  
30 considered without the missing information.

31 (D) A reply to the petition, if any, shall be filed with the court  
32 within 60 days of the date on which the prosecuting agency was  
33 served with the petition, unless a continuance is granted for good  
34 cause.

35 (E) If the court finds by a preponderance of the evidence that  
36 the statements in the petition are true, the court shall hold a hearing  
37 to consider whether to recall the sentence and commitment  
38 previously ordered and to resentence the defendant in the same  
39 manner as if the defendant had not previously been sentenced,  
40 provided that the new sentence, if any, is not greater than the initial



1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

3 (F) The factors that the court may consider when determining  
4 whether to recall and resentence include, but are not limited to,  
5 the following:

6 (i) The defendant was convicted pursuant to felony murder or  
7 aiding and abetting murder provisions of law.

8 (ii) The defendant does not have juvenile felony adjudications  
9 for assault or other felony crimes with a significant potential for  
10 personal harm to victims prior to the offense for which the sentence  
11 is being considered for recall.

12 (iii) The defendant committed the offense with at least one adult  
13 codefendant.

14 (iv) Prior to the offense for which the sentence is being  
15 considered for recall, the defendant had insufficient adult support  
16 or supervision and had suffered from psychological or physical  
17 trauma, or significant stress.

18 (v) The defendant suffers from cognitive limitations due to  
19 mental illness, developmental disabilities, or other factors that did  
20 not constitute a defense, but influenced the defendant's  
21 involvement in the offense.

22 (vi) The defendant has performed acts that tend to indicate  
23 rehabilitation or the potential for rehabilitation, including, but not  
24 limited to, availing himself or herself of rehabilitative, educational,  
25 or vocational programs, if those programs have been available at  
26 his or her classification level and facility, using self-study for  
27 self-improvement, or showing evidence of remorse.

28 (vii) The defendant has maintained family ties or connections  
29 with others through letter writing, calls, or visits, or has eliminated  
30 contact with individuals outside of prison who are currently  
31 involved with crime.

32 (viii) The defendant has had no disciplinary actions for violent  
33 activities in the last five years in which the defendant was  
34 determined to be the aggressor.

35 (G) The court shall have the discretion to recall the sentence  
36 and commitment previously ordered and to resentence the  
37 defendant in the same manner as if the defendant had not  
38 previously been sentenced, provided that the new sentence, if any,  
39 is not greater than the initial sentence. The discretion of the court  
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,  
2 shall be notified of the resentencing hearing and shall retain their  
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit  
5 another petition for recall and resentencing to the sentencing court  
6 when the defendant has been committed to the custody of the  
7 department for at least 20 years. If recall and resentencing is not  
8 granted under that petition, the defendant may file another petition  
9 after having served 24 years. The final petition may be submitted,  
10 and the response to that petition shall be determined, during the  
11 25th year of the defendant's sentence.

12 (I) In addition to the criteria in subparagraph (F), the court may  
13 consider any other criteria that the court deems relevant to its  
14 decision, so long as the court identifies them on the record,  
15 provides a statement of reasons for adopting them, and states why  
16 the defendant does or does not satisfy the criteria.

17 (J) This subdivision shall have retroactive application.

18 (e) (1) Notwithstanding any other law and consistent with  
19 paragraph (1) of subdivision (a), if the secretary or the Board of  
20 Parole Hearings or both determine that a prisoner satisfies the  
21 criteria set forth in paragraph (2), the secretary or the board may  
22 recommend to the court that the prisoner's sentence be recalled.

23 (2) The court shall have the discretion to resentence or recall if  
24 the court finds that the facts described in subparagraphs (A) and  
25 (B) or subparagraphs (B) and (C) exist:

26 (A) The prisoner is terminally ill with an incurable condition  
27 caused by an illness or disease that would produce death within  
28 six months, as determined by a physician employed by the  
29 department.

30 (B) The conditions under which the prisoner would be released  
31 or receive treatment do not pose a threat to public safety.

32 (C) The prisoner is permanently medically incapacitated with  
33 a medical condition that renders him or her permanently unable  
34 to perform activities of basic daily living, and results in the prisoner  
35 requiring 24-hour total care, including, but not limited to, coma,  
36 persistent vegetative state, brain death, ventilator-dependency, loss  
37 of control of muscular or neurological function, and that  
38 incapacitation did not exist at the time of the original sentencing.

39 The Board of Parole Hearings shall make findings pursuant to  
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner  
2 sentenced to death or a term of life without the possibility of parole.

3 (3) Within 10 days of receipt of a positive recommendation by  
4 the secretary or the board, the court shall hold a hearing to consider  
5 whether the prisoner's sentence should be recalled.

6 (4) Any physician employed by the department who determines  
7 that a prisoner has six months or less to live shall notify the chief  
8 medical officer of the prognosis. If the chief medical officer  
9 concurs with the prognosis, he or she shall notify the warden.  
10 Within 48 hours of receiving notification, the warden or the  
11 warden's representative shall notify the prisoner of the recall and  
12 resentencing procedures, and shall arrange for the prisoner to  
13 designate a family member or other outside agent to be notified  
14 as to the prisoner's medical condition and prognosis, and as to the  
15 recall and resentencing procedures. If the inmate is deemed  
16 mentally unfit, the warden or the warden's representative shall  
17 contact the inmate's emergency contact and provide the information  
18 described in paragraph (2).

19 (5) The warden or the warden's representative shall provide the  
20 prisoner and his or her family member, agent, or emergency  
21 contact, as described in paragraph (4), updated information  
22 throughout the recall and resentencing process with regard to the  
23 prisoner's medical condition and the status of the prisoner's recall  
24 and resentencing proceedings.

25 (6) Notwithstanding any other provisions of this section, the  
26 prisoner or his or her family member or designee may  
27 independently request consideration for recall and resentencing  
28 by contacting the chief medical officer at the prison or the  
29 secretary. Upon receipt of the request, the chief medical officer  
30 and the warden or the warden's representative shall follow the  
31 procedures described in paragraph (4). If the secretary determines  
32 that the prisoner satisfies the criteria set forth in paragraph (2), the  
33 secretary or board may recommend to the court that the prisoner's  
34 sentence be recalled. The secretary shall submit a recommendation  
35 for release within 30 days in the case of inmates sentenced to  
36 determinate terms and, in the case of inmates sentenced to  
37 indeterminate terms, the secretary shall make a recommendation  
38 to the Board of Parole Hearings with respect to the inmates who  
39 have applied under this section. The board shall consider this  
40 information and make an independent judgment pursuant to

1 paragraph (2) and make findings related thereto before rejecting  
2 the request or making a recommendation to the court. This action  
3 shall be taken at the next lawfully noticed board meeting.

4 (7) Any recommendation for recall submitted to the court by  
5 the secretary or the Board of Parole Hearings shall include one or  
6 more medical evaluations, a postrelease plan, and findings pursuant  
7 to paragraph (2).

8 (8) If possible, the matter shall be heard before the same judge  
9 of the court who sentenced the prisoner.

10 (9) If the court grants the recall and resentencing application,  
11 the prisoner shall be released by the department within 48 hours  
12 of receipt of the court's order, unless a longer time period is agreed  
13 to by the inmate. At the time of release, the warden or the warden's  
14 representative shall ensure that the prisoner has each of the  
15 following in his or her possession: a discharge medical summary,  
16 full medical records, state identification, parole medications, and  
17 all property belonging to the prisoner. After discharge, any  
18 additional records shall be sent to the prisoner's forwarding  
19 address.

20 (10) The secretary shall issue a directive to medical and  
21 correctional staff employed by the department that details the  
22 guidelines and procedures for initiating a recall and resentencing  
23 procedure. The directive shall clearly state that any prisoner who  
24 is given a prognosis of six months or less to live is eligible for  
25 recall and resentencing consideration, and that recall and  
26 resentencing procedures shall be initiated upon that prognosis.

27 (f) Notwithstanding any other provision of this section, for  
28 purposes of paragraph (3) of subdivision (h), any allegation that  
29 a defendant is eligible for state prison due to a prior or current  
30 conviction, sentence enhancement, or because he or she is required  
31 to register as a sex offender shall not be subject to dismissal  
32 pursuant to Section 1385.

33 (g) A sentence to state prison for a determinate term for which  
34 only one term is specified, is a sentence to state prison under this  
35 section.

36 (h) (1) Except as provided in paragraph (3), a felony punishable  
37 pursuant to this subdivision where the term is not specified in the  
38 underlying offense shall be punishable by a term of imprisonment  
39 in a county jail for 16 months, or two or three years.

1 (2) Except as provided in paragraph (3), a felony punishable  
2 pursuant to this subdivision shall be punishable by imprisonment  
3 in a county jail for the term described in the underlying offense.

4 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
5 (A) has a prior or current felony conviction for a serious felony  
6 described in subdivision (c) of Section 1192.7 or a prior or current  
7 conviction for a violent felony described in subdivision (c) of  
8 Section 667.5, (B) has a prior felony conviction in another  
9 jurisdiction for an offense that has all the elements of a serious  
10 felony described in subdivision (c) of Section 1192.7 or a violent  
11 felony described in subdivision (c) of Section 667.5, (C) is required  
12 to register as a sex offender pursuant to Chapter 5.5 (commencing  
13 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
14 and as part of the sentence an enhancement pursuant to Section  
15 186.11 is imposed, an executed sentence for a felony punishable  
16 pursuant to this subdivision shall be served in state prison.

17 (4) This subdivision does not prevent other dispositions  
18 authorized by law, including pretrial diversion, deferred entry of  
19 judgment, or an order granting probation pursuant to Section  
20 1203.1.

21 (5) The court, when imposing a sentence pursuant to paragraph  
22 (1) or (2) of this subdivision, may commit the defendant to county  
23 jail as follows:

24 (A) For a full term in custody as determined in accordance with  
25 the applicable sentencing law.

26 (B) (i) For a term as determined in accordance with the  
27 applicable sentencing law, but suspend execution of a concluding  
28 portion of the term selected in the court's discretion, during which  
29 time the defendant shall be supervised by the county probation  
30 officer in accordance with the terms, conditions, and procedures  
31 generally applicable to persons placed on probation, for the  
32 remaining unserved portion of the sentence imposed by the court.  
33 The period of supervision shall be mandatory, and may not be  
34 earlier terminated except by court order. Any proceeding to revoke  
35 or modify mandatory supervision under this subparagraph shall  
36 be conducted pursuant to either subdivisions (a) and (b) of Section  
37 1203.2 or Section 1203.3. During the period when the defendant  
38 is under such supervision, unless in actual custody related to the  
39 sentence imposed by the court, the defendant shall be entitled to  
40 only actual time credit against the term of imprisonment imposed

1 by the court. Any time period that is suspended because a person  
2 has absconded shall not be credited toward the period of  
3 supervision.

4 (ii) The portion of a defendant's sentenced term during which  
5 time he or she is supervised by the county probation officer  
6 pursuant to this subparagraph shall be known as mandatory  
7 supervision.

8 (6) The sentencing changes made by the act that added this  
9 subdivision shall be applied prospectively to any person sentenced  
10 on or after October 1, 2011.

11 (i) This section shall become operative on January 1, 2014.

12 SEC. 153. Section 1203.097 of the Penal Code is amended to  
13 read:

14 1203.097. (a) If a person is granted probation for a crime in  
15 which the victim is a person defined in Section 6211 of the Family  
16 Code, the terms of probation shall include all of the following:

17 (1) A minimum period of probation of 36 months, which may  
18 include a period of summary probation as appropriate.

19 (2) A criminal court protective order protecting the victim from  
20 further acts of violence, threats, stalking, sexual abuse, and  
21 harassment, and, if appropriate, containing residence exclusion or  
22 stay-away conditions.

23 (3) Notice to the victim of the disposition of the case.

24 (4) Booking the defendant within one week of sentencing if the  
25 defendant has not already been booked.

26 (5) (A) A minimum payment by the defendant of five hundred  
27 dollars (\$500) to be disbursed as specified in this paragraph. If,  
28 after a hearing in open court, the court finds that the defendant  
29 does not have the ability to pay, the court may reduce or waive  
30 this fee. If the court exercises its discretion to reduce or waive the  
31 fee, it shall state the reason on the record.

32 (B) Two-thirds of the moneys deposited with the county  
33 treasurer pursuant to this section shall be retained by counties and  
34 deposited in the domestic violence programs special fund created  
35 pursuant to Section 18305 of the Welfare and Institutions Code,  
36 to be expended for the purposes of Chapter 5 (commencing with  
37 Section 18290) of Part 6 of Division 9 of the Welfare and  
38 Institutions Code. The remainder shall be transferred, once a month,  
39 to the Controller for deposit in equal amounts in the Domestic  
40 Violence Restraining Order Reimbursement Fund and in the

1 Domestic Violence Training and Education Fund, which are hereby  
2 created, in an amount equal to one-third of funds collected during  
3 the preceding month. Moneys deposited into these funds pursuant  
4 to this section shall be available upon appropriation by the  
5 Legislature and shall be distributed each fiscal year as follows:

6 (i) Funds from the Domestic Violence Restraining Order  
7 Reimbursement Fund shall be distributed to local law enforcement  
8 or other criminal justice agencies for state-mandated local costs  
9 resulting from the notification requirements set forth in subdivision  
10 (b) of Section 6380 of the Family Code, based on the annual  
11 notification from the Department of Justice of the number of  
12 restraining orders issued and registered in the state domestic  
13 violence restraining order registry maintained by the Department  
14 of Justice, for the development and maintenance of the domestic  
15 violence restraining order databank system.

16 (ii) Funds from the Domestic Violence Training and Education  
17 Fund shall support a statewide training and education program to  
18 increase public awareness of domestic violence and to improve  
19 the scope and quality of services provided to the victims of  
20 domestic violence. Grants to support this program shall be awarded  
21 on a competitive basis and be administered by the State Department  
22 of Public Health, in consultation with the statewide domestic  
23 violence coalition, which is eligible to receive funding under this  
24 section.

25 (6) Successful completion of a batterer's program, as defined  
26 in subdivision (c), or if none is available, another appropriate  
27 counseling program designated by the court, for a period not less  
28 than one year with periodic progress reports by the program to the  
29 court every three months or less and weekly sessions of a minimum  
30 of two hours class time duration. The defendant shall attend  
31 consecutive weekly sessions, unless granted an excused absence  
32 for good cause by the program for no more than three individual  
33 sessions during the entire program, and shall complete the program  
34 within 18 months, unless, after a hearing, the court finds good  
35 cause to modify the requirements of consecutive attendance or  
36 completion within 18 months.

37 (7) (A) (i) The court shall order the defendant to comply with  
38 all probation requirements, including the requirements to attend  
39 counseling, keep all program appointments, and pay program fees  
40 based upon the ability to pay.

1 (ii) The terms of probation for offenders shall not be lifted until  
2 all reasonable fees due to the counseling program have been paid  
3 in full, but in no case shall probation be extended beyond the term  
4 provided in subdivision (a) of Section 1203.1. If the court finds  
5 that the defendant does not have the ability to pay the fees based  
6 on the defendant's changed circumstances, the court may reduce  
7 or waive the fees.

8 (B) Upon request by the batterer's program, the court shall  
9 provide the defendant's arrest report, prior incidents of violence,  
10 and treatment history to the program.

11 (8) The court also shall order the defendant to perform a  
12 specified amount of appropriate community service, as designated  
13 by the court. The defendant shall present the court with proof of  
14 completion of community service and the court shall determine if  
15 the community service has been satisfactorily completed. If  
16 sufficient staff and resources are available, the community service  
17 shall be performed under the jurisdiction of the local agency  
18 overseeing a community service program.

19 (9) If the program finds that the defendant is unsuitable, the  
20 program shall immediately contact the probation department or  
21 the court. The probation department or court shall either recalendar  
22 the case for hearing or refer the defendant to an appropriate  
23 alternative batterer's program.

24 (10) (A) Upon recommendation of the program, a court shall  
25 require a defendant to participate in additional sessions throughout  
26 the probationary period, unless it finds that it is not in the interests  
27 of justice to do so, states its reasons on the record, and enters them  
28 into the minutes. In deciding whether the defendant would benefit  
29 from more sessions, the court shall consider whether any of the  
30 following conditions exists:

31 (i) The defendant has been violence free for a minimum of six  
32 months.

33 (ii) The defendant has cooperated and participated in the  
34 batterer's program.

35 (iii) The defendant demonstrates an understanding of and  
36 practices positive conflict resolution skills.

37 (iv) The defendant blames, degrades, or has committed acts that  
38 dehumanize the victim or puts at risk the victim's safety, including,  
39 but not limited to, molesting, stalking, striking, attacking,  
40 threatening, sexually assaulting, or battering the victim.



1 (v) The defendant demonstrates an understanding that the use  
2 of coercion or violent behavior to maintain dominance is  
3 unacceptable in an intimate relationship.

4 (vi) The defendant has made threats to harm anyone in any  
5 manner.

6 (vii) The defendant has complied with applicable requirements  
7 under paragraph (6) of subdivision (c) or subparagraph (C) to  
8 receive alcohol counseling, drug counseling, or both.

9 (viii) The defendant demonstrates acceptance of responsibility  
10 for the abusive behavior perpetrated against the victim.

11 (B) The program shall immediately report any violation of the  
12 terms of the protective order, including any new acts of violence  
13 or failure to comply with the program requirements, to the court,  
14 the prosecutor, and, if formal probation has been ordered, to the  
15 probation department. The probationer shall file proof of  
16 enrollment in a batterer's program with the court within 30 days  
17 of conviction.

18 (C) Concurrent with other requirements under this section, in  
19 addition to, and not in lieu of, the batterer's program, and unless  
20 prohibited by the referring court, the probation department or the  
21 court may make provisions for a defendant to use his or her  
22 resources to enroll in a chemical dependency program or to enter  
23 voluntarily a licensed chemical dependency recovery hospital or  
24 residential treatment program that has a valid license issued by the  
25 state to provide alcohol or drug services to receive program  
26 participation credit, as determined by the court. The probation  
27 department shall document evidence of this hospital or residential  
28 treatment participation in the defendant's program file.

29 (11) The conditions of probation may include, in lieu of a fine,  
30 but not in lieu of the fund payment required under paragraph (5),  
31 one or more of the following requirements:

32 (A) That the defendant make payments to a battered women's  
33 shelter, up to a maximum of five thousand dollars (\$5,000).

34 (B) That the defendant reimburse the victim for reasonable  
35 expenses that the court finds are the direct result of the defendant's  
36 offense.

37 For any order to pay a fine, to make payments to a battered  
38 women's shelter, or to pay restitution as a condition of probation  
39 under this subdivision, the court shall make a determination of the  
40 defendant's ability to pay. Determination of a defendant's ability

1 to pay may include his or her future earning capacity. A defendant  
2 shall bear the burden of demonstrating lack of his or her ability to  
3 pay. Express findings by the court as to the factors bearing on the  
4 amount of the fine shall not be required. In no event shall any order  
5 to make payments to a battered women's shelter be made if it  
6 would impair the ability of the defendant to pay direct restitution  
7 to the victim or court-ordered child support. When the injury to a  
8 married person is caused, in whole or in part, by the criminal acts  
9 of his or her spouse in violation of this section, the community  
10 property shall not be used to discharge the liability of the offending  
11 spouse for restitution to the injured spouse, as required by Section  
12 1203.04, as operative on or before August 2, 1995, or Section  
13 1202.4, or to a shelter for costs with regard to the injured spouse,  
14 until all separate property of the offending spouse is exhausted.

15 (12) If it appears to the prosecuting attorney, the court, or the  
16 probation department that the defendant is performing  
17 unsatisfactorily in the assigned program, is not benefiting from  
18 counseling, or has engaged in criminal conduct, upon request of  
19 the probation officer, the prosecuting attorney, or on its own  
20 motion, the court, as a priority calendar item, shall hold a hearing  
21 to determine whether further sentencing should proceed. The court  
22 may consider factors, including, but not limited to, any violence  
23 by the defendant against the former or a new victim while on  
24 probation and noncompliance with any other specific condition of  
25 probation. If the court finds that the defendant is not performing  
26 satisfactorily in the assigned program, is not benefiting from the  
27 program, has not complied with a condition of probation, or has  
28 engaged in criminal conduct, the court shall terminate the  
29 defendant's participation in the program and shall proceed with  
30 further sentencing.

31 (b) If a person is granted formal probation for a crime in which  
32 the victim is a person defined in Section 6211 of the Family Code,  
33 in addition to the terms specified in subdivision (a), all of the  
34 following shall apply:

35 (1) The probation department shall make an investigation and  
36 take into consideration the defendant's age, medical history,  
37 employment and service records, educational background,  
38 community and family ties, prior incidents of violence, police  
39 report, treatment history, if any, demonstrable motivation, and  
40 other mitigating factors in determining which batterer's program

1 would be appropriate for the defendant. This information shall be  
2 provided to the batterer's program if it is requested. The probation  
3 department shall also determine which community programs the  
4 defendant would benefit from and which of those programs would  
5 accept the defendant. The probation department shall report its  
6 findings and recommendations to the court.

7 (2) The court shall advise the defendant that the failure to report  
8 to the probation department for the initial investigation, as directed  
9 by the court, or the failure to enroll in a specified program, as  
10 directed by the court or the probation department, shall result in  
11 possible further incarceration. The court, in the interests of justice,  
12 may relieve the defendant from the prohibition set forth in this  
13 subdivision based upon the defendant's mistake or excusable  
14 neglect. Application for this relief shall be filed within 20 court  
15 days of the missed deadline. This time limitation may not be  
16 extended. A copy of any application for relief shall be served on  
17 the office of the prosecuting attorney.

18 (3) After the court orders the defendant to a batterer's program,  
19 the probation department shall conduct an initial assessment of  
20 the defendant, including, but not limited to, all of the following:

- 21 (A) Social, economic, and family background.
- 22 (B) Education.
- 23 (C) Vocational achievements.
- 24 (D) Criminal history.
- 25 (E) Medical history.
- 26 (F) Substance abuse history.
- 27 (G) Consultation with the probation officer.
- 28 (H) Verbal consultation with the victim, only if the victim  
29 desires to participate.
- 30 (I) Assessment of the future probability of the defendant  
31 committing murder.

32 (4) The probation department shall attempt to notify the victim  
33 regarding the requirements for the defendant's participation in the  
34 batterer's program, as well as regarding available victim resources.  
35 The victim also shall be informed that attendance in any program  
36 does not guarantee that an abuser will not be violent.

37 (c) The court or the probation department shall refer defendants  
38 only to batterer's programs that follow standards outlined in  
39 paragraph (1), which may include, but are not limited to, lectures,  
40 classes, group discussions, and counseling. The probation

1 department shall design and implement an approval and renewal  
2 process for batterer's programs and shall solicit input from criminal  
3 justice agencies and domestic violence victim advocacy programs.

4 (1) The goal of a batterer's program under this section shall be  
5 to stop domestic violence. A batterer's program shall consist of  
6 the following components:

7 (A) Strategies to hold the defendant accountable for the violence  
8 in a relationship, including, but not limited to, providing the  
9 defendant with a written statement that the defendant shall be held  
10 accountable for acts or threats of domestic violence.

11 (B) A requirement that the defendant participate in ongoing  
12 same-gender group sessions.

13 (C) An initial intake that provides written definitions to the  
14 defendant of physical, emotional, sexual, economic, and verbal  
15 abuse, and the techniques for stopping these types of abuse.

16 (D) Procedures to inform the victim regarding the requirements  
17 for the defendant's participation in the intervention program as  
18 well as regarding available victim resources. The victim also shall  
19 be informed that attendance in any program does not guarantee  
20 that an abuser will not be violent.

21 (E) A requirement that the defendant attend group sessions free  
22 of chemical influence.

23 (F) Educational programming that examines, at a minimum,  
24 gender roles, socialization, the nature of violence, the dynamics  
25 of power and control, and the effects of abuse on children and  
26 others.

27 (G) A requirement that excludes any couple counseling or family  
28 counseling, or both.

29 (H) Procedures that give the program the right to assess whether  
30 or not the defendant would benefit from the program and to refuse  
31 to enroll the defendant if it is determined that the defendant would  
32 not benefit from the program, so long as the refusal is not because  
33 of the defendant's inability to pay. If possible, the program shall  
34 suggest an appropriate alternative program.

35 (I) Program staff who, to the extent possible, have specific  
36 knowledge regarding, but not limited to, spousal abuse, child abuse,  
37 sexual abuse, substance abuse, the dynamics of violence and abuse,  
38 the law, and procedures of the legal system.

39 (J) Program staff who are encouraged to utilize the expertise,  
40 training, and assistance of local domestic violence centers.

1 (K) A requirement that the defendant enter into a written  
2 agreement with the program, which shall include an outline of the  
3 contents of the program, the attendance requirements, the  
4 requirement to attend group sessions free of chemical influence,  
5 and a statement that the defendant may be removed from the  
6 program if it is determined that the defendant is not benefiting  
7 from the program or is disruptive to the program.

8 (L) A requirement that the defendant sign a confidentiality  
9 statement prohibiting disclosure of any information obtained  
10 through participating in the program or during group sessions  
11 regarding other participants in the program.

12 (M) Program content that provides cultural and ethnic  
13 sensitivity.

14 (N) A requirement of a written referral from the court or  
15 probation department prior to permitting the defendant to enroll  
16 in the program. The written referral shall state the number of  
17 minimum sessions required by the court.

18 (O) Procedures for submitting to the probation department all  
19 of the following uniform written responses:

20 (i) Proof of enrollment, to be submitted to the court and the  
21 probation department and to include the fee determined to be  
22 charged to the defendant, based upon the ability to pay, for each  
23 session.

24 (ii) Periodic progress reports that include attendance, fee  
25 payment history, and program compliance.

26 (iii) Final evaluation that includes the program's evaluation of  
27 the defendant's progress, using the criteria set forth in subparagraph  
28 (A) of paragraph (10) of subdivision (a) and recommendation for  
29 either successful or unsuccessful termination or continuation in  
30 the program.

31 (P) A sliding fee schedule based on the defendant's ability to  
32 pay. The batterer's program shall develop and utilize a sliding fee  
33 scale that recognizes both the defendant's ability to pay and the  
34 necessity of programs to meet overhead expenses. An indigent  
35 defendant may negotiate a deferred payment schedule, but shall  
36 pay a nominal fee, if the defendant has the ability to pay the  
37 nominal fee. Upon a hearing and a finding by the court that the  
38 defendant does not have the financial ability to pay the nominal  
39 fee, the court shall waive this fee. The payment of the fee shall be  
40 made a condition of probation if the court determines the defendant

1 has the present ability to pay the fee. The fee shall be paid during  
2 the term of probation unless the program sets other conditions.  
3 The acceptance policies shall be in accordance with the scaled fee  
4 system.

5 (2) The court shall refer persons only to batterer's programs  
6 that have been approved by the probation department pursuant to  
7 paragraph (5). The probation department shall do both of the  
8 following:

9 (A) Provide for the issuance of a provisional approval, provided  
10 that the applicant is in substantial compliance with applicable laws  
11 and regulations and an urgent need for approval exists. A  
12 provisional approval shall be considered an authorization to provide  
13 services and shall not be considered a vested right.

14 (B) If the probation department determines that a program is  
15 not in compliance with standards set by the department, the  
16 department shall provide written notice of the noncompliant areas  
17 to the program. The program shall submit a written plan of  
18 corrections within 14 days from the date of the written notice on  
19 noncompliance. A plan of correction shall include, but not be  
20 limited to, a description of each corrective action and timeframe  
21 for implementation. The department shall review and approve all  
22 or any part of the plan of correction and notify the program of  
23 approval or disapproval in writing. If the program fails to submit  
24 a plan of correction or fails to implement the approved plan of  
25 correction, the department shall consider whether to revoke or  
26 suspend approval and, upon revoking or suspending approval, shall  
27 have the option to cease referrals of defendants under this section.

28 (3) No program, regardless of its source of funding, shall be  
29 approved unless it meets all of the following standards:

30 (A) The establishment of guidelines and criteria for education  
31 services, including standards of services that may include lectures,  
32 classes, and group discussions.

33 (B) Supervision of the defendant for the purpose of evaluating  
34 the person's progress in the program.

35 (C) Adequate reporting requirements to ensure that all persons  
36 who, after being ordered to attend and complete a program, may  
37 be identified for either failure to enroll in, or failure to successfully  
38 complete, the program or for the successful completion of the  
39 program as ordered. The program shall notify the court and the  
40 probation department, in writing, within the period of time and in

1 the manner specified by the court of any person who fails to  
2 complete the program. Notification shall be given if the program  
3 determines that the defendant is performing unsatisfactorily or if  
4 the defendant is not benefiting from the education, treatment, or  
5 counseling.

6 (D) No victim shall be compelled to participate in a program  
7 or counseling, and no program may condition a defendant's  
8 enrollment on participation by the victim.

9 (4) In making referrals of indigent defendants to approved  
10 batterer's programs, the probation department shall apportion these  
11 referrals evenly among the approved programs.

12 (5) The probation department shall have the sole authority to  
13 approve a batterer's program for probation. The program shall be  
14 required to obtain only one approval but shall renew that approval  
15 annually.

16 (A) The procedure for the approval of a new or existing program  
17 shall include all of the following:

18 (i) The completion of a written application containing necessary  
19 and pertinent information describing the applicant program.

20 (ii) The demonstration by the program that it possesses adequate  
21 administrative and operational capability to operate a batterer's  
22 treatment program. The program shall provide documentation to  
23 prove that the program has conducted batterer's programs for at  
24 least one year prior to application. This requirement may be waived  
25 under subparagraph (A) of paragraph (2) if there is no existing  
26 batterer's program in the city, county, or city and county.

27 (iii) The onsite review of the program, including monitoring of  
28 a session to determine that the program adheres to applicable  
29 statutes and regulations.

30 (iv) The payment of the approval fee.

31 (B) The probation department shall fix a fee for approval not  
32 to exceed two hundred fifty dollars (\$250) and for approval renewal  
33 not to exceed two hundred fifty dollars (\$250) every year in an  
34 amount sufficient to cover its costs in administering the approval  
35 process under this section. No fee shall be charged for the approval  
36 of local governmental entities.

37 (C) The probation department has the sole authority to approve  
38 the issuance, denial, suspension, or revocation of approval and to  
39 cease new enrollments or referrals to a batterer's program under  
40 this section. The probation department shall review information

1 relative to a program's performance or failure to adhere to  
2 standards, or both. The probation department may suspend or  
3 revoke an approval issued under this subdivision or deny an  
4 application to renew an approval or to modify the terms and  
5 conditions of approval, based on grounds established by probation,  
6 including, but not limited to, either of the following:

7 (i) Violation of this section by any person holding approval or  
8 by a program employee in a program under this section.

9 (ii) Misrepresentation of any material fact in obtaining the  
10 approval.

11 (6) For defendants who are chronic users or serious abusers of  
12 drugs or alcohol, standard components in the program shall include  
13 concurrent counseling for substance abuse and violent behavior,  
14 and in appropriate cases, detoxification and abstinence from the  
15 abused substance.

16 (7) The program shall conduct an exit conference that assesses  
17 the defendant's progress during his or her participation in the  
18 batterer's program.

19 (d) An act or omission relating to the approval of a batterer's  
20 treatment program under paragraph (5) of subdivision (c) is a  
21 discretionary act pursuant to Section 820.2 of the Government  
22 Code.

23 SEC. 153.5. Section 1203.4a of the Penal Code is amended to  
24 read:

25 1203.4a. (a) Every defendant convicted of a misdemeanor and  
26 not granted probation, and every defendant convicted of an  
27 infraction shall, at any time after the lapse of one year from the  
28 date of pronouncement of judgment, if he or she has fully complied  
29 with and performed the sentence of the court, is not then serving  
30 a sentence for any offense and is not under charge of commission  
31 of any crime, and has, since the pronouncement of judgment, lived  
32 an honest and upright life and has conformed to and obeyed the  
33 laws of the land, be permitted by the court to withdraw his or her  
34 plea of guilty or nolo contendere and enter a plea of not guilty; or  
35 if he or she has been convicted after a plea of not guilty, the court  
36 shall set aside the verdict of guilty; and in either case the court  
37 shall thereupon dismiss the accusatory pleading against the  
38 defendant, who shall thereafter be released from all penalties and  
39 disabilities resulting from the offense of which he or she has been  
40 convicted, except as provided in Chapter 3 (commencing with



1 Section 29900) of Division 9 of Title 4 of Part 6 of this code or  
2 Section 13555 of the Vehicle Code.

3 (b) If a defendant does not satisfy all the requirements of  
4 subdivision (a), after a lapse of one year from the date of  
5 pronouncement of judgment, a court, in its discretion and in the  
6 interests of justice, may grant the relief available pursuant to  
7 subdivision (a) to a defendant convicted of an infraction, or of a  
8 misdemeanor and not granted probation, or both, if he or she has  
9 fully complied with and performed the sentence of the court, is  
10 not then serving a sentence for any offense, and is not under charge  
11 of commission of any crime.

12 (c) (1) The defendant shall be informed of the provisions of  
13 this section, either orally or in writing, at the time he or she is  
14 sentenced. The defendant may make an application and change of  
15 plea in person or by attorney, or by the probation officer authorized  
16 in writing, provided that, in any subsequent prosecution of the  
17 defendant for any other offense, the prior conviction may be  
18 pleaded and proved and shall have the same effect as if relief had  
19 not been granted pursuant to this section.

20 (2) Dismissal of an accusatory pleading pursuant to this section  
21 does not permit a person to own, possess, or have in his or her  
22 custody or control any firearm or prevent his or her conviction  
23 under Chapter 2 (commencing with Section 29800) of Division 9  
24 of Title 4 of Part 6.

25 (3) Dismissal of an accusatory pleading underlying a conviction  
26 pursuant to this section does not permit a person prohibited from  
27 holding public office as a result of that conviction to hold public  
28 office.

29 (d) This section applies to any conviction specified in  
30 subdivision (a) or (b) that occurred before, as well as those  
31 occurring after, the effective date of this section, except that this  
32 section does not apply to the following:

33 (1) A misdemeanor violation of subdivision (c) of Section 288.

34 (2) Any misdemeanor falling within the provisions of Section  
35 42002.1 of the Vehicle Code.

36 (3) Any infraction falling within the provisions of Section 42001  
37 of the Vehicle Code.

38 (e) A person who petitions for a dismissal of a charge under  
39 this section may be required to reimburse the county and the court  
40 for the cost of services rendered at a rate to be determined by the

1 county board of supervisors for the county and by the court for the  
 2 court, not to exceed sixty dollars (\$60), and to reimburse any city  
 3 for the cost of services rendered at a rate to be determined by the  
 4 city council not to exceed sixty dollars (\$60). Ability to make this  
 5 reimbursement shall be determined by the court using the standards  
 6 set forth in paragraph (2) of subdivision (g) of Section 987.8 and  
 7 shall not be a prerequisite to a person’s eligibility under this  
 8 section. The court may order reimbursement in any case in which  
 9 the petitioner appears to have the ability to pay, without undue  
 10 hardship, all or any portion of the cost for services established  
 11 pursuant to this subdivision.

12 (f) A petition for dismissal of an infraction pursuant to this  
 13 section shall be by written declaration, except upon a showing of  
 14 compelling need. Dismissal of an infraction shall not be granted  
 15 under this section unless the prosecuting attorney has been given  
 16 at least 15 days’ notice of the petition for dismissal. It shall be  
 17 presumed that the prosecuting attorney has received notice if proof  
 18 of service is filed with the court.

19 (g) Any determination of amount made by a court under this  
 20 section shall be valid only if either (1) made under procedures  
 21 adopted by the Judicial Council or (2) approved by the Judicial  
 22 Council.

23 SEC. 154. Section 1230 of the Penal Code is amended to read:

24 1230. (a) Each county is hereby authorized to establish in each  
 25 county treasury a Community Corrections Performance Incentives  
 26 Fund (CCPIF), to receive all amounts allocated to that county for  
 27 purposes of implementing this chapter.

28 (b) In any fiscal year for which a county receives moneys to be  
 29 expended for the implementation of this chapter, the moneys,  
 30 including any interest, shall be made available to the CPO of that  
 31 county, within 30 days of the deposit of those moneys into the  
 32 fund, for the implementation of the community corrections program  
 33 authorized by this chapter.

34 (1) The community corrections program shall be developed and  
 35 implemented by probation and advised by a local Community  
 36 Corrections Partnership.

37 (2) The local Community Corrections Partnership shall be  
 38 chaired by the CPO and comprised of the following membership:

39 (A) The presiding judge of the superior court, or his or her  
 40 designee.

- 1 (B) A county supervisor or the chief administrative officer for
  - 2 the county or a designee of the board of supervisors.
  - 3 (C) The district attorney.
  - 4 (D) The public defender.
  - 5 (E) The sheriff.
  - 6 (F) A chief of police.
  - 7 (G) The head of the county department of social services.
  - 8 (H) The head of the county department of mental health.
  - 9 (I) The head of the county department of employment.
  - 10 (J) The head of the county alcohol and substance abuse program.
  - 11 (K) The head of the county office of education.
  - 12 (L) A representative from a community-based organization with
  - 13 experience in successfully providing rehabilitative services to
  - 14 persons who have been convicted of a criminal offense.
  - 15 (M) An individual who represents the interests of victims.
- 16 (3) Funds allocated to probation pursuant to this act shall be
- 17 used to provide supervision and rehabilitative services for adult
- 18 felony offenders subject to probation, and shall be spent on
- 19 evidence-based community corrections practices and programs,
- 20 as defined in subdivision (d) of Section 1229, which may include,
- 21 but are not limited to, the following:
- 22 (A) Implementing and expanding evidence-based risk and needs
  - 23 assessments.
  - 24 (B) Implementing and expanding intermediate sanctions that
  - 25 include, but are not limited to, electronic monitoring, mandatory
  - 26 community service, home detention, day reporting, restorative
  - 27 justice programs, work furlough programs, and incarceration in a
  - 28 county jail for up to 90 days.
  - 29 (C) Providing more intensive probation supervision.
  - 30 (D) Expanding the availability of evidence-based rehabilitation
  - 31 programs, including, but not limited to, drug and alcohol treatment,
  - 32 mental health treatment, anger management, cognitive behavior
  - 33 programs, and job training and employment services.
  - 34 (E) Evaluating the effectiveness of rehabilitation and supervision
  - 35 programs and ensuring program fidelity.
- 36 (4) The CPO shall have discretion to spend funds on any of the
- 37 above practices and programs consistent with this act but, at a
- 38 minimum, shall devote at least 5 percent of all funding received
- 39 to evaluate the effectiveness of those programs and practices
- 40 implemented with the funds provided pursuant to this chapter. A

1 CPO may petition the Administrative Office of the Courts to have  
2 this restriction waived, and the Administrative Office of the Courts  
3 shall have the authority to grant such a petition, if the CPO can  
4 demonstrate that the department is already devoting sufficient  
5 funds to the evaluation of these programs and practices.

6 (5) Each probation department receiving funds under this chapter  
7 shall maintain a complete and accurate accounting of all funds  
8 received pursuant to this chapter.

9 SEC. 155. The heading of Title 4.5 (commencing with Section  
10 13600) of Part 4 of the Penal Code, as amended by Section 7 of  
11 Chapter 136 of the Statutes of 2011, is repealed.

12 SEC. 156. Section 1370.1 of the Penal Code is amended to  
13 read:

14 1370.1. (a) (1) (A) If the defendant is found mentally  
15 competent, the criminal process shall resume, the trial on the  
16 offense charged shall proceed, and judgment may be pronounced.

17 (B) If the defendant is found mentally incompetent and is  
18 developmentally disabled, the trial or judgment shall be suspended  
19 until the defendant becomes mentally competent.

20 (i) Except as provided in clause (ii) or (iii), the court shall  
21 consider a recommendation for placement, which recommendation  
22 shall be made to the court by the director of a regional center or  
23 designee. In the meantime, the court shall order that the mentally  
24 incompetent defendant be delivered by the sheriff or other person  
25 designated by the court to a state hospital or developmental center  
26 for the care and treatment of the developmentally disabled or any  
27 other available residential facility approved by the director of a  
28 regional center for the developmentally disabled established under  
29 Division 4.5 (commencing with Section 4500) of the Welfare and  
30 Institutions Code as will promote the defendant's speedy attainment  
31 of mental competence, or be placed on outpatient status pursuant  
32 to the provisions of Section 1370.4 and Title 15 (commencing with  
33 Section 1600).

34 (ii) However, if the action against the defendant who has been  
35 found mentally incompetent is on a complaint charging a felony  
36 offense specified in Section 290, the prosecutor shall determine  
37 whether the defendant previously has been found mentally  
38 incompetent to stand trial pursuant to this chapter on a charge of  
39 a Section 290 offense, or whether the defendant is currently the  
40 subject of a pending Section 1368 proceeding arising out of a

1 charge of a Section 290 offense. If either determination is made,  
2 the prosecutor shall so notify the court and defendant in writing.  
3 After this notification, and opportunity for hearing, the court shall  
4 order that the defendant be delivered by the sheriff to a state  
5 hospital or other secure treatment facility for the care and treatment  
6 of the developmentally disabled unless the court makes specific  
7 findings on the record that an alternative placement would provide  
8 more appropriate treatment for the defendant and would not pose  
9 a danger to the health and safety of others.

10 (iii) If the action against the defendant who has been found  
11 mentally incompetent is on a complaint charging a felony offense  
12 specified in Section 290 and the defendant has been denied bail  
13 pursuant to subdivision (b) of Section 12 of Article I of the  
14 California Constitution because the court has found, based upon  
15 clear and convincing evidence, a substantial likelihood that the  
16 person's release would result in great bodily harm to others, the  
17 court shall order that the defendant be delivered by the sheriff to  
18 a state hospital for the care and treatment of the developmentally  
19 disabled unless the court makes specific findings on the record  
20 that an alternative placement would provide more appropriate  
21 treatment for the defendant and would not pose a danger to the  
22 health and safety of others.

23 (iv) The clerk of the court shall notify the Department of Justice  
24 in writing of any finding of mental incompetence with respect to  
25 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
26 or her state summary criminal history information.

27 (C) Upon becoming competent, the court shall order that the  
28 defendant be returned to the committing court pursuant to the  
29 procedures set forth in paragraph (2) of subdivision (a) of Section  
30 1372 or by another person designated by the court. The court shall  
31 further determine conditions under which the person may be absent  
32 from the placement for medical treatment, social visits, and other  
33 similar activities. Required levels of supervision and security for  
34 these activities shall be specified.

35 (D) The court shall transmit a copy of its order to the regional  
36 center director or designee and to the Director of Developmental  
37 Services.

38 (E) A defendant charged with a violent felony may not be placed  
39 in a facility or delivered to a state hospital, developmental center,  
40 or residential facility pursuant to this subdivision unless the facility,

1 state hospital, developmental center, or residential facility has a  
2 secured perimeter or a locked and controlled treatment facility,  
3 and the judge determines that the public safety will be protected.

4 (F) For purposes of this paragraph, “violent felony” means an  
5 offense specified in subdivision (c) of Section 667.5.

6 (G) A defendant charged with a violent felony may be placed  
7 on outpatient status, as specified in Section 1370.4 or 1600, only  
8 if the court finds that the placement will not pose a danger to the  
9 health or safety of others.

10 (H) As used in this section, “developmental disability” means  
11 a disability that originates before an individual attains 18 years of  
12 age, continues, or can be expected to continue, indefinitely and  
13 constitutes a substantial handicap for the individual, and shall not  
14 include other handicapping conditions that are solely physical in  
15 nature. As defined by the Director of Developmental Services, in  
16 consultation with the Superintendent of Public Instruction, this  
17 term shall include intellectual disability, cerebral palsy, epilepsy,  
18 and autism. This term shall also include handicapping conditions  
19 found to be closely related to intellectual disability or to require  
20 treatment similar to that required for individuals with an intellectual  
21 disability, but shall not include other handicapping conditions that  
22 are solely physical in nature.

23 (2) Prior to making the order directing that the defendant be  
24 confined in a state hospital, developmental center, or other  
25 residential facility, or be placed on outpatient status, the court shall  
26 order the regional center director or designee to evaluate the  
27 defendant and to submit to the court within 15 judicial days of the  
28 order a written recommendation as to whether the defendant should  
29 be committed to a state hospital or developmental center or to any  
30 other available residential facility approved by the regional center  
31 director. A person shall not be admitted to a state hospital,  
32 developmental center, or other residential facility or accepted for  
33 outpatient status under Section 1370.4 without having been  
34 evaluated by the regional center director or designee.

35 (3) When the court orders that the defendant be confined in a  
36 state hospital or other secure treatment facility pursuant to clause  
37 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall  
38 provide copies of the following documents which shall be taken  
39 with the defendant to the state hospital or other secure treatment  
40 facility where the defendant is to be confined:

1 (A) State summary criminal history information.

2 (B) Any arrest reports prepared by the police department or  
3 other law enforcement agency.

4 (C) Records of a finding of mental incompetence pursuant to  
5 this chapter arising out of a complaint charging a felony offense  
6 specified in Section 290 or a pending Section 1368 proceeding  
7 arising out of a charge of a Section 290 offense.

8 (4) When the defendant is committed to a residential facility  
9 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
10 court makes the findings specified in clause (ii) or (iii) of  
11 subparagraph (B) of paragraph (1) to assign the defendant to a  
12 facility other than a state hospital or other secure treatment facility,  
13 the court shall order that notice be given to the appropriate law  
14 enforcement agency or agencies having local jurisdiction at the  
15 site of the placement facility of a finding of mental incompetence  
16 pursuant to this chapter arising out of a charge of a Section 290  
17 offense.

18 (5) (A) If the defendant is committed or transferred to a state  
19 hospital or developmental center pursuant to this section, the court  
20 may, upon receiving the written recommendation of the executive  
21 director of the state hospital or developmental center and the  
22 regional center director that the defendant be transferred to a  
23 residential facility approved by the regional center director, order  
24 the defendant transferred to that facility. If the defendant is  
25 committed or transferred to a residential facility approved by the  
26 regional center director, the court may, upon receiving the written  
27 recommendation of the regional center director, transfer the  
28 defendant to a state hospital or developmental center or to another  
29 residential facility approved by the regional center director.

30 In the event of dismissal of the criminal charges before the  
31 defendant recovers competence, the person shall be subject to the  
32 applicable provisions of the Lanterman-Petris-Short Act (Part 1  
33 commencing with Section 5000) of Division 5 of the Welfare and  
34 Institutions Code) or to commitment or detention pursuant to a  
35 petition filed pursuant to Section 6502 of the Welfare and  
36 Institutions Code.

37 The defendant or prosecuting attorney may contest either kind  
38 of order of transfer by filing a petition with the court for a hearing,  
39 which shall be held if the court determines that sufficient grounds  
40 exist. At the hearing, the prosecuting attorney or the defendant

1 may present evidence bearing on the order of transfer. The court  
2 shall use the same standards as used in conducting probation  
3 revocation hearings pursuant to Section 1203.2.

4 Prior to making an order for transfer under this section, the court  
5 shall notify the defendant, the attorney of record for the defendant,  
6 the prosecuting attorney, and the regional center director or  
7 designee.

8 (B) If the defendant is committed to a state hospital or secure  
9 treatment facility pursuant to clause (ii) or (iii) of subparagraph  
10 (B) of paragraph (1) and is subsequently transferred to another  
11 facility, copies of the documents specified in paragraph (3) shall  
12 be taken with the defendant to the new facility. The transferring  
13 facility shall also notify the appropriate law enforcement agency  
14 or agencies having local jurisdiction at the site of the new facility  
15 that the defendant is a person subject to clause (ii) or (iii) of  
16 subparagraph (B) of paragraph (1).

17 (b) (1) Within 90 days of admission of a person committed  
18 pursuant to subdivision (a), the executive director or designee of  
19 the state hospital, developmental center, or other facility to which  
20 the defendant is committed, or the outpatient supervisor where the  
21 defendant is placed on outpatient status, shall make a written report  
22 to the committing court and the regional center director or a  
23 designee concerning the defendant's progress toward becoming  
24 mentally competent. If the defendant has not become mentally  
25 competent, but the report discloses a substantial likelihood the  
26 defendant will become mentally competent within the next 90  
27 days, the court may order that the defendant shall remain in the  
28 state hospital, developmental center, or other facility or on  
29 outpatient status for that period of time. Within 150 days of an  
30 admission made pursuant to subdivision (a) or if the defendant  
31 becomes mentally competent, the executive director or designee  
32 of the hospital or developmental center or person in charge of the  
33 facility or the outpatient supervisor shall report to the court and  
34 the regional center director or his or her designee regarding the  
35 defendant's progress toward becoming mentally competent. The  
36 court shall provide to the prosecutor and defense counsel copies  
37 of all reports under this section. If the report indicates that there  
38 is no substantial likelihood that the defendant has become mentally  
39 competent, the committing court shall order the defendant to be  
40 returned to the court for proceedings pursuant to paragraph (2) of



1 subdivision (c). The court shall transmit a copy of its order to the  
2 regional center director or designee and to the executive director  
3 of the developmental center.

4 (2) A defendant who has been committed or has been on  
5 outpatient status for 18 months, and is still hospitalized or on  
6 outpatient status, shall be returned to the committing court where  
7 a hearing shall be held pursuant to the procedures set forth in  
8 Section 1369. The court shall transmit a copy of its order to the  
9 regional center director or designee and the executive director of  
10 the developmental center.

11 (3) If it is determined by the court that no treatment for the  
12 defendant's mental impairment is being conducted, the defendant  
13 shall be returned to the committing court. A copy of this order  
14 shall be sent to the regional center director or designee and to the  
15 executive director of the developmental center.

16 (4) At each review by the court specified in this subdivision,  
17 the court shall determine if the security level of housing and  
18 treatment is appropriate and may make an order in accordance  
19 with its determination.

20 (c) (1) (A) At the end of three years from the date of  
21 commitment or a period of commitment equal to the maximum  
22 term of imprisonment provided by law for the most serious offense  
23 charged in the information, indictment, or misdemeanor complaint,  
24 whichever is shorter, a defendant who has not become mentally  
25 competent shall be returned to the committing court.

26 (B) The court shall notify the regional center director or designee  
27 and the executive director of the developmental center of that  
28 return and of any resulting court orders.

29 (2) In the event of dismissal of the criminal charges before the  
30 defendant becomes mentally competent, the defendant shall be  
31 subject to the applicable provisions of the Lanterman-Petris-Short  
32 Act (Part 1 (commencing with Section 5000) of Division 5 of the  
33 Welfare and Institutions Code), or to commitment and detention  
34 pursuant to a petition filed pursuant to Section 6502 of the Welfare  
35 and Institutions Code. If it is found that the person is not subject  
36 to commitment or detention pursuant to the applicable provision  
37 of the Lanterman-Petris-Short Act (Part 1 (commencing with  
38 Section 5000) of Division 5 of the Welfare and Institutions Code)  
39 or to commitment or detention pursuant to a petition filed pursuant  
40 to Section 6502 of the Welfare and Institutions Code, the individual

1 shall not be subject to further confinement pursuant to this article  
2 and the criminal action remains subject to dismissal pursuant to  
3 Section 1385. The court shall notify the regional center director  
4 and the executive director of the developmental center of any  
5 dismissal.

6 (d) Notwithstanding any other provision of this section, the  
7 criminal action remains subject to dismissal pursuant to Section  
8 1385. If at any time prior to the maximum period of time allowed  
9 for proceedings under this article, the regional center director  
10 concludes that the behavior of the defendant related to the  
11 defendant's criminal offense has been eliminated during time spent  
12 in court-ordered programs, the court may, upon recommendation  
13 of the regional center director, dismiss the criminal charges. The  
14 court shall transmit a copy of any order of dismissal to the regional  
15 center director and to the executive director of the developmental  
16 center.

17 (e) For the purpose of this section, "secure treatment facility"  
18 shall not include, except for state mental hospitals, state  
19 developmental centers, and correctional treatment facilities, a  
20 facility licensed pursuant to Chapter 2 (commencing with Section  
21 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
22 3.2 (commencing with Section 1569) of, Division 2 of the Health  
23 and Safety Code, or a community board and care facility.

24 SEC. 157. Section 2602 of the Penal Code is amended to read:

25 2602. (a) Except as provided in subdivision (b), no person  
26 sentenced to imprisonment or housed in a state prison shall be  
27 administered any psychiatric medication without his or her prior  
28 informed consent.

29 (b) If a psychiatrist determines that an inmate should be treated  
30 with psychiatric medication, but the inmate does not consent, the  
31 inmate may be involuntarily treated with the medication. Treatment  
32 may be given on either a nonemergency basis as provided in  
33 subdivision (c), or on an emergency or interim basis as provided  
34 in subdivision (d).

35 (c) The Department of Corrections and Rehabilitation may seek  
36 to initiate involuntary medication on a nonemergency basis only  
37 if all of the following conditions have been met:

38 (1) A psychiatrist has determined that the inmate has a serious  
39 mental disorder.

1 (2) A psychiatrist has determined that, as a result of that mental  
2 disorder, the inmate is gravely disabled and does not have the  
3 capacity to refuse treatment with psychiatric medications or is a  
4 danger to self or others.

5 (3) A psychiatrist has prescribed one or more psychiatric  
6 medications for the treatment of the inmate's disorder, has  
7 considered the risks, benefits, and treatment alternatives to  
8 involuntary medication, and has determined that the treatment  
9 alternatives to involuntary medication are unlikely to meet the  
10 needs of the patient.

11 (4) The inmate has been advised of the risks and benefits of,  
12 and treatment alternatives to, the psychiatric medication and refuses  
13 or is unable to consent to the administration of the medication.

14 (5) The inmate is provided a hearing before an administrative  
15 law judge.

16 (6) The inmate is provided counsel at least 21 days prior to the  
17 hearing, unless emergency or interim medication is being  
18 administered pursuant to subdivision (d), in which case the inmate  
19 would receive expedited access to counsel. The hearing shall be  
20 held not more than 30 days after the filing of the notice with the  
21 Office of Administrative Hearings, unless counsel for the inmate  
22 agrees to extend the date of the hearing.

23 (7) The inmate and counsel are provided with written notice of  
24 the hearing at least 21 days prior to the hearing, unless emergency  
25 or interim medication is being administered pursuant to subdivision  
26 (d), in which case the inmate would receive an expedited hearing.  
27 The written notice shall do all of the following:

28 (A) Set forth the diagnosis, the factual basis for the diagnosis,  
29 the basis upon which psychiatric medication is recommended, the  
30 expected benefits of the medication, any potential side effects and  
31 risks to the inmate from the medication, and any alternatives to  
32 treatment with the medication.

33 (B) Advise the inmate of the right to be present at the hearing,  
34 the right to be represented by counsel at all stages of the  
35 proceedings, the right to present evidence, and the right to  
36 cross-examine witnesses. Counsel for the inmate shall have access  
37 to all medical records and files of the inmate, but shall not have  
38 access to the confidential section of the inmate's central file which  
39 contains materials unrelated to medical treatment.

1 (C) Inform the inmate of his or her right to contest the finding  
2 of an administrative law judge authorizing treatment with  
3 involuntary medication by filing a petition for writ of  
4 administrative mandamus pursuant to Section 1094.5 of the Code  
5 of Civil Procedure, and his or her right to file a petition for writ  
6 of habeas corpus with respect to any decision of the Department  
7 of Corrections and Rehabilitation to continue treatment with  
8 involuntary medication after the administrative law judge has  
9 authorized treatment with involuntary medication.

10 (8) An administrative law judge determines by clear and  
11 convincing evidence that the inmate has a mental illness or  
12 disorder, that as a result of that illness the inmate is gravely  
13 disabled and lacks the capacity to consent to or refuse treatment  
14 with psychiatric medications or is a danger to self or others if not  
15 medicated, that there is no less intrusive alternative to involuntary  
16 medication, and that the medication is in the inmate's best medical  
17 interest. Failure of the department to provide timely or adequate  
18 notice pursuant to this section shall be excused only upon a  
19 showing of good cause and the absence of prejudice to the inmate.  
20 In making this determination, the administrative law judge may  
21 consider factors, including, but not limited to, the ability of the  
22 inmate's counsel to adequately prepare the case and to confer with  
23 the inmate, the continuity of care, and, if applicable, the need for  
24 protection of the inmate or institutional staff that would be  
25 compromised by a procedural default.

26 (9) The historical course of the inmate's mental disorder, as  
27 determined by available relevant information about the course of  
28 the inmate's mental disorder, shall be considered when it has direct  
29 bearing on the determination of whether the inmate is a danger to  
30 self or others, or is gravely disabled and incompetent to refuse  
31 medication as the result of a mental disorder.

32 (10) An inmate is entitled to file one motion for reconsideration  
33 following a determination that he or she may receive involuntary  
34 medication, and may seek a hearing to present new evidence, upon  
35 good cause shown.

36 (d) This section does not prohibit a physician from taking  
37 appropriate action in an emergency. An emergency exists when  
38 there is a sudden and marked change in an inmate's mental  
39 condition so that action is immediately necessary for the  
40 preservation of life or the prevention of serious bodily harm to the

1 inmate or others, and it is impractical, due to the seriousness of  
2 the emergency, to first obtain informed consent. If psychiatric  
3 medication is administered during an emergency, the medication  
4 shall only be that which is required to treat the emergency condition  
5 and shall be administered for only so long as the emergency  
6 continues to exist. If the Department of Corrections and  
7 Rehabilitation's clinicians identify a situation that jeopardizes the  
8 inmate's health or well-being as the result of a serious mental  
9 illness, and necessitates the continuation of medication beyond  
10 the initial 72 hours pending the full mental health hearing, the  
11 department shall give notice to the inmate and his or her counsel  
12 of the department's intention to seek an ex parte order to allow the  
13 continuance of medication pending the full hearing. The notice  
14 shall be served upon the inmate and counsel at the same time the  
15 inmate is given the written notice that the involuntary medication  
16 proceedings are being initiated and is appointed counsel as  
17 provided in subdivision (c). The order may be issued ex parte upon  
18 a showing that in the absence of the medication the emergency  
19 conditions are likely to recur. The request for an ex parte order  
20 shall be supported by an affidavit from the psychiatrist showing  
21 specific facts. The inmate and the inmate's appointed counsel shall  
22 have two business days to respond to the department's ex parte  
23 request to continue interim medication, and may present facts  
24 supported by an affidavit in opposition to the department's request.  
25 An administrative law judge shall review the ex parte request and  
26 shall have three business days to determine the merits of the  
27 department's request for an ex parte order. If an order is issued,  
28 the psychiatrist may continue the administration of the medication  
29 until the hearing described in paragraph (5) of subdivision (c) is  
30 held.

31 (1) The Department of Corrections and Rehabilitation shall file  
32 with the Office of Administrative Hearings, and serve on the inmate  
33 and his or her counsel, the written notice described in paragraph  
34 (7) of subdivision (c) within 72 hours of commencing medication  
35 pursuant to this subdivision, unless either of the following occurs:

36 (A) The inmate gives informed consent to continue the  
37 medication.

38 (B) A psychiatrist determines that the psychiatric medication  
39 is not necessary and administration of the medication is  
40 discontinued.

1 (2) If medication is being administered pursuant to this  
2 subdivision, the hearing described in paragraph (5) of subdivision  
3 (c) shall commence within 21 days of the filing and service of the  
4 notice, unless counsel for an inmate agrees to a different period  
5 of time.

6 (3) With the exception of the timeline provisions specified in  
7 paragraphs (1) and (2) for providing notice and commencement  
8 of the hearing pursuant to the conditions specified in this  
9 subdivision, the inmate shall be entitled to and be given the same  
10 due process protections as specified in subdivision (c). The  
11 department shall prove the same elements supporting the  
12 involuntary administration of psychiatric medication and the  
13 administrative law judge shall be required to make the same  
14 findings described in subdivision (c).

15 (e) The determination that an inmate may receive involuntary  
16 medication shall be valid for one year from the date of the  
17 determination, regardless of whether the inmate subsequently gives  
18 his or her informed consent.

19 (f) If a determination has been made to involuntarily medicate  
20 an inmate pursuant to subdivision (c) or (d), the medication shall  
21 be discontinued one year after the date of that determination, unless  
22 the inmate gives his or her informed consent to the administration  
23 of the medication, or unless a new determination is made pursuant  
24 to the procedures set forth in subdivision (g).

25 (g) To renew an existing order allowing involuntary medication,  
26 the department shall file with the Office of Administrative  
27 Hearings, and shall serve on the inmate and his or her counsel, a  
28 written notice indicating the department's intent to renew the  
29 existing involuntary medication order.

30 (1) The request to renew the order shall be filed and served no  
31 later than 21 days prior to the expiration of the current order  
32 authorizing involuntary medication.

33 (2) The inmate shall be entitled to, and shall be given, the same  
34 due process protections as specified in subdivision (c).

35 (3) Renewal orders shall be valid for one year from the date of  
36 the hearing.

37 (4) An order renewing an existing order shall be granted based  
38 on clear and convincing evidence that the inmate has a serious  
39 mental disorder that requires treatment with psychiatric medication,  
40 and that, but for the medication, the inmate would revert to the

1 behavior that was the basis for the prior order authorizing  
2 involuntary medication, coupled with evidence that the inmate  
3 lacks insight regarding his or her need for the medication, such  
4 that it is unlikely that the inmate would be able to manage his or  
5 her own medication and treatment regimen. No new acts need be  
6 alleged or proven.

7 (5) If the department wishes to add a basis to an existing order,  
8 the department shall give the inmate and the inmate's counsel  
9 notice in advance of the hearing via a renewal notice or  
10 supplemental petition. Within the renewal notice or supplemental  
11 petition, the department shall specify what additional basis is being  
12 alleged and what qualifying conduct within the past year supports  
13 that additional basis. The department shall prove the additional  
14 basis and conduct by clear and convincing evidence at a hearing  
15 as specified in subdivision (c).

16 (6) The hearing on any petition to renew an order for involuntary  
17 medication shall be conducted prior to the expiration of the current  
18 order.

19 (h) Pursuant to Section 5058, the Department of Corrections  
20 and Rehabilitation shall adopt regulations to fully implement this  
21 section.

22 (i) In the event of a conflict between the provisions of this  
23 section and the Administrative Procedure Act (Chapter 4.5  
24 (commencing with Section 11400) of Part 1 of Division 3 of the  
25 Government Code), this section shall control.

26 SEC. 158. Section 3000.08 of the Penal Code, as amended by  
27 Section 35 of Chapter 43 of the Statutes of 2012, is amended to  
28 read:

29 3000.08. (a) Persons released from state prison prior to or on  
30 or after July 1, 2013, after serving a prison term or, whose sentence  
31 has been deemed served pursuant to Section 2900.5, for any of the  
32 following crimes shall be subject to parole supervision by the  
33 Department of Corrections and Rehabilitation and the jurisdiction  
34 of the court in the county where the parolee is released or resides  
35 for the purpose of hearing petitions to revoke parole and impose  
36 a term of custody:

37 (1) A serious felony as described in subdivision (c) of Section  
38 1192.7.

39 (2) A violent felony as described in subdivision (c) of Section  
40 667.5.

1 (3) A crime for which the person was sentenced pursuant to  
2 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)  
3 of subdivision (c) of Section 1170.12.

4 (4) Any crime where the person eligible for release from prison  
5 is classified as a High Risk Sex Offender.

6 (5) Any crime where the person is required, as a condition of  
7 parole, to undergo treatment by the State Department of State  
8 Hospitals pursuant to Section 2962.

9 (b) Notwithstanding any other provision of law, all other  
10 offenders released from prison shall be placed on postrelease  
11 supervision pursuant to Title 2.05 (commencing with Section  
12 3450).

13 (c) At any time during the period of parole of a person subject  
14 to this section, if any parole agent or peace officer has probable  
15 cause to believe that the parolee is violating any term or condition  
16 of his or her parole, the agent or officer may, without warrant or  
17 other process and at any time until the final disposition of the case,  
18 arrest the person and bring him or her before the court, or the court  
19 may, in its discretion, issue a warrant for that person's arrest  
20 pursuant to Section 1203.2.

21 (d) Upon review of the alleged violation and a finding of good  
22 cause that the parolee has committed a violation of law or violated  
23 his or her conditions of parole, the supervising parole agency may  
24 impose additional and appropriate conditions of supervision,  
25 including rehabilitation and treatment services and appropriate  
26 incentives for compliance, and impose immediate, structured, and  
27 intermediate sanctions for parole violations, including flash  
28 incarceration in a county jail. Periods of "flash incarceration," as  
29 defined in subdivision (e), are encouraged as one method of  
30 punishment for violations of a parolee's conditions of parole.  
31 Nothing in this section is intended to preclude referrals to a reentry  
32 court pursuant to Section 3015.

33 (e) "Flash incarceration" is a period of detention in a county  
34 jail due to a violation of a parolee's conditions of parole. The length  
35 of the detention period can range between one and 10 consecutive  
36 days. Shorter, but if necessary more frequent, periods of detention  
37 for violations of a parolee's conditions of parole shall appropriately  
38 punish a parolee while preventing the disruption in a work or home  
39 establishment that typically arises from longer periods of detention.



1 (f) If the supervising parole agency has determined, following  
2 application of its assessment processes, that intermediate sanctions  
3 up to and including flash incarceration are not appropriate, the  
4 supervising parole agency shall, pursuant to Section 1203.2,  
5 petition the court in the county in which the parolee is being  
6 supervised to revoke parole. At any point during the process  
7 initiated pursuant to this section, a parolee may waive, in writing,  
8 his or her right to counsel, admit the parole violation, waive a court  
9 hearing, and accept the proposed parole modification or revocation.  
10 The petition shall include a written report that contains additional  
11 information regarding the petition, including the relevant terms  
12 and conditions of parole, the circumstances of the alleged  
13 underlying violation, the history and background of the parolee,  
14 and any recommendations. The Judicial Council shall adopt forms  
15 and rules of court to establish uniform statewide procedures to  
16 implement this subdivision, including the minimum contents of  
17 supervision agency reports. Upon a finding that the person has  
18 violated the conditions of parole, the court shall have authority to  
19 do any of the following:

20 (1) Return the person to parole supervision with modifications  
21 of conditions, if appropriate, including a period of incarceration  
22 in a county jail.

23 (2) Revoke parole and order the person to confinement in a  
24 county jail.

25 (3) Refer the person to a reentry court pursuant to Section 3015  
26 or other evidence-based program in the court's discretion.

27 (g) Confinement pursuant to paragraphs (1) and (2) of  
28 subdivision (f) shall not exceed a period of 180 days in a county  
29 jail.

30 (h) Notwithstanding any other provision of law, in any case  
31 where Section 3000.1 or paragraph (4) of subdivision (b) of Section  
32 3000 applies to a person who is on parole and the court determines  
33 that the person has committed a violation of law or violated his or  
34 her conditions of parole, the person on parole shall be remanded  
35 to the custody of the Department of Corrections and Rehabilitation  
36 and the jurisdiction of the Board of Parole Hearings for the purpose  
37 of future parole consideration.

38 (i) Notwithstanding subdivision (a), any of the following persons  
39 released from state prison shall be subject to the jurisdiction of,  
40 and parole supervision by, the Department of Corrections and

1 Rehabilitation for a period of parole up to three years or the parole  
2 term the person was subject to at the time of the commission of  
3 the offense, whichever is greater:

4 (1) The person is required to register as a sex offender pursuant  
5 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
6 1, and was subject to a period of parole exceeding three years at  
7 the time he or she committed a felony for which he or she was  
8 convicted and subsequently sentenced to state prison.

9 (2) The person was subject to parole for life pursuant to Section  
10 3000.1 at the time of the commission of the offense that resulted  
11 in a conviction and state prison sentence.

12 (j) Parolees subject to this section who have a pending  
13 adjudication for a parole violation on July 1, 2013, shall be subject  
14 to the jurisdiction of the Board of Parole Hearings. Parole  
15 revocation proceedings conducted by the Board of Parole Hearings  
16 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be  
17 subject to the jurisdiction of the Board of Parole Hearings.

18 (k) Except as described in subdivision (c), any person who is  
19 convicted of a felony that requires community supervision and  
20 who still has a period of state parole to serve shall discharge from  
21 state parole at the time of release to community supervision.

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

23 SEC. 159. Section 3060.7 of the Penal Code, as added by  
24 Section 48 of Chapter 43 of the Statutes of 2012, is amended to  
25 read:

26 3060.7. (a) (1) Notwithstanding any other law, the supervising  
27 parole agency shall notify any person released on parole or  
28 postrelease community supervision pursuant to Title 2.05  
29 (commencing with Section 3450) of Part 3 who has been classified  
30 by the Department of Corrections and Rehabilitation as included  
31 within the highest control or risk classification that he or she shall  
32 be required to report to his or her assigned parole officer or  
33 designated local supervising agency within two days of release  
34 from the state prison.

35 (2) This section shall not prohibit the supervising parole agency  
36 or local supervising agency from requiring any person released on  
37 parole or postrelease community supervision to report to his or  
38 her assigned parole officer within a time period that is less than  
39 two days from the time of release.

1 (b) The supervising parole agency, within 24 hours of a parolee's  
2 failure to report as required by this section, shall issue a written  
3 order suspending the parole of that parolee, pending a hearing  
4 before the Board of Parole Hearings or the court, as applicable,  
5 and shall request that a warrant be issued for the parolee's arrest  
6 pursuant to subdivision (c) of Section 3000.08.

7 (c) Upon the issuance of an arrest warrant for a parolee who  
8 has been classified within the highest control or risk classification,  
9 the assigned parole officer shall continue to carry the parolee on  
10 his or her regular caseload and shall continue to search for the  
11 parolee's whereabouts.

12 (d) With regard to any inmate subject to this section, the  
13 Department of Corrections and Rehabilitation shall release an  
14 inmate sentenced prior to June 27, 2012, one or two days before  
15 his or her scheduled release date if the inmate's release date falls  
16 on the day before a holiday or weekend.

17 (e) With regard to any inmate subject to this section, the  
18 Department of Corrections and Rehabilitation shall release an  
19 inmate one or two days after his or her scheduled release date if  
20 the release date falls on the day before a holiday or weekend.

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

22 SEC. 160. Section 4024.2 of the Penal Code is amended to  
23 read:

24 4024.2. (a) Notwithstanding any other law, the board of  
25 supervisors of any county may authorize the sheriff or other official  
26 in charge of county correctional facilities to offer a voluntary  
27 program under which any person committed to the facility may  
28 participate in a work release program pursuant to criteria described  
29 in subdivision (b), in which one day of participation will be in lieu  
30 of one day of confinement.

31 (b) The criteria for a work release program are the following:

32 (1) The work release program shall consist of any of the  
33 following:

34 (A) Manual labor to improve or maintain levees or public  
35 facilities, including, but not limited to, streets, parks, and schools.

36 (B) Manual labor in support of nonprofit organizations, as  
37 approved by the sheriff or other official in charge of the  
38 correctional facilities. As a condition of assigning participants of  
39 a work release program to perform manual labor in support of  
40 nonprofit organizations pursuant to this section, the board of

1 supervisors shall obtain workers' compensation insurance which  
2 shall be adequate to cover work-related injuries incurred by those  
3 participants, in accordance with Section 3363.5 of the Labor Code.

4 (C) Performance of graffiti cleanup for local governmental  
5 entities, including participation in a graffiti abatement program as  
6 defined in subdivision (f) of Section 594, as approved by the sheriff  
7 or other official in charge of the correctional facilities.

8 (D) Performance of weed and rubbish abatement on public and  
9 private property pursuant to Chapter 13 (commencing with Section  
10 39501) of Part 2 of Division 3 of Title 4 of the Government Code,  
11 or Part 5 (commencing with Section 14875) or Part 6 (commencing  
12 with Section 14930) of Division 12 of the Health and Safety Code,  
13 as approved by the sheriff or other official in charge of the  
14 correctional facilities.

15 (E) Performance of house repairs or yard services for senior  
16 citizens and the performance of repairs to senior centers through  
17 contact with local senior service organizations, as approved by the  
18 sheriff or other official in charge of the correctional facilities.  
19 Where a work release participant has been assigned to this task,  
20 the sheriff or other official shall agree upon in advance with the  
21 senior service organization about the type of services to be rendered  
22 by the participant and the extent of contact permitted between the  
23 recipients of these services and the participant.

24 (F) Any person who is not able to perform manual labor as  
25 specified in this paragraph because of a medical condition, physical  
26 disability, or age, may participate in a work release program  
27 involving any other type of public sector work that is designated  
28 and approved by the sheriff or other official in charge of county  
29 correctional facilities.

30 (2) The sheriff or other official may permit a participant in a  
31 work release program to receive work release credit for documented  
32 participation in educational programs, vocational programs,  
33 substance abuse programs, life skills programs, or parenting  
34 programs. Participation in these programs shall be considered in  
35 lieu of performing labor in a work release program, with eight  
36 work-related hours to equal one day of custody credit.

37 (3) The work release program shall be under the direction of a  
38 responsible person appointed by the sheriff or other official in  
39 charge.

1 (4) The hours of labor to be performed pursuant to this section  
2 shall be uniform for all persons committed to a facility in a county  
3 and may be determined by the sheriff or other official in charge  
4 of county correctional facilities, and each day shall be a minimum  
5 of 8 and a maximum of 10 hours, in accordance with the normal  
6 working hours of county employees assigned to supervise the  
7 programs. However, reasonable accommodation may be made for  
8 participation in a program under paragraph (2).

9 As used in this section, “nonprofit organizations” means  
10 organizations established or operated for the benefit of the public  
11 or in support of a significant public interest, as set forth in Section  
12 501(c)(3) of the Internal Revenue Code. Organizations established  
13 or operated for the primary purpose of benefiting their own  
14 memberships are excluded.

15 (c) The board of supervisors may prescribe reasonable rules and  
16 regulations under which a work release program is operated and  
17 may provide that participants wear clothing of a distinctive  
18 character while performing the work. As a condition of  
19 participating in a work release program, a person shall give his or  
20 her promise to appear for work or assigned activity by signing a  
21 notice to appear before the sheriff or at the education, vocational,  
22 or substance abuse program at a time and place specified in the  
23 notice and shall sign an agreement that the sheriff may immediately  
24 retake the person into custody to serve the balance of his or her  
25 sentence if the person fails to appear for the program at the time  
26 and place agreed to, does not perform the work or activity assigned,  
27 or for any other reason is no longer a fit subject for release under  
28 this section. A copy of the notice shall be delivered to the person  
29 and a copy shall be retained by the sheriff. Any person who  
30 willfully violates his or her written promise to appear at the time  
31 and place specified in the notice is guilty of a misdemeanor.

32 Whenever a peace officer has reasonable cause to believe the  
33 person has failed to appear at the time and place specified in the  
34 notice or fails to appear or work at the time and place agreed to or  
35 has failed to perform the work assigned, the peace officer may,  
36 without a warrant, retake the person into custody, or the court may  
37 issue an arrest warrant for the retaking of the person into custody,  
38 to complete the remainder of the original sentence. A peace officer  
39 may not retake a person into custody under this subdivision,  
40 without a warrant for arrest, unless the officer has a written order

1 to do so, signed by the sheriff or other person in charge of the  
2 program, that describes with particularity the person to be retaken.

3 (d) This section does not require the sheriff or other official in  
4 charge to assign a person to a program pursuant to this section if  
5 it appears from the record that the person has refused to  
6 satisfactorily perform as assigned or has not satisfactorily complied  
7 with the reasonable rules and regulations governing the assignment  
8 or any other order of the court.

9 A person shall be eligible for work release under this section  
10 only if the sheriff or other official in charge concludes that the  
11 person is a fit subject therefor.

12 (e) The board of supervisors may prescribe a program  
13 administrative fee, not to exceed the pro rata cost of administration,  
14 to be paid by each person according to his or her ability to pay.

15 SEC. 161. Section 4115.55 of the Penal Code is amended to  
16 read:

17 4115.55. (a) Upon agreement with the sheriff or director of  
18 the county department of corrections, a board of supervisors may  
19 enter into a contract with other public agencies to provide housing  
20 for inmates sentenced to a county jail in community correctional  
21 facilities created pursuant to Article 1.5 (commencing with Section  
22 2910) of Chapter 7 of Title 1 or Chapter 9.5 (commencing with  
23 Section 6250) of Title 7.

24 (b) Facilities operated pursuant to agreements entered into under  
25 subdivision (a) shall comply with the minimum standards for local  
26 detention facilities as provided by Chapter 1 (commencing with  
27 Section 3000) of Division 3 of Title 15 of the California Code of  
28 Regulations.

29 SEC. 162. Section 5072 of the Penal Code is amended to read:

30 5072. (a) Notwithstanding any other provision of law, the  
31 Department of Corrections and Rehabilitation and the State  
32 Department of Health Care Services may develop a process to  
33 maximize federal financial participation for the provision of acute  
34 inpatient hospital services rendered to individuals who, but for  
35 their institutional status as inmates, are otherwise eligible for  
36 Medi-Cal pursuant to Chapter 7 (commencing with Section 14000)  
37 of Part 3 of Division 9 of the Welfare and Institutions Code or a  
38 Low Income Health Program (LIHP) pursuant to Part 3.6  
39 (commencing with Section 15909) of Division 9 of the Welfare  
40 and Institutions Code.

1 (b) Federal reimbursement for acute inpatient hospital services  
2 for inmates enrolled in Medi-Cal shall occur through the State  
3 Department of Health Care Services and federal reimbursement  
4 for acute inpatient hospital services for inmates not enrolled in  
5 Medi-Cal but who are eligible for a LIHP shall occur through a  
6 county LIHP.

7 (c) (1) The Secretary of the Department of Corrections and  
8 Rehabilitation, in conjunction with the State Department of Health  
9 Care Services, shall develop a process to claim federal financial  
10 participation and to reimburse the Department of Corrections and  
11 Rehabilitation for the federal share of the allowable Medicaid cost  
12 provision of acute inpatient hospital services rendered to inmates  
13 according to this section and for any administrative costs incurred  
14 in support of those services.

15 (2) Public or community hospitals shall invoice the Department  
16 of Corrections and Rehabilitation to obtain reimbursement for  
17 acute inpatient hospital services in accordance with contracted  
18 rates of reimbursement, or if no contract is in place, the rates  
19 pursuant to Section 5023.5. The Department of Corrections and  
20 Rehabilitation shall reimburse a public or community hospital for  
21 the delivery of acute inpatient hospital services rendered to an  
22 inmate pursuant to this section. For individuals eligible for  
23 Medi-Cal pursuant to this section, the Department of Corrections  
24 and Rehabilitation shall submit a quarterly invoice to the State  
25 Department of Health Care Services for claiming federal  
26 participation at the Medi-Cal rate for acute inpatient hospital  
27 services. For enrollees in the LIHP, the Department of Corrections  
28 and Rehabilitation shall submit a quarterly invoice to the county  
29 of last legal residence pursuant to Section 14053.7 of the Welfare  
30 and Institutions Code. The county shall submit the invoice to the  
31 State Department of Health Care Services for claiming federal  
32 financial participation for acute inpatient hospital services for  
33 individuals made eligible pursuant to this section, pursuant to  
34 Section 14053.7 of the Welfare and Institutions Code, and pursuant  
35 to the process developed in subdivision (b). The State Department  
36 of Health Care Services shall claim federal participation for eligible  
37 services for LIHP enrolled inmates at the rate paid by the  
38 Department of Corrections and Rehabilitation. The State  
39 Department of Health Care Services and counties shall remit funds  
40 received for federal participation to the Department of Corrections

1 and Rehabilitation for allowable costs incurred as a result of  
2 delivering acute inpatient hospital services allowable under this  
3 section.

4 (3) The county LIHPs shall not experience any additional net  
5 expenditures of county funds due to the provision of services under  
6 this section.

7 (4) The Department of Corrections and Rehabilitation shall  
8 reimburse the State Department of Health Care Services and  
9 counties for administrative costs that are not reimbursed by the  
10 federal government.

11 (5) The Department of Corrections and Rehabilitation shall  
12 reimburse the State Department of Health Care Services for any  
13 disallowance that is required to be returned to the Centers for  
14 Medicare and Medicaid Services for any litigation costs incurred  
15 due to the implementation of this section.

16 (d) (1) The state shall indemnify and hold harmless participating  
17 entities that operate a LIHP, including all counties, and all counties  
18 that operate in a consortium that participates as a LIHP, against  
19 any and all losses, including, but not limited to, claims, demands,  
20 liabilities, court costs, judgments, or obligations, due to the  
21 implementation of this section as directed by the secretary and the  
22 State Department of Health Care Services.

23 (2) The State Department of Health Care Services may at its  
24 discretion require a county, as a condition of participation as a  
25 LIHP, to enroll an eligible inmate into its LIHP if the county is  
26 the inmate's county of last legal residence.

27 (3) The county LIHPs shall be held harmless by the state for  
28 any disallowance or deferral if federal action is taken due to the  
29 implementation of this section in accord with the state's policies,  
30 directions, and requirements.

31 (e) (1) The Department of Corrections and Rehabilitation, in  
32 conjunction with the State Department of Health Care Services,  
33 shall develop a process to facilitate eligibility determinations for  
34 individuals who may be eligible for Medi-Cal or a LIHP pursuant  
35 to this section and Section 14053.7 of the Welfare and Institutions  
36 Code.

37 (2) The Department of Corrections and Rehabilitation shall  
38 assist inmates in completing either the Medi-Cal or LIHP  
39 application as appropriate and shall forward that application to the  
40 State Department of Health Care Services for processing.



1 (3) Notwithstanding any other state law, and only to the extent  
2 that federal law allows and federal financial participation is  
3 available, for the limited purpose of implementing this section,  
4 the department or its designee is authorized to act on behalf of an  
5 inmate for purposes of applying for or determinations of Medi-Cal  
6 or LIHP eligibility.

7 (f) (1) This section does not restrict or limit the eligibility or  
8 alter county responsibility for payment of any service delivered  
9 to a parolee who has been released from detention or incarceration  
10 and now resides in a county that participates in the LIHP. If  
11 otherwise eligible for the county's LIHP, the LIHP shall enroll the  
12 parolee.

13 (2) Notwithstanding paragraph (1), at the option of the state,  
14 for enrolled parolees who have been released from detention or  
15 incarceration and now reside in a county that participates in a  
16 LIHP, the LIHP shall reimburse providers for the delivery of  
17 services which are otherwise the responsibility of the state to  
18 provide. Payment for these medical services, including both the  
19 state and federal shares of reimbursement, shall be included as  
20 part of the reimbursement process described in paragraph (1) of  
21 subdivision (c).

22 (3) Enrollment of individuals in a LIHP under this subdivision  
23 shall be subject to any enrollment limitations described in  
24 subdivision (h) of Section 15910 of the Welfare and Institutions  
25 Code.

26 (g) The department shall be responsible to the LIHP for the  
27 nonfederal share of any reimbursement made for the provision of  
28 acute inpatient hospital services rendered to inmates pursuant to  
29 this section.

30 (h) Reimbursement pursuant to this section shall be limited to  
31 those acute inpatient hospital services for which federal financial  
32 participation pursuant to Title XIX of the federal Social Security  
33 Act is allowed.

34 (i) This section shall have no force or effect if there is a final  
35 judicial determination made by any state or federal court that is  
36 not appealed, or by a court of appellate jurisdiction that is not  
37 further appealed, in any action by any party, or a final  
38 determination by the administrator of the federal Centers for  
39 Medicare and Medicaid Services, that limits or affects the

1 department's authority to select the hospitals used to provide  
2 inpatient hospital services to inmates.

3 (j) It is the intent of the Legislature that the implementation of  
4 this section will result in state General Fund savings for the funding  
5 of acute inpatient hospital services provided to inmates along with  
6 any related administrative costs.

7 (k) Any agreements entered into under this section for Medi-Cal  
8 or a LIHP to provide for reimbursement of acute inpatient hospital  
9 services and administrative expenditures as described in  
10 subdivision (c) shall not be subject to Part 2 (commencing with  
11 Section 10100) of Division 2 of the Public Contract Code.

12 (l) This section shall be implemented in a manner that is  
13 consistent with federal Medicaid law and regulations. The Director  
14 of the State Department of Health Care Services shall seek any  
15 federal approvals necessary for the implementation of this section.  
16 This section shall be implemented only when and to the extent that  
17 any necessary federal approval is obtained, and only to the extent  
18 that existing levels of federal financial participation are not  
19 otherwise jeopardized.

20 (m) To the extent that the Director of the State Department of  
21 Health Care Services determines that existing levels of federal  
22 financial participation are jeopardized, this section shall no longer  
23 be implemented.

24 (n) Notwithstanding Chapter 3.5 (commencing with Section  
25 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
26 the State Department of Health Care Services may, without taking  
27 any further regulatory action, implement this section by means of  
28 all-county letters, provider bulletins, facility letters, or similar  
29 instructions.

30 (o) For purposes of this section, the following terms have the  
31 following meanings:

32 (1) The term "county of last legal residence" means the county  
33 in which the inmate resided at the time of arrest that resulted in  
34 conviction and incarceration in a state prison facility.

35 (2) The term "inmate" means an adult who is involuntarily  
36 residing in a state prison facility operated, administered, or  
37 regulated, directly or indirectly, by the department.

38 (3) During the existence of the receivership established in United  
39 States District Court for the Northern District of California, Case  
40 No. C01-1351 TEH, Plata v. Schwarzenegger, references in this

1 section to the “secretary” shall mean the receiver appointed in that  
2 action, who shall implement portions of this section that would  
3 otherwise be within the secretary’s responsibility.

4 SEC. 163. Section 6030 of the Penal Code is amended to read:

5 6030. (a) The Board of State and Community Corrections shall  
6 establish minimum standards for local correctional facilities. The  
7 board shall review those standards biennially and make any  
8 appropriate revisions.

9 (b) The standards shall include, but not be limited to, the  
10 following areas: health and sanitary conditions, fire and life safety,  
11 security, rehabilitation programs, recreation, treatment of persons  
12 confined in local correctional facilities, and personnel training.

13 (c) The standards shall require that at least one person on duty  
14 at the facility is knowledgeable in the area of fire and life safety  
15 procedures.

16 (d) The standards shall also include requirements relating to the  
17 acquisition, storage, labeling, packaging, and dispensing of drugs.

18 (e) The standards shall require that inmates who are received  
19 by the facility while they are pregnant be notified, orally or in  
20 writing, of and provided all of the following:

21 (1) A balanced, nutritious diet approved by a doctor.

22 (2) Prenatal and post partum information and health care,  
23 including, but not limited to, access to necessary vitamins as  
24 recommended by a doctor.

25 (3) Information pertaining to childbirth education and infant  
26 care.

27 (4) A dental cleaning while in a state facility.

28 (f) The standards shall provide that a woman known to be  
29 pregnant or in recovery after delivery shall not be restrained, except  
30 as provided in Section 3407. The board shall develop standards  
31 regarding the restraint of pregnant women at the next biennial  
32 review of the standards after the enactment of the act amending  
33 this subdivision and shall review the individual facility’s  
34 compliance with the standards.

35 (g) In establishing minimum standards, the board shall seek the  
36 advice of the following:

37 (1) For health and sanitary conditions:

38 The State Department of Public Health, physicians, psychiatrists,  
39 local public health officials, and other interested persons.

40 (2) For fire and life safety:

1 The State Fire Marshal, local fire officials, and other interested  
2 persons.

3 (3) For security, rehabilitation programs, recreation, and  
4 treatment of persons confined in correctional facilities:

5 The Department of Corrections and Rehabilitation, state and  
6 local juvenile justice commissions, state and local correctional  
7 officials, experts in criminology and penology, and other interested  
8 persons.

9 (4) For personnel training:

10 The Commission on Peace Officer Standards and Training,  
11 psychiatrists, experts in criminology and penology, the Department  
12 of Corrections and Rehabilitation, state and local correctional  
13 officials, and other interested persons.

14 (5) For female inmates and pregnant inmates in local adult and  
15 juvenile facilities:

16 The California State Sheriffs’ Association and Chief Probation  
17 Officers’ Association of California, and other interested persons.

18 SEC. 164. Section 11165.7 of the Penal Code is amended to  
19 read:

20 11165.7. (a) As used in this article, “mandated reporter” is  
21 defined as any of the following:

22 (1) A teacher.

23 (2) An instructional aide.

24 (3) A teacher’s aide or teacher’s assistant employed by a public  
25 or private school.

26 (4) A classified employee of a public school.

27 (5) An administrative officer or supervisor of child welfare and  
28 attendance, or a certificated pupil personnel employee of a public  
29 or private school.

30 (6) An administrator of a public or private day camp.

31 (7) An administrator or employee of a public or private youth  
32 center, youth recreation program, or youth organization.

33 (8) An administrator or employee of a public or private  
34 organization whose duties require direct contact and supervision  
35 of children.

36 (9) An employee of a county office of education or the State  
37 Department of Education whose duties bring the employee into  
38 contact with children on a regular basis.

39 (10) A licensee, an administrator, or an employee of a licensed  
40 community care or child day care facility.

- 1 (11) A Head Start program teacher.
- 2 (12) A licensing worker or licensing evaluator employed by a  
3 licensing agency, as defined in Section 11165.11.
- 4 (13) A public assistance worker.
- 5 (14) An employee of a child care institution, including, but not  
6 limited to, foster parents, group home personnel, and personnel of  
7 residential care facilities.
- 8 (15) A social worker, probation officer, or parole officer.
- 9 (16) An employee of a school district police or security  
10 department.
- 11 (17) A person who is an administrator or presenter of, or a  
12 counselor in, a child abuse prevention program in a public or  
13 private school.
- 14 (18) A district attorney investigator, inspector, or local child  
15 support agency caseworker, unless the investigator, inspector, or  
16 caseworker is working with an attorney appointed pursuant to  
17 Section 317 of the Welfare and Institutions Code to represent a  
18 minor.
- 19 (19) A peace officer, as defined in Chapter 4.5 (commencing  
20 with Section 830) of Title 3 of Part 2, who is not otherwise  
21 described in this section.
- 22 (20) A firefighter, except for volunteer firefighters.
- 23 (21) A physician and surgeon, psychiatrist, psychologist, dentist,  
24 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
25 hygienist, optometrist, marriage and family therapist, clinical social  
26 worker, professional clinical counselor, or any other person who  
27 is currently licensed under Division 2 (commencing with Section  
28 500) of the Business and Professions Code.
- 29 (22) An emergency medical technician I or II, paramedic, or  
30 other person certified pursuant to Division 2.5 (commencing with  
31 Section 1797) of the Health and Safety Code.
- 32 (23) A psychological assistant registered pursuant to Section  
33 2913 of the Business and Professions Code.
- 34 (24) A marriage and family therapist trainee, as defined in  
35 subdivision (c) of Section 4980.03 of the Business and Professions  
36 Code.
- 37 (25) An unlicensed marriage and family therapist intern  
38 registered under Section 4980.44 of the Business and Professions  
39 Code.

1 (26) A state or county public health employee who treats a minor  
2 for venereal disease or any other condition.

3 (27) A coroner.

4 (28) A medical examiner or other person who performs  
5 autopsies.

6 (29) A commercial film and photographic print or image  
7 processor as specified in subdivision (e) of Section 11166. As used  
8 in this article, “commercial film and photographic print or image  
9 processor” means a person who develops exposed photographic  
10 film into negatives, slides, or prints, or who makes prints from  
11 negatives or slides, or who prepares, publishes, produces, develops,  
12 duplicates, or prints any representation of information, data, or an  
13 image, including, but not limited to, any film, filmstrip, photograph,  
14 negative, slide, photocopy, videotape, video laser disc, computer  
15 hardware, computer software, computer floppy disk, data storage  
16 medium, CD-ROM, computer-generated equipment, or  
17 computer-generated image, for compensation. The term includes  
18 any employee of that person; it does not include a person who  
19 develops film or makes prints or images for a public agency.

20 (30) A child visitation monitor. As used in this article, “child  
21 visitation monitor” means a person who, for financial  
22 compensation, acts as a monitor of a visit between a child and  
23 another person when the monitoring of that visit has been ordered  
24 by a court of law.

25 (31) An animal control officer or humane society officer. For  
26 the purposes of this article, the following terms have the following  
27 meanings:

28 (A) “Animal control officer” means a person employed by a  
29 city, county, or city and county for the purpose of enforcing animal  
30 control laws or regulations.

31 (B) “Humane society officer” means a person appointed or  
32 employed by a public or private entity as a humane officer who is  
33 qualified pursuant to Section 14502 or 14503 of the Corporations  
34 Code.

35 (32) A clergy member, as specified in subdivision (d) of Section  
36 11166. As used in this article, “clergy member” means a priest,  
37 minister, rabbi, religious practitioner, or similar functionary of a  
38 church, temple, or recognized denomination or organization.

39 (33) Any custodian of records of a clergy member, as specified  
40 in this section and subdivision (d) of Section 11166.

1 (34) An employee of any police department, county sheriff's  
2 department, county probation department, or county welfare  
3 department.

4 (35) An employee or volunteer of a Court Appointed Special  
5 Advocate program, as defined in Rule 5.655 of the California Rules  
6 of Court.

7 (36) A custodial officer, as defined in Section 831.5.

8 (37) A person providing services to a minor child under Section  
9 12300 or 12300.1 of the Welfare and Institutions Code.

10 (38) An alcohol and drug counselor. As used in this article, an  
11 "alcohol and drug counselor" is a person providing counseling,  
12 therapy, or other clinical services for a state licensed or certified  
13 drug, alcohol, or drug and alcohol treatment program. However,  
14 alcohol or drug abuse, or both alcohol and drug abuse, is not, in  
15 and of itself, a sufficient basis for reporting child abuse or neglect.

16 (39) A clinical counselor trainee, as defined in subdivision (g)  
17 of Section 4999.12 of the Business and Professions Code.

18 (40) A clinical counselor intern registered under Section 4999.42  
19 of the Business and Professions Code.

20 (41) An employee or administrator of a public or private  
21 postsecondary institution, whose duties bring the administrator or  
22 employee into contact with children on a regular basis, or who  
23 supervises those whose duties bring the administrator or employee  
24 into contact with children on a regular basis, as to child abuse or  
25 neglect occurring on that institution's premises or at an official  
26 activity of, or program conducted by, the institution. Nothing in  
27 this paragraph shall be construed as altering the lawyer-client  
28 privilege as set forth in Article 3 (commencing with Section 950)  
29 of Chapter 4 of Division 8 of the Evidence Code.

30 (42) An athletic coach, athletic administrator, or athletic director  
31 employed by any public or private school that provides any  
32 combination of instruction for kindergarten, or grades 1 to 12,  
33 inclusive.

34 (43) (A) A commercial computer technician as specified in  
35 subdivision (e) of Section 11166. As used in this article,  
36 "commercial computer technician" means a person who works for  
37 a company that is in the business of repairing, installing, or  
38 otherwise servicing a computer or computer component, including,  
39 but not limited to, a computer part, device, memory storage or  
40 recording mechanism, auxiliary storage recording or memory

1 capacity, or any other material relating to the operation and  
2 maintenance of a computer or computer network system, for a fee.  
3 An employer who provides an electronic communications service  
4 or a remote computing service to the public shall be deemed to  
5 comply with this article if that employer complies with Section  
6 2258A of Title 18 of the United States Code.

7 (B) An employer of a commercial computer technician may  
8 implement internal procedures for facilitating reporting consistent  
9 with this article. These procedures may direct employees who are  
10 mandated reporters under this paragraph to report materials  
11 described in subdivision (e) of Section 11166 to an employee who  
12 is designated by the employer to receive the reports. An employee  
13 who is designated to receive reports under this subparagraph shall  
14 be a commercial computer technician for purposes of this article.  
15 A commercial computer technician who makes a report to the  
16 designated employee pursuant to this subparagraph shall be deemed  
17 to have complied with the requirements of this article and shall be  
18 subject to the protections afforded to mandated reporters, including,  
19 but not limited to, those protections afforded by Section 11172.

20 (44) Any athletic coach, including, but not limited to, an  
21 assistant coach or a graduate assistant involved in coaching, at  
22 public or private postsecondary institutions.

23 (b) Except as provided in paragraph (35) of subdivision (a),  
24 volunteers of public or private organizations whose duties require  
25 direct contact with and supervision of children are not mandated  
26 reporters but are encouraged to obtain training in the identification  
27 and reporting of child abuse and neglect and are further encouraged  
28 to report known or suspected instances of child abuse or neglect  
29 to an agency specified in Section 11165.9.

30 (c) Employers are strongly encouraged to provide their  
31 employees who are mandated reporters with training in the duties  
32 imposed by this article. This training shall include training in child  
33 abuse and neglect identification and training in child abuse and  
34 neglect reporting. Whether or not employers provide their  
35 employees with training in child abuse and neglect identification  
36 and reporting, the employers shall provide their employees who  
37 are mandated reporters with the statement required pursuant to  
38 subdivision (a) of Section 11166.5.

39 (d) School districts that do not train their employees specified  
40 in subdivision (a) in the duties of mandated reporters under the



1 child abuse reporting laws shall report to the State Department of  
2 Education the reasons why this training is not provided.

3 (e) Unless otherwise specifically provided, the absence of  
4 training shall not excuse a mandated reporter from the duties  
5 imposed by this article.

6 (f) Public and private organizations are encouraged to provide  
7 their volunteers whose duties require direct contact with and  
8 supervision of children with training in the identification and  
9 reporting of child abuse and neglect.

10 SEC. 165. Section 11166 of the Penal Code is amended to read:

11 11166. (a) Except as provided in subdivision (d), and in  
12 Section 11166.05, a mandated reporter shall make a report to an  
13 agency specified in Section 11165.9 whenever the mandated  
14 reporter, in his or her professional capacity or within the scope of  
15 his or her employment, has knowledge of or observes a child whom  
16 the mandated reporter knows or reasonably suspects has been the  
17 victim of child abuse or neglect. The mandated reporter shall make  
18 an initial report by telephone to the agency immediately or as soon  
19 as is practicably possible, and shall prepare and send, fax, or  
20 electronically transmit a written followup report within 36 hours  
21 of receiving the information concerning the incident. The mandated  
22 reporter may include with the report any nonprivileged  
23 documentary evidence the mandated reporter possesses relating  
24 to the incident.

25 (1) For purposes of this article, “reasonable suspicion” means  
26 that it is objectively reasonable for a person to entertain a suspicion,  
27 based upon facts that could cause a reasonable person in a like  
28 position, drawing, when appropriate, on his or her training and  
29 experience, to suspect child abuse or neglect. “Reasonable  
30 suspicion” does not require certainty that child abuse or neglect  
31 has occurred nor does it require a specific medical indication of  
32 child abuse or neglect; any “reasonable suspicion” is sufficient.  
33 For purposes of this article, the pregnancy of a minor does not, in  
34 and of itself, constitute a basis for a reasonable suspicion of sexual  
35 abuse.

36 (2) The agency shall be notified and a report shall be prepared  
37 and sent, faxed, or electronically transmitted even if the child has  
38 expired, regardless of whether or not the possible abuse was a  
39 factor contributing to the death, and even if suspected child abuse  
40 was discovered during an autopsy.

1 (3) A report made by a mandated reporter pursuant to this  
2 section shall be known as a mandated report.

3 (b) If, after reasonable efforts, a mandated reporter is unable to  
4 submit an initial report by telephone, he or she shall immediately  
5 or as soon as is practicably possible, by fax or electronic  
6 transmission, make a one-time automated written report on the  
7 form prescribed by the Department of Justice, and shall also be  
8 available to respond to a telephone followup call by the agency  
9 with which he or she filed the report. A mandated reporter who  
10 files a one-time automated written report because he or she was  
11 unable to submit an initial report by telephone is not required to  
12 submit a written followup report.

13 (1) The one-time automated written report form prescribed by  
14 the Department of Justice shall be clearly identifiable so that it is  
15 not mistaken for a standard written followup report. In addition,  
16 the automated one-time report shall contain a section that allows  
17 the mandated reporter to state the reason the initial telephone call  
18 was not able to be completed. The reason for the submission of  
19 the one-time automated written report in lieu of the procedure  
20 prescribed in subdivision (a) shall be captured in the Child Welfare  
21 Services/Case Management System (CWS/CMS). The department  
22 shall work with stakeholders to modify reporting forms and the  
23 CWS/CMS as is necessary to accommodate the changes enacted  
24 by these provisions.

25 (2) This subdivision shall not become operative until the  
26 CWS/CMS is updated to capture the information prescribed in this  
27 subdivision.

28 (3) This subdivision shall become inoperative three years after  
29 this subdivision becomes operative or on January 1, 2009,  
30 whichever occurs first.

31 (4) On the inoperative date of these provisions, a report shall  
32 be submitted to the counties and the Legislature by the State  
33 Department of Social Services that reflects the data collected from  
34 automated one-time reports indicating the reasons stated as to why  
35 the automated one-time report was filed in lieu of the initial  
36 telephone report.

37 (5) Nothing in this section shall supersede the requirement that  
38 a mandated reporter first attempt to make a report via telephone,  
39 or that agencies specified in Section 11165.9 accept reports from  
40 mandated reporters and other persons as required.

1 (c) A mandated reporter who fails to report an incident of known  
2 or reasonably suspected child abuse or neglect as required by this  
3 section is guilty of a misdemeanor punishable by up to six months  
4 confinement in a county jail or by a fine of one thousand dollars  
5 (\$1,000) or by both that imprisonment and fine. If a mandated  
6 reporter intentionally conceals his or her failure to report an  
7 incident known by the mandated reporter to be abuse or severe  
8 neglect under this section, the failure to report is a continuing  
9 offense until an agency specified in Section 11165.9 discovers the  
10 offense.

11 (d) (1) A clergy member who acquires knowledge or a  
12 reasonable suspicion of child abuse or neglect during a penitential  
13 communication is not subject to subdivision (a). For the purposes  
14 of this subdivision, “penitential communication” means a  
15 communication, intended to be in confidence, including, but not  
16 limited to, a sacramental confession, made to a clergy member  
17 who, in the course of the discipline or practice of his or her church,  
18 denomination, or organization, is authorized or accustomed to hear  
19 those communications, and under the discipline, tenets, customs,  
20 or practices of his or her church, denomination, or organization,  
21 has a duty to keep those communications secret.

22 (2) Nothing in this subdivision shall be construed to modify or  
23 limit a clergy member’s duty to report known or suspected child  
24 abuse or neglect when the clergy member is acting in some other  
25 capacity that would otherwise make the clergy member a mandated  
26 reporter.

27 (3) (A) On or before January 1, 2004, a clergy member or any  
28 custodian of records for the clergy member may report to an agency  
29 specified in Section 11165.9 that the clergy member or any  
30 custodian of records for the clergy member, prior to January 1,  
31 1997, in his or her professional capacity or within the scope of his  
32 or her employment, other than during a penitential communication,  
33 acquired knowledge or had a reasonable suspicion that a child had  
34 been the victim of sexual abuse and that the clergy member or any  
35 custodian of records for the clergy member did not previously  
36 report the abuse to an agency specified in Section 11165.9. The  
37 provisions of Section 11172 shall apply to all reports made pursuant  
38 to this paragraph.

1 (B) This paragraph shall apply even if the victim of the known  
2 or suspected abuse has reached the age of majority by the time the  
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction  
5 to investigate any report of child abuse made pursuant to this  
6 paragraph even if the report is made after the victim has reached  
7 the age of majority.

8 (e) (1) A commercial film, photographic print, or image  
9 processor who has knowledge of or observes, within the scope of  
10 his or her professional capacity or employment, any film,  
11 photograph, videotape, negative, slide, or any representation of  
12 information, data, or an image, including, but not limited to, any  
13 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
14 video laser disc, computer hardware, computer software, computer  
15 floppy disk, data storage medium, CD-ROM, computer-generated  
16 equipment, or computer-generated image depicting a child under  
17 16 years of age engaged in an act of sexual conduct, shall,  
18 immediately or as soon as practicably possible, telephonically  
19 report the instance of suspected abuse to the law enforcement  
20 agency located in the county in which the images are seen. Within  
21 36 hours of receiving the information concerning the incident, the  
22 reporter shall prepare and send, fax, or electronically transmit a  
23 written followup report of the incident with a copy of the image  
24 or material attached.

25 (2) A commercial computer technician who has knowledge of  
26 or observes, within the scope of his or her professional capacity  
27 or employment, any representation of information, data, or an  
28 image, including, but not limited to, any computer hardware,  
29 computer software, computer file, computer floppy disk, data  
30 storage medium, CD-ROM, computer-generated equipment, or  
31 computer-generated image that is retrievable in perceivable form  
32 and that is intentionally saved, transmitted, or organized on an  
33 electronic medium, depicting a child under 16 years of age engaged  
34 in an act of sexual conduct, shall immediately, or as soon as  
35 practicably possible, telephonically report the instance of suspected  
36 abuse to the law enforcement agency located in the county in which  
37 the images or material are seen. As soon as practicably possible  
38 after receiving the information concerning the incident, the reporter  
39 shall prepare and send, fax, or electronically transmit a written

1 followup report of the incident with a brief description of the  
2 images or materials.

3 (3) For purposes of this article, “commercial computer  
4 technician” includes an employee designated by an employer to  
5 receive reports pursuant to an established reporting process  
6 authorized by subparagraph (B) of paragraph (43) of subdivision  
7 (a) of Section 11165.7.

8 (4) As used in this subdivision, “electronic medium” includes,  
9 but is not limited to, a recording, CD-ROM, magnetic disk memory,  
10 magnetic tape memory, CD, DVD, thumbdrive, or any other  
11 computer hardware or media.

12 (5) As used in this subdivision, “sexual conduct” means any of  
13 the following:

14 (A) Sexual intercourse, including genital-genital, oral-genital,  
15 anal-genital, or oral-anal, whether between persons of the same or  
16 opposite sex or between humans and animals.

17 (B) Penetration of the vagina or rectum by any object.

18 (C) Masturbation for the purpose of sexual stimulation of the  
19 viewer.

20 (D) Sodomasochistic abuse for the purpose of sexual stimulation  
21 of the viewer.

22 (E) Exhibition of the genitals, pubic, or rectal areas of a person  
23 for the purpose of sexual stimulation of the viewer.

24 (f) Any mandated reporter who knows or reasonably suspects  
25 that the home or institution in which a child resides is unsuitable  
26 for the child because of abuse or neglect of the child shall bring  
27 the condition to the attention of the agency to which, and at the  
28 same time as, he or she makes a report of the abuse or neglect  
29 pursuant to subdivision (a).

30 (g) ~~Any~~ other person who has knowledge of or observes a  
31 child whom he or she knows or reasonably suspects has been a  
32 victim of child abuse or neglect may report the known or suspected  
33 instance of child abuse or neglect to an agency specified in Section  
34 11165.9. For purposes of this section, “any other person” includes  
35 a mandated reporter who acts in his or her private capacity and  
36 not in his or her professional capacity or within the scope of his  
37 or her employment.

38 (h) When two or more persons, who are required to report,  
39 jointly have knowledge of a known or suspected instance of child  
40 abuse or neglect, and when there is agreement among them, the

1 telephone report may be made by a member of the team selected  
2 by mutual agreement and a single report may be made and signed  
3 by the selected member of the reporting team. Any member who  
4 has knowledge that the member designated to report has failed to  
5 do so shall thereafter make the report.

6 (i) (1) The reporting duties under this section are individual,  
7 and no supervisor or administrator may impede or inhibit the  
8 reporting duties, and no person making a report shall be subject  
9 to any sanction for making the report. However, internal procedures  
10 to facilitate reporting and apprise supervisors and administrators  
11 of reports may be established provided that they are not inconsistent  
12 with this article.

13 (2) The internal procedures shall not require any employee  
14 required to make reports pursuant to this article to disclose his or  
15 her identity to the employer.

16 (3) Reporting the information regarding a case of possible child  
17 abuse or neglect to an employer, supervisor, school principal,  
18 school counselor, coworker, or other person shall not be a substitute  
19 for making a mandated report to an agency specified in Section  
20 11165.9.

21 (j) A county probation or welfare department shall immediately,  
22 or as soon as practicably possible, report by telephone, fax, or  
23 electronic transmission to the law enforcement agency having  
24 jurisdiction over the case, to the agency given the responsibility  
25 for investigation of cases under Section 300 of the Welfare and  
26 Institutions Code, and to the district attorney's office every known  
27 or suspected instance of child abuse or neglect, as defined in  
28 Section 11165.6, except acts or omissions coming within  
29 subdivision (b) of Section 11165.2, or reports made pursuant to  
30 Section 11165.13 based on risk to a child which relates solely to  
31 the inability of the parent to provide the child with regular care  
32 due to the parent's substance abuse, which shall be reported only  
33 to the county welfare or probation department. A county probation  
34 or welfare department also shall send, fax, or electronically transmit  
35 a written report thereof within 36 hours of receiving the information  
36 concerning the incident to any agency to which it makes a  
37 telephone report under this subdivision.

38 (k) A law enforcement agency shall immediately, or as soon as  
39 practicably possible, report by telephone, fax, or electronic  
40 transmission to the agency given responsibility for investigation

1 of cases under Section 300 of the Welfare and Institutions Code  
2 and to the district attorney's office every known or suspected  
3 instance of child abuse or neglect reported to it, except acts or  
4 omissions coming within subdivision (b) of Section 11165.2, which  
5 shall be reported only to the county welfare or probation  
6 department. A law enforcement agency shall report to the county  
7 welfare or probation department every known or suspected instance  
8 of child abuse or neglect reported to it which is alleged to have  
9 occurred as a result of the action of a person responsible for the  
10 child's welfare, or as the result of the failure of a person responsible  
11 for the child's welfare to adequately protect the minor from abuse  
12 when the person responsible for the child's welfare knew or  
13 reasonably should have known that the minor was in danger of  
14 abuse. A law enforcement agency also shall send, fax, or  
15 electronically transmit a written report thereof within 36 hours of  
16 receiving the information concerning the incident to any agency  
17 to which it makes a telephone report under this subdivision.

18 SEC. 166. Section 12022 of the Penal Code is amended to read:

19 12022. (a) (1) Except as provided in subdivisions (c) and (d),  
20 a person who is armed with a firearm in the commission of a felony  
21 or attempted felony shall be punished by an additional and  
22 consecutive term of imprisonment pursuant to subdivision (h) of  
23 Section 1170 for one year, unless the arming is an element of that  
24 offense. This additional term shall apply to a person who is a  
25 principal in the commission of a felony or attempted felony if one  
26 or more of the principals is armed with a firearm, whether or not  
27 the person is personally armed with a firearm.

28 (2) Except as provided in subdivision (c), and notwithstanding  
29 subdivision (d), if the firearm is an assault weapon, as defined in  
30 Section 30510 or 30515, or a machinegun, as defined in Section  
31 16880, or a .50 BMG rifle, as defined in Section 30530, the  
32 additional and consecutive term described in this subdivision shall  
33 be three years imprisonment pursuant to subdivision (h) of Section  
34 1170 whether or not the arming is an element of the offense of  
35 which the person was convicted. The additional term provided in  
36 this paragraph shall apply to any person who is a principal in the  
37 commission of a felony or attempted felony if one or more of the  
38 principals is armed with an assault weapon, machinegun, or a .50  
39 BMG rifle, whether or not the person is personally armed with an  
40 assault weapon, machinegun, or a .50 BMG rifle.

1 (b) (1) A person who personally uses a deadly or dangerous  
 2 weapon in the commission of a felony or attempted felony shall  
 3 be punished by an additional and consecutive term of imprisonment  
 4 in the state prison for one year, unless use of a deadly or dangerous  
 5 weapon is an element of that offense.

6 (2) If the person described in paragraph (1) has been convicted  
 7 of carjacking or attempted carjacking, the additional term shall be  
 8 in the state prison for one, two, or three years.

9 (3) When a person is found to have personally used a deadly or  
 10 dangerous weapon in the commission of a felony or attempted  
 11 felony as provided in this subdivision and the weapon is owned  
 12 by that person, the court shall order that the weapon be deemed a  
 13 nuisance and disposed of in the manner provided in Sections 18000  
 14 and 18005.

15 (c) Notwithstanding the enhancement set forth in subdivision  
 16 (a), a person who is personally armed with a firearm in the  
 17 commission of a violation or attempted violation of Section 11351,  
 18 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,  
 19 11379.5, or 11379.6 of the Health and Safety Code shall be  
 20 punished by an additional and consecutive term of imprisonment  
 21 pursuant to subdivision (h) of Section 1170 for three, four, or five  
 22 years.

23 (d) Notwithstanding the enhancement set forth in subdivision  
 24 (a), a person who is not personally armed with a firearm who,  
 25 knowing that another principal is personally armed with a firearm,  
 26 is a principal in the commission of an offense or attempted offense  
 27 specified in subdivision (c), shall be punished by an additional and  
 28 consecutive term of imprisonment pursuant to subdivision (h) of  
 29 Section 1170 for one, two, or three years.

30 (e) For purposes of imposing an enhancement under Section  
 31 1170.1, the enhancements under this section shall count as a single  
 32 enhancement.

33 (f) Notwithstanding any other provision of law, the court may  
 34 strike the additional punishment for the enhancements provided  
 35 in subdivision (c) or (d) in an unusual case where the interests of  
 36 justice would best be served, if the court specifies on the record  
 37 and enters into the minutes the circumstances indicating that the  
 38 interests of justice would best be served by that disposition.

39 SEC. 167. Section 12022.1 of the Penal Code is amended to  
 40 read:



1 12022.1. (a) For the purposes of this section only:

2 (1) “Primary offense” means a felony offense for which a person  
3 has been released from custody on bail or on his or her own  
4 recognizance prior to the judgment becoming final, including the  
5 disposition of any appeal, or for which release on bail or his or her  
6 own recognizance has been revoked. In cases where the court has  
7 granted a stay of execution of a county jail commitment or state  
8 prison commitment, “primary offense” also means a felony offense  
9 for which a person is out of custody during the period of time  
10 between the pronouncement of judgment and the time the person  
11 actually surrenders into custody or is otherwise returned to custody.

12 (2) “Secondary offense” means a felony offense alleged to have  
13 been committed while the person is released from custody for a  
14 primary offense.

15 (b) Any person arrested for a secondary offense that was alleged  
16 to have been committed while that person was released from  
17 custody on a primary offense shall be subject to a penalty  
18 enhancement of an additional two years, which shall be served  
19 consecutive to any other term imposed by the court.

20 (c) The enhancement allegation provided in subdivision (b)  
21 shall be pleaded in the information or indictment which alleges  
22 the secondary offense, or in the information or indictment of the  
23 primary offense if a conviction has already occurred in the  
24 secondary offense, and shall be proved as provided by law. The  
25 enhancement allegation may be pleaded in a complaint but need  
26 not be proved at the preliminary hearing or grand jury hearing.

27 (d) Whenever there is a conviction for the secondary offense  
28 and the enhancement is proved, and the person is sentenced on the  
29 secondary offense prior to the conviction of the primary offense,  
30 the imposition of the enhancement shall be stayed pending  
31 imposition of the sentence for the primary offense. The stay shall  
32 be lifted by the court hearing the primary offense at the time of  
33 sentencing for that offense and shall be recorded in the abstract of  
34 judgment. If the person is acquitted of the primary offense the stay  
35 shall be permanent.

36 (e) If the person is convicted of a felony for the primary offense,  
37 is sentenced to state prison for the primary offense, and is convicted  
38 of a felony for the secondary offense, any sentence for the  
39 secondary offense shall be consecutive to the primary sentence  
40 and the aggregate term shall be served in the state prison, even if

1 the term for the secondary offense specifies imprisonment in county  
2 jail pursuant to subdivision (h) of Section 1170.

3 (f) If the person is convicted of a felony for the primary offense,  
4 is granted probation for the primary offense, and is convicted of  
5 a felony for the secondary offense, any sentence for the secondary  
6 offense shall be enhanced as provided in subdivision (b).

7 (g) If the primary offense conviction is reversed on appeal, the  
8 enhancement shall be suspended pending retrial of that felony.  
9 Upon retrial and reconviction, the enhancement shall be reimposed.  
10 If the person is no longer in custody for the secondary offense  
11 upon reconviction of the primary offense, the court may, at its  
12 discretion, reimpose the enhancement and order him or her  
13 recommitted to custody.

14 SEC. 168. Section 10295.6 of the Public Contract Code is  
15 amended to read:

16 10295.6. Sections 10295 and 10297 do not apply to any contract  
17 entered into by the Department of Water Resources under Part 3  
18 (commencing with Section 11100) of Division 6 or Chapter 8  
19 (commencing with Section 12930) of Part 6 of Division 6 of the  
20 Water Code for the acquisition, sale, or transmission of power, or  
21 for services to facilitate those activities.

22 SEC. 169. Section 20651.7 of the Public Contract Code is  
23 amended to read:

24 20651.7. (a) For the purposes of bid evaluation and selection  
25 pursuant to subdivision (a) of Section 20651, when a community  
26 college district determines that it can expect long-term savings  
27 through the use of life-cycle cost methodology, the use of more  
28 sustainable goods and materials, and reduced administrative costs,  
29 the community college district may provide for the selection of  
30 the lowest responsible bidder on the basis of best value pursuant  
31 to policies and procedures adopted by the governing board in  
32 accordance with this section.

33 (b) For purposes of this section, “best value” means the most  
34 advantageous balance of price, quality, service, performance, and  
35 other elements, as defined by the governing board, achieved  
36 through methods in accordance with this section and determined  
37 by objective performance criteria that may include price, features,  
38 long-term functionality, life-cycle costs, overall sustainability, and  
39 required services.

- 1 (c) A community college district shall consider all of the  
2 following when adopting best value policies pursuant to subdivision  
3 (a):
- 4 (1) Price and service level proposals that reduce the district's  
5 overall operating costs, including end-of-life expenditures and  
6 impact.
  - 7 (2) Equipment, services, supplies, and materials standards that  
8 support the community college district's strategic acquisition and  
9 management program direction.
  - 10 (3) A procedure for protest and resolution.
- 11 (d) A community college district may consider any of the  
12 following factors if adopting policies and procedures pursuant to  
13 subdivision (c):
- 14 (1) The total cost to the community college district of its  
15 purchase, use, and consumption of equipment, supplies, and  
16 materials.
  - 17 (2) The operational cost or benefit incurred by the community  
18 college district as a result of a contract award.
  - 19 (3) The added value to the community college district, as defined  
20 in the request for proposal, of vendor-added services.
  - 21 (4) The quality and effectiveness of equipment, supplies,  
22 materials, and services.
  - 23 (5) The reliability of delivery and installation schedules.
  - 24 (6) The terms and conditions of product warranties and vendor  
25 guarantees.
  - 26 (7) The financial stability of the vendor.
  - 27 (8) The vendor's quality assurance program.
  - 28 (9) The vendor's experience with the provisions of equipment,  
29 supplies, materials, and services within the institutional  
30 marketplace.
  - 31 (10) The consistency of the vendor's proposed equipment,  
32 supplies, materials, and services with the district's overall supplies  
33 and materials procurement program.
  - 34 (11) The economic benefits to the local community, including,  
35 but not limited to, job creation and retention.
  - 36 (12) The environmental benefits to the local community.
- 37 (e) A community college district awarding a contract under this  
38 section shall award a contract to the lowest responsible bidder  
39 whose proposal is determined, in writing by the community college

1 district, to be the best value to the community college district based  
2 solely on the criteria set forth in the request for proposal.

3 (f) The governing board of a community college district shall  
4 issue a written notice of intent to award supporting its contract  
5 award and stating in detail the basis of the award. The notice of  
6 the intent to award and the contract file must be sufficient to satisfy  
7 an external audit.

8 (g) The governing board of a community college district shall  
9 publicly announce its award, identifying the bidder to which the  
10 award is made, the price proposal of the contractor awarded the  
11 contract, and the overall combined rating on the request for  
12 proposal evaluation factors. The announcement shall also include  
13 the ranking of the contractor awarded the contract in relation to  
14 all other responsive bidders and their respective price proposals  
15 and summary of the rationale for the contract award.

16 (h) The community college district shall ensure that all  
17 businesses have a fair and equitable opportunity to compete for,  
18 and participate in, district contracts and shall also ensure that  
19 discrimination, as described in subdivision (e) of Section 12751.3  
20 of the Public Utilities Code, in the award and performance of  
21 contracts does not occur.

22 (i) (1) If a community college district elects to purchase  
23 equipment, materials, supplies, and services by contract, let in  
24 accordance with this section, the community college district shall  
25 submit the following information to the Chancellor of the  
26 California Community Colleges on or before January 1, 2016:

27 (A) The community college district's policies adopted pursuant  
28 to subdivision (a).

29 (B) An annual list of district procurements for contracts with a  
30 brief description of the contract, the winning bid, the cost, and if  
31 the contract was done under best value acquisition policies.

32 (C) For a contract awarded under the best value acquisition  
33 policies, the bid announcement announcing the bidder to which  
34 the award was made, including that bidder's scoring rating  
35 compared to other bidders, the winning contractor's price proposal,  
36 the overall combined rating on the request for proposal evaluation  
37 factors, a description of the products, commodities, or services  
38 sought, and a summary of the rationale for the contract award.

39 (D) For each contract awarded using the best value acquisition  
40 policies at least one bid award announcement for a comparably

1 priced contract using the traditional lowest responsible bidder  
2 process that specifies the bidder to which the contract was awarded,  
3 the amount of the award, and the request for bid for that contract  
4 that includes a description of the products, commodities, or services  
5 sought for at least one comparably sized contract, to the best value  
6 contract being let, awarded pursuant to the traditional lowest  
7 responsible bidder process including contracts awarded by the  
8 district in the three years prior to the adoption of best value  
9 acquisition policies by the district.

10 (E) For contracts awarded using best value, a summary of any  
11 additional economic benefit other than the price of the contract  
12 obtained, including an explanation of whether these benefits were  
13 realized as expected.

14 (F) The total number of bid protests or protests concerning an  
15 aspect of the solicitation, bid, or award of the agreement since the  
16 district adopted policies pursuant to subdivision (a) and the number  
17 of those protests that occurred under best value.

18 (G) A description of any written bid protest or protests  
19 concerning an aspect of the solicitation, bid, or award of the  
20 agreement including the resolution of the protest for any contract  
21 submitted pursuant to this section.

22 (2) The Legislative Analyst shall request the chancellor to  
23 provide the information specified in paragraph (1) to the Legislative  
24 Analyst on or before July 1, 2016. On or before February 1, 2017,  
25 the Legislative Analyst shall report to the Legislature on the use  
26 of competitive means for obtaining best value procurement by  
27 community college districts. The Legislative Analyst shall use the  
28 information provided by the chancellor to report all of the  
29 following:

30 (A) A summary of the overall benefits of best value acquisition.

31 (B) A comparison of the overall cost of contracts let under best  
32 value acquisition pursuant to this section to similar contracts let  
33 under traditional low bid procurement practices.

34 (C) An assessment of any benefits or disadvantages of best value  
35 procurement practices as compared to bids awarded to the lowest  
36 responsible bidder.

37 (D) An assessment of whether the use of best value procurement  
38 has led to a difference in the number of disputes as compared to  
39 contracts awarded using the traditional lowest responsible bidder  
40 method.

1 (E) An assessment of the policies adopted by the community  
2 college districts pursuant to subdivision (a) as well as an assessment  
3 of the overall performance criteria used to evaluate the bids and  
4 the effectiveness of the methodology.

5 (F) Recommendations as to whether the best value at lowest  
6 cost acquisition procurement authority should be continued.

7 (j) This section shall remain in effect only until January 1, 2018,  
8 and as of that date is repealed.

9 SEC. 170. Section 4629.5 of the Public Resources Code is  
10 amended to read:

11 4629.5. (a) (1) On and after January 1, 2013, there is hereby  
12 imposed an assessment on a person who purchases a lumber  
13 product or an engineered wood product for the storage, use, or  
14 other consumption in this state, at the rate of 1 percent of the sales  
15 price.

16 (2) A retailer shall charge the person the amount of the  
17 assessment as a charge that is separate from, and not included in,  
18 any other fee, charge, or other amount paid by the purchaser.

19 (3) The retailer shall collect the assessment from the person at  
20 the time of sale, and may retain an amount equal to the amount of  
21 reimbursement, as determined by the State Board of Equalization  
22 pursuant to regulations, for any costs associated with the collection  
23 of the assessment, to be taken on the first return or next consecutive  
24 returns until the entire reimbursement amount is retained. For  
25 purposes of this paragraph, the State Board of Equalization may  
26 adopt emergency regulations pursuant to Section 11346.1 of the  
27 Government Code. The adoption of any regulation pursuant to this  
28 paragraph shall be deemed to be an emergency and necessary for  
29 the immediate preservation of the public peace, health, and safety,  
30 and general welfare.

31 (b) The retailer shall separately state the amount of the  
32 assessment imposed under this section on the sales receipt given  
33 by the retailer to the person at the time of sale.

34 (c) The State Board of Equalization shall administer and collect  
35 the assessment imposed by this section pursuant to the Fee  
36 Collection Procedures Law (Part 30 (commencing with Section  
37 55001) of Division 2 of the Revenue and Taxation Code) with  
38 those changes as may be necessary to conform to the provisions  
39 of this article. For purposes of this section, the references in the

1 Fee Collection Procedures Law to “fee” shall include the  
2 assessment imposed by this section.

3 (d) (1) The assessment is required to be collected by a retailer  
4 and any amount unreturned to the person who paid an amount in  
5 excess of the assessment, but was collected from the person under  
6 the representation by the retailer that it was owed as an assessment,  
7 constitutes debts owed by the retailer to this state.

8 (2) Every person who purchases a lumber product or an  
9 engineered wood product for storage, use, or other consumption  
10 in this state is liable for the assessment until it has been paid to  
11 this state, except that payment to a retailer relieves the person from  
12 further liability for the assessment. Any assessment collected from  
13 a person that has not been remitted to the State Board of  
14 Equalization shall be a debt owed to the state by the retailer  
15 required to collect and remit the assessment. Nothing in this part  
16 shall impose any obligation upon a retailer to take any legal action  
17 to enforce the collection of the assessment imposed by this section.

18 (e) Except as provided in paragraph (3) of subdivision (a), the  
19 State Board of Equalization may prescribe, adopt, and enforce  
20 regulations relating to the administration and enforcement of this  
21 section, including, but not limited to, collections, reporting, refunds,  
22 and appeals.

23 (f) (1) The assessment imposed by this section is due and  
24 payable to the State Board of Equalization quarterly on or before  
25 the last day of the month next succeeding each quarterly period.

26 (2) On or before the last day of the month following each  
27 quarterly period, a return for the preceding quarterly period shall  
28 be filed with the State Board of Equalization using electronic  
29 media, in the form prescribed by the State Board of Equalization.  
30 Returns shall be authenticated in a form or pursuant to methods,  
31 as prescribed by the State Board of Equalization.

32 (g) For purposes of this section, all of the following shall apply:

33 (1) “Purchase” has the same meaning as that term is defined in  
34 Section 6010 of the Revenue and Taxation Code.

35 (2) “Retailer” has the same meaning as that term is defined in  
36 Section 6015 of the Revenue and Taxation Code.

37 (3) “Sales price” has the same meaning as that term is defined  
38 in Section 6011 of the Revenue and Taxation Code.

39 (4) “Storage” has the same meaning as that term is defined in  
40 Section 6008 of the Revenue and Taxation Code.

1 (5) “Use” has the same meaning as that term is defined in  
2 Section 6009 of the Revenue and Taxation Code.

3 (h) (1) Every person required to pay the assessment imposed  
4 under this article shall register with the State Board of Equalization.  
5 Every application for registration shall be made in a form  
6 prescribed by the State Board of Equalization and shall set forth  
7 the name under which the applicant transacts or intends to transact  
8 business, the location of his or her place or places of business, and  
9 such other information as the State Board of Equalization may  
10 require. An application for registration shall be authenticated in a  
11 form or pursuant to methods as may be prescribed by the State  
12 Board of Equalization.

13 (2) An application for registration filed pursuant to this section  
14 may be filed using electronic media as prescribed by the State  
15 Board of Equalization.

16 (3) Electronic media includes, but is not limited to, computer  
17 modem, magnetic media, optical disc, facsimile machine, or  
18 telephone.

19 SEC. 171. Section 4629.9 of the Public Resources Code is  
20 amended to read:

21 4629.9. (a) On or before January 10, 2013, and on each January  
22 10 thereafter in conjunction with the 2014–15 Governor’s Budget  
23 and each Governor’s Budget thereafter, the Secretary of the Natural  
24 Resources Agency, in consultation with the Secretary for  
25 Environmental Protection, shall submit to the Joint Legislative  
26 Budget Committee a report on the activities of all state  
27 departments, agencies, and boards relating to forest and timberland  
28 regulation. This report shall include, at a minimum, all of the  
29 following:

30 (1) A listing, by organization, of the proposed total costs  
31 associated with the review, approval, and inspection of timber  
32 harvest plans and associated permits.

33 (2) The number of timber harvest plans, and acreage covered  
34 by the plans, reviewed in the 2011–12 fiscal year, or the most  
35 recent fiscal year.

36 (3) To the extent feasible, a listing of activities, personnel, and  
37 funding, by department, for the forest practice program for  
38 2012–13, or the most recent fiscal year, and the preceding 10 fiscal  
39 years.



1 (4) The number of staff in each organization dedicated fully or  
2 partially to (A) review of timber harvest plans, and (B) other  
3 forestry-related activities, by geographical location in the state.

4 (5) The costs of other forestry-related activities undertaken.

5 (6) A summary of any process improvements identified by the  
6 administration as part of ongoing review of the timber harvest  
7 process, including data and technology improvement needs.

8 (7) Workload analysis for the forest practice program in each  
9 organization.

10 (8) In order to assess efficiencies in the program and the  
11 effectiveness of spending, a set of measures for, and a plan for  
12 collection of data on, the program, including, but not limited to:

13 (A) The number of timber harvest plans reviewed.

14 (B) Average time for plan review.

15 (C) Number of field inspections per inspector.

16 (D) Number of acres under active plans.

17 (E) Number of violations.

18 (F) Evaluating ecological performance.

19 (b) A report required to be submitted pursuant to subdivision  
20 (a) shall be submitted in compliance with Section 9795 of the  
21 Government Code.

22 SEC. 172. Section 6224.5 of the Public Resources Code is  
23 amended to read:

24 6224.5. (a) If, as of January 1, 2013, a person is in violation  
25 of subdivision (a) of Section 6224.3, that person shall not be subject  
26 to a penalty pursuant to that section, if the person, on or before  
27 July 1, 2013, remedies the violation or submits to the commission  
28 a completed lease application, including the payment of all fees  
29 and costs. The remedy may include, but is not limited to, entering  
30 into an appropriate lease with the commission or adequately  
31 removing the structure or facility.

32 (b) A person shall not be subject to a penalty or order pursuant  
33 to Section 6224.3, if the person submits a notice to the commission  
34 that a structure or facility owned by that person is potentially in  
35 violation of subdivision (a) of Section 6224.3 and the person,  
36 within six months from the date the notice is received by the  
37 commission, remedies the violation or submits to the commission  
38 a completed lease application, including the payment of all fees  
39 and costs. This subdivision shall apply only if the potential violator  
40 submits a notice to the commission before the commission

1 otherwise receives notice or information regarding the potential  
2 violation, or takes action against the violator.

3 (c) If any pole, conduit, cable, wire, pipeline, or associated  
4 appurtenance that is owned by an electrical corporation, as defined  
5 in Section 218 of the Public Utilities Code, or a gas corporation,  
6 as defined in Section 222 of the Public Utilities Code, violates  
7 subdivision (a) of Section 6224.3, and the electrical or gas  
8 corporation can demonstrate that it has not received actual notice  
9 that it does not have adequate existing land rights for its structure  
10 or facility located on land under the commission's jurisdiction, the  
11 electrical or gas corporation shall not be subject to a penalty or  
12 order pursuant to Section 6224.3 if the electrical or gas corporation  
13 remedies the violation or submits to the commission a completed  
14 lease application, including the payment of all fees and costs, or  
15 files with a court of competent jurisdiction a motion to perfect a  
16 prescriptive easement within six months from the date the violation  
17 is reported or the mistake is discovered.

18 (d) The commission may adopt regulations necessary or useful  
19 to carry out this section and Sections 6224.3 and 6224.4.

20 SEC. 173. Section 21080.37 of the Public Resources Code is  
21 amended to read:

22 21080.37. (a) This division does not apply to a project or an  
23 activity to repair, maintain, or make minor alterations to an existing  
24 roadway if all of the following conditions are met:

25 (1) The project is carried out by a city or county with a  
26 population of less than 100,000 persons to improve public safety.

27 (2) (A) The project does not cross a waterway.

28 (B) For purposes of this paragraph, "waterway" means a bay,  
29 estuary, lake, pond, river, slough, or a perennial, intermittent, or  
30 ephemeral stream, lake, or estuarine-marine shoreline.

31 (3) The project involves negligible or no expansion of an  
32 existing use beyond that existing at the time of the lead agency's  
33 determination.

34 (4) The roadway is not a state roadway.

35 (5) (A) The site of the project does not contain wetlands or  
36 riparian areas and does not have significant value as a wildlife  
37 habitat, and the project does not harm any species protected by the  
38 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et  
39 seq.), the Native Plant Protection Act (Chapter 10 (commencing  
40 with Section 1900) of Division 2 of the Fish and Game Code), or

1 the California Endangered Species Act (Chapter 1.5 (commencing  
2 with Section 2050) of Division 3 of the Fish and Game Code), and  
3 the project does not cause the destruction or removal of any species  
4 protected by a local ordinance.

5 (B) For the purposes of this paragraph:

6 (i) “Riparian areas” mean those areas transitional between  
7 terrestrial and aquatic ecosystems and that are distinguished by  
8 gradients in biophysical conditions, ecological processes, and biota.  
9 A riparian area is an area through which surface and subsurface  
10 hydrology connect waterbodies with their adjacent uplands. A  
11 riparian area includes those portions of terrestrial ecosystems that  
12 significantly influence exchanges of energy and matter with aquatic  
13 ecosystems. A riparian area is adjacent to perennial, intermittent,  
14 and ephemeral streams, lakes, and estuarine-marine shorelines.

15 (ii) “Significant value as a wildlife habitat” includes wildlife  
16 habitat of national, statewide, regional, or local importance; habitat  
17 for species protected by the federal Endangered Species Act of  
18 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered  
19 Species Act (Chapter 1.5 (commencing with Section 2050) of  
20 Division 3 of the Fish and Game Code), or the Native Plant  
21 Protection Act (Chapter 10 (commencing with Section 1900) of  
22 Division 2 of the Fish and Game Code); habitat identified as  
23 candidate, fully protected, sensitive, or species of special status  
24 by local, state, or federal agencies; or habitat essential to the  
25 movement of resident or migratory wildlife.

26 (iii) “Wetlands” has the same meaning as in the United States  
27 Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

28 (iv) “Wildlife habitat” means the ecological communities upon  
29 which wild animals, birds, plants, fish, amphibians, and  
30 invertebrates depend for their conservation and protection.

31 (6) The project does not impact cultural resources.

32 (7) The roadway does not affect scenic resources, as provided  
33 pursuant to subdivision (c) of Section 21084.

34 (b) Prior to determining that a project is exempt pursuant to this  
35 section, the lead agency shall do both of the following:

36 (1) Include measures in the project to mitigate potential  
37 vehicular traffic and safety impacts and bicycle and pedestrian  
38 safety impacts.

39 (2) Hold a noticed public hearing on the project to hear and  
40 respond to public comments. The hearing on the project may be

1 conducted with another noticed lead agency public hearing.  
2 Publication of the notice shall be no fewer times than required by  
3 Section 6061 of the Government Code, by the public agency in a  
4 newspaper of general circulation in the area.

5 (c) For purposes of this section, “roadway” means a roadway  
6 as defined pursuant to Section 530 of the Vehicle Code and the  
7 previously graded and maintained shoulder that is within a roadway  
8 right-of-way of no more than five feet from the edge of the  
9 roadway.

10 (d) Whenever a local agency determines that a project is not  
11 subject to this division pursuant to this section, and it approves or  
12 determines to carry out that project, the local agency shall file a  
13 notice with the Office of Planning and Research, and with the  
14 county clerk in the county in which the project will be located in  
15 the manner specified in subdivisions (b) and (c) of Section 21152.

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

19 SEC. 174. Section 21080.5 of the Public Resources Code is  
20 amended to read:

21 21080.5. (a) Except as provided in Section 21158.1, when the  
22 regulatory program of a state agency requires a plan or other written  
23 documentation containing environmental information and  
24 complying with paragraph (3) of subdivision (d) to be submitted  
25 in support of an activity listed in subdivision (b), the plan or other  
26 written documentation may be submitted in lieu of the  
27 environmental impact report required by this division if the  
28 Secretary of the Resources Agency has certified the regulatory  
29 program pursuant to this section.

30 (b) This section applies only to regulatory programs or portions  
31 thereof that involve either of the following:

32 (1) The issuance to a person of a lease, permit, license,  
33 certificate, or other entitlement for use.

34 (2) The adoption or approval of standards, rules, regulations,  
35 or plans for use in the regulatory program.

36 (c) A regulatory program certified pursuant to this section is  
37 exempt from Chapter 3 (commencing with Section 21100), Chapter  
38 4 (commencing with Section 21150), and Section 21167, except  
39 as provided in Article 2 (commencing with Section 21157) of  
40 Chapter 4.5.

1 (d) To qualify for certification pursuant to this section, a  
2 regulatory program shall require the utilization of an  
3 interdisciplinary approach that will ensure the integrated use of  
4 the natural and social sciences in decisionmaking and that shall  
5 meet all of the following criteria:

6 (1) The enabling legislation of the regulatory program does both  
7 of the following:

8 (A) Includes protection of the environment among its principal  
9 purposes.

10 (B) Contains authority for the administering agency to adopt  
11 rules and regulations for the protection of the environment, guided  
12 by standards set forth in the enabling legislation.

13 (2) The rules and regulations adopted by the administering  
14 agency for the regulatory program do all of the following:

15 (A) Require that an activity will not be approved or adopted as  
16 proposed if there are feasible alternatives or feasible mitigation  
17 measures available that would substantially lessen a significant  
18 adverse effect that the activity may have on the environment.

19 (B) Include guidelines for the orderly evaluation of proposed  
20 activities and the preparation of the plan or other written  
21 documentation in a manner consistent with the environmental  
22 protection purposes of the regulatory program.

23 (C) Require the administering agency to consult with all public  
24 agencies that have jurisdiction, by law, with respect to the proposed  
25 activity.

26 (D) Require that final action on the proposed activity include  
27 the written responses of the issuing authority to significant  
28 environmental points raised during the evaluation process.

29 (E) Require the filing of a notice of the decision by the  
30 administering agency on the proposed activity with the Secretary  
31 of the Resources Agency. Those notices shall be available for  
32 public inspection, and a list of the notices shall be posted on a  
33 weekly basis in the Office of the Resources Agency. Each list shall  
34 remain posted for a period of 30 days.

35 (F) Require notice of the filing of the plan or other written  
36 documentation to be made to the public and to a person who  
37 requests, in writing, notification. The notification shall be made  
38 in a manner that will provide the public or a person requesting  
39 notification with sufficient time to review and comment on the  
40 filing.

1 (3) The plan or other written documentation required by the  
2 regulatory program does both of the following:  
3 (A) Includes a description of the proposed activity with  
4 alternatives to the activity, and mitigation measures to minimize  
5 any significant adverse effect on the environment of the activity.  
6 (B) Is available for a reasonable time for review and comment  
7 by other public agencies and the general public.  
8 (e) (1) The Secretary of the Resources Agency shall certify a  
9 regulatory program that the secretary determines meets all the  
10 qualifications for certification set forth in this section, and withdraw  
11 certification on determination that the regulatory program has been  
12 altered so that it no longer meets those qualifications. Certification  
13 and withdrawal of certification shall occur only after compliance  
14 with Chapter 3.5 (commencing with Section 11340) of Part 1 of  
15 Division 3 of Title 2 of the Government Code.  
16 (2) In determining whether or not a regulatory program meets  
17 the qualifications for certification set forth in this section, the  
18 inquiry of the secretary shall extend only to the question of whether  
19 the regulatory program meets the generic requirements of  
20 subdivision (d). The inquiry may not extend to individual decisions  
21 to be reached under the regulatory program, including the nature  
22 of specific alternatives or mitigation measures that might be  
23 proposed to lessen any significant adverse effect on the  
24 environment of the activity.  
25 (3) If the secretary determines that the regulatory program  
26 submitted for certification does not meet the qualifications for  
27 certification set forth in this section, the secretary shall adopt  
28 findings setting forth the reasons for the determination.  
29 (f) After a regulatory program has been certified pursuant to  
30 this section, a proposed change in the program that could affect  
31 compliance with the qualifications for certification specified in  
32 subdivision (d) may be submitted to the Secretary of the Resources  
33 Agency for review and comment. The scope of the secretary's  
34 review shall extend only to the question of whether the regulatory  
35 program meets the generic requirements of subdivision (d). The  
36 review may not extend to individual decisions to be reached under  
37 the regulatory program, including specific alternatives or mitigation  
38 measures that might be proposed to lessen any significant adverse  
39 effect on the environment of the activity. The secretary shall have  
40 30 days from the date of receipt of the proposed change to notify

1 the state agency whether the proposed change will alter the  
2 regulatory program so that it no longer meets the qualification for  
3 certification established in this section and will result in a  
4 withdrawal of certification as provided in this section.

5 (g) An action or proceeding to attack, review, set aside, void,  
6 or annul a determination or decision of a state agency approving  
7 or adopting a proposed activity under a regulatory program that  
8 has been certified pursuant to this section on the basis that the plan  
9 or other written documentation prepared pursuant to paragraph (3)  
10 of subdivision (d) does not comply with this section shall be  
11 commenced not later than 30 days from the date of the filing of  
12 notice of the approval or adoption of the activity.

13 (h) (1) An action or proceeding to attack, review, set aside,  
14 void, or annul a determination of the Secretary of the Resources  
15 Agency to certify a regulatory program pursuant to this section on  
16 the basis that the regulatory program does not comply with this  
17 section shall be commenced within 30 days from the date of  
18 certification by the secretary.

19 (2) In an action brought pursuant to paragraph (1), the inquiry  
20 shall extend only to whether there was a prejudicial abuse of  
21 discretion by the secretary. Abuse of discretion is established if  
22 the secretary has not proceeded in a manner required by law or if  
23 the determination is not supported by substantial evidence.

24 (i) For purposes of this section, a county agricultural  
25 commissioner is a state agency.

26 (j) For purposes of this section, an air quality management  
27 district or air pollution control district is a state agency, except  
28 that the approval, if any, by a district of a nonattainment area plan  
29 is subject to this section only if, and to the extent that, the approval  
30 adopts or amends rules or regulations.

31 (k) (1) The secretary, by July 1, 2004, shall develop a protocol  
32 for reviewing the prospective application of certified regulatory  
33 programs to evaluate the consistency of those programs with the  
34 requirements of this division. Following the completion of the  
35 development of the protocol, the secretary shall provide a report  
36 to the Senate Committee on Environmental Quality and the  
37 Assembly Committee on Natural Resources regarding the need  
38 for a grant of additional statutory authority authorizing the secretary  
39 to undertake a review of the certified regulatory programs.

1 (2) The secretary may update the protocol, and may update the  
2 report provided to the legislative committees pursuant to paragraph  
3 (1) and provide, in compliance with Section 9795 of the  
4 Government Code, the updated report to those committees if  
5 additional statutory authority is needed.

6 (3) The secretary shall provide a significant opportunity for  
7 public participation in developing or updating the protocol  
8 described in paragraph (1) or (2), including, but not limited to, at  
9 least two public meetings with interested parties. A notice of each  
10 meeting shall be provided at least 10 days prior to the meeting to  
11 a person who files a written request for a notice with the agency  
12 and to the Senate Committee on Environmental Quality and the  
13 Assembly Committee on Natural Resources.

14 SEC. 175. Section 21084 of the Public Resources Code is  
15 amended to read:

16 21084. (a) The guidelines prepared and adopted pursuant to  
17 Section 21083 shall include a list of classes of projects that have  
18 been determined not to have a significant effect on the environment  
19 and that shall be exempt from this division. In adopting the  
20 guidelines, the Secretary of the Natural Resources Agency shall  
21 make a finding that the listed classes of projects referred to in this  
22 section do not have a significant effect on the environment.

23 (b) A project's greenhouse gas emissions shall not, in and of  
24 themselves, be deemed to cause an exemption adopted pursuant  
25 to subdivision (a) to be inapplicable if the project complies with  
26 all applicable regulations or requirements adopted to implement  
27 statewide, regional, or local plans consistent with Section 15183.5  
28 of Title 14 of the California Code of Regulations.

29 (c) A project that may result in damage to scenic resources,  
30 including, but not limited to, trees, historic buildings, rock  
31 outcroppings, or similar resources, within a highway designated  
32 as an official state scenic highway, pursuant to Article 2.5  
33 (commencing with Section 260) of Chapter 2 of Division 1 of the  
34 Streets and Highways Code, shall not be exempted from this  
35 division pursuant to subdivision (a). This subdivision does not  
36 apply to improvements as mitigation for a project for which a  
37 negative declaration has been approved or an environmental impact  
38 report has been certified.

39 (d) A project located on a site that is included on any list  
40 compiled pursuant to Section 65962.5 of the Government Code



1 shall not be exempted from this division pursuant to subdivision  
2 (a).

3 (e) A project that may cause a substantial adverse change in the  
4 significance of a historical resource, as specified in Section  
5 21084.1, shall not be exempted from this division pursuant to  
6 subdivision (a).

7 SEC. 176. Section 72410 of the Public Resources Code is  
8 amended to read:

9 72410. (a) Unless the context otherwise requires, the  
10 definitions set forth in this section govern this division.

11 (b) “Board” means the State Water Resources Control Board.

12 (c) “Commission” means the State Lands Commission.

13 (d) “Graywater” means drainage from dishwasher, shower,  
14 laundry, bath, and washbasin drains, but does not include drainage  
15 from toilets, urinals, hospitals, or cargo spaces.

16 (e) “Hazardous waste” has the meaning set forth in Section  
17 25117 of the Health and Safety Code, but does not include sewage.

18 (f) “Large passenger vessel” or “vessel” means a vessel of 300  
19 gross registered tons or greater that is engaged in the carrying of  
20 passengers for hire, excluding all of the following vessels:

21 (1) Vessels without berths or overnight accommodations for  
22 passengers.

23 (2) Noncommercial vessels, warships, vessels operated by  
24 nonprofit entities as determined by the Internal Revenue Service,  
25 and vessels operated by the state, the United States, or a foreign  
26 government.

27 (3) Oceangoing ships, as defined in subdivision (j).

28 (g) “Marine waters of the state” means waters within the area  
29 bounded by the mean high tide line to the three-mile state waters  
30 limit, from the Oregon border to the Mexican border.

31 (h) “Marine sanctuary” means marine waters of the state in the  
32 Channel Islands National Marine Sanctuary, Cordell Bank National  
33 Marine Sanctuary, Gulf of the Farallones National Marine  
34 Sanctuary, or Monterey Bay National Marine Sanctuary.

35 (i) “Medical waste” means medical waste subject to regulation  
36 pursuant to Part 14 (commencing with Section 117600) of Division  
37 104 of the Health and Safety Code.

38 (j) “Oceangoing ship” means a private, commercial, government,  
39 or military vessel of 300 gross registered tons or more calling on  
40 California ports or places.

1 (k) “Oil” has the meaning set forth in Section 8750.

2 (l) “Oily bilgewater” includes bilgewater that contains used  
3 lubrication oils, oil sludge and slops, fuel and oil sludge, used oil,  
4 used fuel and fuel filters, and oily waste.

5 (m) “Operator” has the meaning set forth in Section 651 of the  
6 Harbors and Navigation Code.

7 (n) “Other waste” means photography laboratory chemicals,  
8 dry cleaning chemicals, or medical waste.

9 (o) “Owner” has the meaning set forth in Section 651 of the  
10 Harbors and Navigation Code.

11 (p) “Release” means discharging or disposing of wastes into  
12 the environment.

13 (q) “Sewage” has the meaning set forth in Section 775.5 of the  
14 Harbors and Navigation Code, including material that has been  
15 collected or treated through a marine sanitation device as that term  
16 is used in Section 312 of the federal Clean Water Act (33 U.S.C.  
17 Sec. 1322) or material that is a byproduct of sewage treatment.

18 (r) “Sewage sludge” has the meaning set forth in Section 122.2  
19 of Title 40 of the Code of Federal Regulations.

20 (s) “Sufficient holding tank capacity” means a holding tank of  
21 sufficient capacity to contain sewage and graywater while the  
22 oceangoing ship is within the marine waters of the state.

23 (t) “Waste” means hazardous waste and other waste.

24 SEC. 177. Section 2827.10 of the Public Utilities Code is  
25 amended to read:

26 2827.10. (a) As used in this section, the following terms have  
27 the following meanings:

28 (1) “Electrical corporation” means an electrical corporation, as  
29 defined in Section 218.

30 (2) “Eligible fuel cell electrical generating facility” means a  
31 facility that includes the following:

32 (A) Integrated powerplant systems containing a stack, tubular  
33 array, or other functionally similar configuration used to  
34 electrochemically convert fuel to electric energy.

35 (B) An inverter and fuel processing system where necessary.

36 (C) Other plant equipment, including heat recovery equipment,  
37 necessary to support the plant’s operation or its energy conversion.

38 (3) (A) “Eligible fuel cell customer-generator” means a  
39 customer of an electrical corporation that meets all the following  
40 criteria:

1 (i) Uses a fuel cell electrical generating facility with a capacity  
2 of not more than one megawatt that is located on or adjacent to  
3 the customer's owned, leased, or rented premises, is interconnected  
4 and operates in parallel with the electrical grid while the grid is  
5 operational or in a grid independent mode when the grid is  
6 nonoperational, and is sized to offset part or all of the eligible fuel  
7 cell customer-generator's own electrical requirements.

8 (ii) Is the recipient of local, state, or federal funds, or who  
9 self-finances projects designed to encourage the development of  
10 eligible fuel cell electrical generating facilities.

11 (iii) Uses technology the commission has determined will  
12 achieve reductions in emissions of greenhouse gases pursuant to  
13 subdivision (b), and meets the emission requirements for eligibility  
14 for funding set forth in subdivision (c), of Section 379.6.

15 (B) For purposes of this paragraph, a person or entity is a  
16 customer of the electrical corporation if the customer is physically  
17 located within the service territory of the electrical corporation  
18 and receives bundled service, distribution service, or transmission  
19 service from the electrical corporation.

20 (4) "Net energy metering" means measuring the difference  
21 between the electricity supplied through the electrical grid and the  
22 difference between the electricity generated by an eligible fuel cell  
23 electrical generating facility and fed back to the electrical grid over  
24 a 12-month period as described in subdivision (e). Net energy  
25 metering shall be accomplished using a time-of-use meter capable  
26 of registering the flow of electricity in two directions. If the existing  
27 electrical meter of an eligible fuel cell customer-generator is not  
28 capable of measuring the flow of electricity in two directions, the  
29 eligible fuel cell customer-generator shall be responsible for all  
30 expenses involved in purchasing and installing a meter that is able  
31 to measure electricity flow in two directions. If an additional meter  
32 or meters are installed, the net energy metering calculation shall  
33 yield a result identical to that of a time-of-use meter.

34 (b) (1) Every electrical corporation, not later than March 1,  
35 2004, shall file with the commission a standard tariff providing  
36 for net energy metering for eligible fuel cell customer-generators,  
37 consistent with this section. Subject to the limitation in subdivision  
38 (f), every electrical corporation shall make this tariff available to  
39 eligible fuel cell customer-generators upon request, on a  
40 first-come-first-served basis, until the total cumulative rated

1 generating capacity of the eligible fuel cell electrical generating  
2 facilities receiving service pursuant to the tariff reaches a level  
3 equal to its proportionate share of a statewide limitation of 500  
4 megawatts cumulative rated generation capacity served under this  
5 section. The proportionate share shall be calculated based on the  
6 ratio of the electrical corporation's peak demand compared to the  
7 total statewide peak demand.

8 (2) To continue the growth of the market for onsite electrical  
9 generation using fuel cells, the commission may review and  
10 incrementally raise the limitation established in paragraph (1) on  
11 the total cumulative rated generating capacity of the eligible fuel  
12 cell electrical generating facilities receiving service pursuant to  
13 the tariff in paragraph (1).

14 (c) In determining the eligibility for the cumulative rated  
15 generating capacity within an electrical corporation's service  
16 territory, preference shall be given to facilities that, at the time of  
17 installation, are located in a community with significant exposure  
18 to air contaminants or localized air contaminants, or both,  
19 including, but not limited to, communities of minority populations  
20 or low-income populations, or both, based on the ambient air  
21 quality standards established pursuant to Section 39607 of the  
22 Health and Safety Code.

23 (d) (1) Each net energy metering contract or tariff shall be  
24 identical, with respect to rate structure, all retail rate components,  
25 and any monthly charges, to the contract or tariff to which the  
26 customer would be assigned if the customer was not an eligible  
27 fuel cell customer-generator. Any new or additional demand  
28 charge, standby charge, customer charge, minimum monthly  
29 charge, interconnection charge, or other charge that would increase  
30 an eligible fuel cell customer-generator's costs beyond those of  
31 other customers in the rate class to which the eligible fuel cell  
32 customer-generator would otherwise be assigned are contrary to  
33 the intent of the Legislature in enacting this section, and may not  
34 form a part of net energy metering tariffs.

35 (2) The commission shall authorize an electrical corporation to  
36 charge a fuel cell customer-generator a fee based on the cost to  
37 the utility associated with providing interconnection inspection  
38 services for that fuel cell customer-generator.

39 (e) The net metering calculation shall be made by measuring  
40 the difference between the electricity supplied to the eligible fuel

1 cell customer-generator and the electricity generated by the eligible  
2 fuel cell customer-generator and fed back to the electrical grid  
3 over a 12-month period. The following rules shall apply to the  
4 annualized metering calculation:

5 (1) The eligible fuel cell customer-generator shall, at the end  
6 of each 12-month period following the date of final interconnection  
7 of the eligible fuel cell electrical generating facility with an  
8 electrical corporation, and at each anniversary date thereafter, be  
9 billed for electricity used during that period. The electrical  
10 corporation shall determine if the eligible fuel cell  
11 customer-generator was a net consumer or a net producer of  
12 electricity during that period. For purposes of determining if the  
13 eligible fuel cell customer-generator was a net consumer or a net  
14 producer of electricity during that period, the electrical corporation  
15 shall aggregate the electrical load of the meters located on the  
16 property where the eligible fuel cell electrical generating facility  
17 is located and on all property adjacent or contiguous to the property  
18 on which the facility is located, if those properties are solely  
19 owned, leased, or rented by the eligible fuel cell  
20 customer-generator. Each aggregated account shall be billed and  
21 measured according to a time-of-use rate schedule.

22 (2) At the end of each 12-month period, where the electricity  
23 supplied during the period by the electrical corporation exceeds  
24 the electricity generated by the eligible fuel cell customer-generator  
25 during that same period, the eligible fuel cell customer-generator  
26 is a net electricity consumer and the electrical corporation shall  
27 be owed compensation for the eligible fuel cell  
28 customer-generator's net kilowatthour consumption over that same  
29 period. The compensation owed for the eligible fuel cell  
30 customer-generator's consumption shall be calculated as follows:

31 (A) The generation charges for any net monthly consumption  
32 of electricity shall be calculated according to the terms of the tariff  
33 to which the same customer would be assigned to or be eligible  
34 for if the customer was not an eligible fuel cell customer-generator.  
35 When the eligible fuel cell customer-generator is a net generator  
36 during any discrete time-of-use period, the net kilowatthours  
37 produced shall be valued at the same price per kilowatthour as the  
38 electrical corporation would charge for retail kilowatthour sales  
39 for generation, exclusive of any surcharges, during that same  
40 time-of-use period. If the eligible fuel cell customer-generator's

1 time-of-use electrical meter is unable to measure the flow of  
2 electricity in two directions, paragraph (4) of subdivision (a) shall  
3 apply. All other charges, other than generation charges, shall be  
4 calculated in accordance with the eligible fuel cell  
5 customer-generator's applicable tariff and based on the total  
6 kilowatthours delivered by the electrical corporation to the eligible  
7 fuel cell customer-generator. To the extent that charges for  
8 transmission and distribution services are recovered through  
9 demand charges in any particular month, no standby reservation  
10 charges shall apply in that monthly billing cycle.

11 (B) The net balance of moneys owed shall be paid in accordance  
12 with the electrical corporation's normal billing cycle.

13 (3) At the end of each 12-month period, where the electricity  
14 generated by the eligible fuel cell customer-generator during the  
15 12-month period exceeds the electricity supplied by the electrical  
16 corporation during that same period, the eligible fuel cell  
17 customer-generator is a net electricity producer and the electrical  
18 corporation shall retain any excess kilowatthours generated during  
19 the prior 12-month period. The eligible fuel cell customer-generator  
20 shall not be owed any compensation for those excess kilowatthours.

21 (4) If an eligible fuel cell customer-generator terminates service  
22 with the electrical corporation, the electrical corporation shall  
23 reconcile the eligible fuel cell customer-generator's consumption  
24 and production of electricity during any 12-month period.

25 (f) No fuel cell electrical generating facility shall be eligible for  
26 the tariff unless it commences operation prior to January 1, 2015,  
27 unless a later enacted statute, that is chaptered before January 1,  
28 2015, extends this eligibility commencement date. The tariff shall  
29 remain in effect for an eligible fuel cell electrical generating facility  
30 that commences operation pursuant to the tariff prior to January  
31 1, 2015. A fuel cell customer-generator shall be eligible for the  
32 tariff established pursuant to this section only for the operating  
33 life of the eligible fuel cell electrical generating facility.

34 SEC. 178. Section 2862 of the Public Utilities Code is amended  
35 to read:

36 2862. The Legislature finds and declares all of the following:

37 (a) California is heavily dependent on natural gas, importing  
38 more than 80 percent of the natural gas it consumes.

1 (b) Rising worldwide demand for natural gas and a shrinking  
2 supply create rising and unstable prices that can harm California  
3 consumers and the economy.

4 (c) Natural gas is a fossil fuel and a major source of global  
5 warming pollution and the pollutants that cause air pollution,  
6 including smog.

7 (d) California's growing population and economy will put a  
8 strain on energy supplies and threaten the ability of the state to  
9 meet its global warming goals unless specific steps are taken to  
10 reduce demand and generate energy cleanly and efficiently.

11 (e) Water heating for domestic and industrial use relies almost  
12 entirely on natural gas and accounts for a significant percentage  
13 of the state's natural gas consumption.

14 (f) Solar water heating systems represent the largest untapped  
15 natural gas saving potential remaining in California.

16 (g) In addition to financial and energy savings, solar water  
17 heating systems can help protect against future gas and electricity  
18 shortages and reduce our dependence on foreign sources of energy.

19 (h) Solar water heating systems can also help preserve the  
20 environment and protect public health by reducing air pollution,  
21 including carbon dioxide, a leading global warming gas, and  
22 nitrogen oxide, a precursor to smog.

23 (i) Growing demand for these technologies will create jobs in  
24 California as well as promote greater energy independence, protect  
25 consumers from rising energy costs, and result in cleaner air.

26 (j) It is in the interest of the State of California to promote solar  
27 water heating systems and other technologies that directly reduce  
28 demand for natural gas in homes and businesses.

29 (k) It is the intent of the Legislature to build a mainstream  
30 market for solar water heating systems that directly reduces demand  
31 for natural gas in homes, businesses, schools, nonprofit, and  
32 government buildings. Toward that end, it is the goal of this article  
33 to install at least 200,000 solar water heating systems on homes,  
34 businesses, and other buildings or facilities of eligible customer  
35 classes throughout the state by 2017, thereby lowering prices and  
36 creating a self-sufficient market that will sustain itself beyond the  
37 life of this program.

38 (l) It is the intent of the Legislature that the solar water heating  
39 system incentives created by this article should be a cost-effective  
40 investment by gas customers. Gas customers will recoup the cost

1 of their investment through lower prices as a result of avoiding  
2 purchases of natural gas.

3 (m) It is the intent of the Legislature that this article will  
4 encourage the cost-effective deployment of solar heating systems  
5 in both residential and commercial markets and in each end-use  
6 application sector in a balanced manner. It is the intent of the  
7 Legislature that the commission monitor and adjust incentives  
8 created by this article so that they are cost-effective investments  
9 sufficient to significantly increase markets and promote market  
10 transformation. It is the intent of the Legislature that the  
11 commission ensure that increased, uniform growth in each market  
12 sector is achieved through program incentives or structure  
13 adjustments that prevent overutilization of program resources by  
14 any single sector.

15 SEC. 179. Section 5142 of the Public Utilities Code is amended  
16 to read:

17 5142. (a) Except as provided in Section 5133, a household  
18 goods carrier in compliance with this chapter has a lien on used  
19 household goods and personal effects to secure payment of the  
20 amount specified in subdivision (b) for transportation and  
21 additional services ordered by the consignor. A lien does not attach  
22 to food, medicine, or medical devices, items used to treat or assist  
23 an individual with a disability, or items used for the care of a minor  
24 child.

25 (b) (1) The amount secured by the lien is the maximum total  
26 dollar amount for the transportation of the household goods and  
27 personal effects and any additional services (including any bona  
28 fide change order permitted under the commission's tariffs) that  
29 is set forth clearly and conspicuously in writing adjacent to the  
30 space reserved for the signature of the consignor and that is agreed  
31 to by the consignor before any goods or personal effects are moved  
32 from their location or any additional services are performed.

33 (2) The dollar amount for the transportation of household goods  
34 and personal effects and additional services may not be preprinted  
35 on any form, shall be just and reasonable, and shall be established  
36 in good faith by the household goods carrier based on the specific  
37 circumstances of the services to be performed.

38 (c) Upon tender to the household goods carrier of the amount  
39 specified in subdivision (b), the lien is extinguished, and the



1 household goods carrier shall release all household goods and  
2 personal effects to the consignee.

3 (d) A household goods carrier may enforce the lien on household  
4 goods and personal effects provided in this section except as to  
5 any goods that the carrier voluntarily delivers or unjustifiably  
6 refuses to deliver. The lien shall be enforced in the manner  
7 provided in this section and Chapter 6 (commencing with Section  
8 9601) of Division 9 of the Commercial Code for the enforcement  
9 of a security interest in consumer goods in a consumer transaction.  
10 To the extent of any conflict between this section and that Chapter  
11 6, this section shall prevail. Every act required in connection with  
12 enforcing the lien shall be performed in good faith and in a  
13 commercially reasonable manner.

14 (e) The household goods carrier shall provide a notification of  
15 disposition at least 30 days prior to any disposition to each  
16 consignor and consignee by personal delivery, or in the alternative,  
17 by first-class and certified mail, postage prepaid and return receipt  
18 requested, at the address last known by the carrier and at the  
19 destination address, and by electronic mail if an electronic mail  
20 address is known to the carrier. If any of the required recipients  
21 of notice are married to each other, and according to the carrier's  
22 records, reside at the same address, one notice addressed to both  
23 shall be sufficient. Within 14 days after a disposition, the carrier  
24 shall provide to the consignors any surplus funds from the  
25 disposition and an accounting, without charge, of the proceeds of  
26 the disposition.

27 (f) Any person having possession or control of household goods  
28 or personal effects, who knows, or through the exercise of  
29 reasonable care should know, that the household goods carrier has  
30 been tendered the amount specified in subdivision (b), shall release  
31 the household goods and personal effects to the consignor or  
32 consignee, upon the request of the consignor or consignee. If the  
33 person fails to release the household goods and personal effects  
34 to the consignor or consignee, any peace officer, as defined in  
35 subdivision (c) of Section 5133, may take custody of the household  
36 goods and personal effects and release them to the consignor or  
37 consignee.

38 (g) This section shall not affect any rights, if any, of a household  
39 goods carrier to claim additional amounts, on an unsecured basis,  
40 or of a consignor or consignee to make or contest any claim, and

1 tender of payment of the amount specified in subdivision (b) is  
2 not a waiver of claims by the consignor or consignee.

3 (h) Any person injured by a violation of this section may bring  
4 an action for the recovery of the greater of one thousand dollars  
5 (\$1,000) or actual damages, injunctive or other equitable relief,  
6 reasonable attorney's fees and costs, and exemplary damages of  
7 not less than three times the amount of actual damages for a willful  
8 violation.

9 (i) Any waiver of this section shall be void and unenforceable.

10 (j) Notwithstanding any other law, this section exclusively  
11 establishes and provides for a household goods carrier's lien on  
12 used household goods and personal effects to secure payment for  
13 transportation and additional services ordered by the consignor.

14 (k) For purposes of this section, the following terms have the  
15 following meanings:

16 (1) "Consignor" means the person named in the bill of lading  
17 as the person from whom the household goods and personal effects  
18 have been received for shipment and that person's agent.

19 (2) "Consignee" means the person named in the bill of lading  
20 to whom or to whose order the household goods carrier is required  
21 to make delivery as provided in the bill of lading and that person's  
22 agent.

23 (l) Any document required by this section may be in an  
24 electronic form, if agreed upon by the carrier and the customer.

25 SEC. 180. Section 5143 of the Public Utilities Code is amended  
26 to read:

27 5143. (a) For purposes of this section, the following terms  
28 have the following meanings:

29 (1) "Consignor" means the person named in the bill of lading  
30 as the person from whom the household goods and personal effects  
31 have been received for shipment and that person's agent.

32 (2) "Consignee" means the person named in the bill of lading  
33 to whom or to whose order the household goods carrier is required  
34 to make delivery as provided in the bill of lading and that person's  
35 agent.

36 (b) Any household goods carrier engaged in the business of  
37 transportation of used household goods and personal effects by  
38 motor vehicle over any public highway in this state shall provide  
39 each consignor with a completed copy of the notice set forth in  
40 this section. The notice shall be printed in at least 12-point type,

1 except the title and first two paragraphs which shall be printed in  
2 boldface type, and provided to each consignor at least three days  
3 prior to the date scheduled for the transportation of household  
4 goods or personal effects. If the consignor requests services on a  
5 date that is less than three days before the scheduled date for  
6 transportation of the household goods or personal effects, the  
7 carrier shall provide the notice as soon as practicable, but in no  
8 event may the carrier commence any services until the consignor  
9 has signed and received a signed copy of the notice. The carrier  
10 shall obtain sufficient information from the consignor to fill out  
11 the form and shall include the correct maximum amount and a  
12 sufficient description of services that will be performed. The carrier  
13 shall retain a copy of the notice, signed by the consignor, for at  
14 least three years from the date the notice was signed by the  
15 consignor.

16 (c) Any waiver of the requirements of this section is void and  
17 unenforceable.

18 (d) The “Not To Exceed” amount set forth in the notice and the  
19 agreement between the household goods carrier and the consignor  
20 shall be the maximum total dollar amount for which the consignor  
21 may be liable for the transportation of household goods and  
22 personal effects and any additional services ordered by the  
23 consignor (including any bona fide change order permitted under  
24 the commission’s rules and tariffs) and agreed to by the consignor  
25 before any goods or personal effects are moved from their location  
26 or any other services are performed.

27 (e) A household goods carrier may provide the notice set forth  
28 in this section either as a separate document or by including it as  
29 the centerfold of the informational booklet that the household  
30 goods carrier is required to provide the consignor under the  
31 commission’s tariffs. If the household goods carrier provides the  
32 notice as part of the informational booklet, the booklet shall contain  
33 a tab that extends beyond the edge of the booklet at the place where  
34 the notice is included. The statement “Important Notice” shall be  
35 printed on the tab in at least 12-point boldface type. In addition,  
36 the statement “Customer Must Read And Sign The Important  
37 Notice In The Middle Of This Booklet Before A Move Can Begin”  
38 shall be set forth in 14-point boldface type on the front cover of  
39 the booklet.

1 (f) The notice provided the consignor shall be in the following  
2 form:

3  
4 "IMPORTANT NOTICE ABOUT YOUR MOVE

5  
6 "IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A  
7 "NOT TO EXCEED" AMOUNT THAT YOU THINK IS A  
8 PROPER AND REASONABLE FEE FOR THE SERVICES YOU  
9 ARE REQUESTING. THE "NOT TO EXCEED" AMOUNT THIS  
10 MOVER IS REQUESTING IS \$\_\_\_\_\_ to  
11 perform the following services:

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_.

15  
16 "IF YOU DO NOT AGREE TO THE "NOT TO EXCEED"  
17 AMOUNT LISTED OR THE DESCRIPTION OF SERVICES,  
18 YOU HAVE THE RIGHT TO REFUSE THE MOVER'S  
19 SERVICE AT NO CHARGE TO YOU.

20 "If you request additional or different services at the time of the  
21 move, you may be asked to complete a Change Order which will  
22 set forth your agreement to pay for additional fees for those newly  
23 requested services. If you agree to the additional charges on that  
24 Change Order, those charges may be added to the "NOT TO  
25 EXCEED" amount set forth above. If you do not agree to the  
26 amounts listed in the Change Order, you should not sign it and  
27 may refuse the mover's services.

28 "A mover cannot refuse to release your goods once you have paid  
29 the "NOT TO EXCEED" amount for the transportation of your  
30 goods and personal effects and any additional services that you  
31 have agreed to in writing. The "NOT TO EXCEED" amount must  
32 be reasonable.

33 "A mover cannot, under any circumstances, withhold food,  
34 medicine, medical devices, items to treat or assist a disabled person,  
35 or items used for care of a minor child. An unlicensed mover has  
36 no right to withhold your goods for any reason including claims  
37 that you have not adequately paid for services rendered.

38 "For additional information or to confirm whether a mover is  
39 licensed by the California Public Utilities Commission, please call  
40 the Public Utilities Commission toll free at:

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40

\_\_\_\_\_ .  
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.

1 SEC. 182. Section 185035 of the Public Utilities Code is  
2 amended to read:

3 185035. (a) The authority shall establish an independent peer  
4 review group for the purpose of reviewing the planning,  
5 engineering, financing, and other elements of the authority's plans  
6 and issuing an analysis of the appropriateness and accuracy of the  
7 authority's assumptions and an analysis of the viability of the  
8 authority's financing plan, including the funding plan for each  
9 corridor required pursuant to subdivision (c) of Section 2704.08  
10 of the Streets and Highways Code.

11 (b) The peer review group shall include all of the following:

12 (1) Two individuals with experience in the construction or  
13 operation of high-speed trains in Europe, Asia, or both, designated  
14 by the Treasurer.

15 (2) Two individuals, one with experience in engineering and  
16 construction of high-speed trains and one with experience in project  
17 finance, designated by the Controller.

18 (3) One representative from a financial services or financial  
19 consulting firm who shall not have been a contractor or  
20 subcontractor of the authority for the previous three years,  
21 designated by the Director of Finance.

22 (4) One representative with experience in environmental  
23 planning, designated by the Secretary of Business, Transportation  
24 and Housing.

25 (5) Two expert representatives from agencies providing intercity  
26 or commuter passenger train services in California, designated by  
27 the Secretary of Business, Transportation and Housing.

28 (c) The peer review group shall evaluate the authority's funding  
29 plans and prepare its independent judgment as to the feasibility  
30 and reasonableness of the plans, appropriateness of assumptions,  
31 analyses, and estimates, and any other observations or evaluations  
32 it deems necessary.

33 (d) The authority shall provide the peer review group any and  
34 all information that the peer review group may request to carry  
35 out its responsibilities.

36 (e) The peer review group shall report its findings and  
37 conclusions to the Legislature no later than 60 days after receiving  
38 the plans.

1 SEC. 183. Section 2188.6 of the Revenue and Taxation Code,  
2 as amended by Section 79 of Chapter 181 of the Statutes of 2012,  
3 is amended to read:

4 2188.6. (a) Unless a request for exemption has been recorded  
5 pursuant to subdivision (d), prior to the creation of a condominium  
6 as defined in Section 783 of the Civil Code, the county assessor  
7 may separately assess each individual unit which is shown on the  
8 condominium plan of a proposed condominium project when all  
9 of the following documents have been recorded as required by  
10 law:

11 (1) A subdivision final map or parcel map, as described in  
12 Sections 66434 and 66445, respectively, of the Government Code.

13 (2) A condominium plan, as defined in Section 4120 of the Civil  
14 Code.

15 (3) A declaration, as defined in Section 4135 of the Civil Code.

16 (b) The tax due on each individual unit shall constitute a lien  
17 solely on that unit.

18 (c) The lien created pursuant to this section shall be a lien on  
19 an undivided interest in a portion of real property coupled with a  
20 separate interest in space called a unit as described in Section 4125  
21 of the Civil Code.

22 (d) The record owner of the real property may record with the  
23 condominium plan a request that the real property be exempt from  
24 separate assessment pursuant to this section. If a request for  
25 exemption is recorded, separate assessment of a condominium unit  
26 shall be made only in accordance with Section 2188.3.

27 (e) This section shall become operative on January 1, 1990, and  
28 shall apply to condominium projects for which a condominium  
29 plan is recorded after that date.

30 SEC. 184. Section 7285.3 of the Revenue and Taxation Code  
31 is amended to read:

32 7285.3. The combined rate of all taxes imposed in any county  
33 pursuant to this chapter and pursuant to Part 1.6 (commencing  
34 with Section 7251) shall not exceed the rate specified in Section  
35 7251.1.

36 SEC. 185. Section 17276.20 of the Revenue and Taxation Code  
37 is amended to read:

38 17276.20. Except as provided in Sections 17276.1, 17276.2,  
39 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided

1 by Section 172 of the Internal Revenue Code, relating to net  
2 operating loss deduction, shall be modified as follows:

3 (a) (1) Net operating losses attributable to taxable years  
4 beginning before January 1, 1987, shall not be allowed.

5 (2) A net operating loss shall not be carried forward to any  
6 taxable year beginning before January 1, 1987.

7 (b) (1) Except as provided in paragraphs (2) and (3), the  
8 provisions of Section 172(b)(2) of the Internal Revenue Code,  
9 relating to amount of carrybacks and carryovers, shall be modified  
10 so that the applicable percentage of the entire amount of the net  
11 operating loss for any taxable year shall be eligible for carryover  
12 to any subsequent taxable year. For purposes of this subdivision,  
13 the applicable percentage shall be:

14 (A) Fifty percent for any taxable year beginning before January  
15 1, 2000.

16 (B) Fifty-five percent for any taxable year beginning on or after  
17 January 1, 2000, and before January 1, 2002.

18 (C) Sixty percent for any taxable year beginning on or after  
19 January 1, 2002, and before January 1, 2004.

20 (D) One hundred percent for any taxable year beginning on or  
21 after January 1, 2004.

22 (2) In the case of a taxpayer who has a net operating loss in any  
23 taxable year beginning on or after January 1, 1994, and who  
24 operates a new business during that taxable year, each of the  
25 following shall apply to each loss incurred during the first three  
26 taxable years of operating the new business:

27 (A) If the net operating loss is equal to or less than the net loss  
28 from the new business, 100 percent of the net operating loss shall  
29 be carried forward as provided in subdivision (d).

30 (B) If the net operating loss is greater than the net loss from the  
31 new business, the net operating loss shall be carried over as  
32 follows:

33 (i) With respect to an amount equal to the net loss from the new  
34 business, 100 percent of that amount shall be carried forward as  
35 provided in subdivision (d).

36 (ii) With respect to the portion of the net operating loss that  
37 exceeds the net loss from the new business, the applicable  
38 percentage of that amount shall be carried forward as provided in  
39 subdivision (d).



1 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
2 Code, the amount described in clause (ii) of subparagraph (B) shall  
3 be absorbed before the amount described in clause (i) of  
4 subparagraph (B).

5 (3) In the case of a taxpayer who has a net operating loss in any  
6 taxable year beginning on or after January 1, 1994, and who  
7 operates an eligible small business during that taxable year, each  
8 of the following shall apply:

9 (A) If the net operating loss is equal to or less than the net loss  
10 from the eligible small business, 100 percent of the net operating  
11 loss shall be carried forward to the taxable years specified in  
12 subdivision (d).

13 (B) If the net operating loss is greater than the net loss from the  
14 eligible small business, the net operating loss shall be carried over  
15 as follows:

16 (i) With respect to an amount equal to the net loss from the  
17 eligible small business, 100 percent of that amount shall be carried  
18 forward as provided in subdivision (d).

19 (ii) With respect to that portion of the net operating loss that  
20 exceeds the net loss from the eligible small business, the applicable  
21 percentage of that amount shall be carried forward as provided in  
22 subdivision (d).

23 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
24 Code, the amount described in clause (ii) of subparagraph (B) shall  
25 be absorbed before the amount described in clause (i) of  
26 subparagraph (B).

27 (4) In the case of a taxpayer who has a net operating loss in a  
28 taxable year beginning on or after January 1, 1994, and who  
29 operates a business that qualifies as both a new business and an  
30 eligible small business under this section, that business shall be  
31 treated as a new business for the first three taxable years of the  
32 new business.

33 (5) In the case of a taxpayer who has a net operating loss in a  
34 taxable year beginning on or after January 1, 1994, and who  
35 operates more than one business, and more than one of those  
36 businesses qualifies as either a new business or an eligible small  
37 business under this section, paragraph (2) shall be applied first,  
38 except that if there is any remaining portion of the net operating  
39 loss after application of clause (i) of subparagraph (B) of that  
40 paragraph, paragraph (3) shall be applied to the remaining portion

1 of the net operating loss as though that remaining portion of the  
2 net operating loss constituted the entire net operating loss.

3 (6) For purposes of this section, the term “net loss” means the  
4 amount of net loss after application of Sections 465 and 469 of the  
5 Internal Revenue Code.

6 (c) Section 172(b)(1) of the Internal Revenue Code, relating to  
7 years to which the loss may be carried, is modified as follows:

8 (1) Net operating loss carrybacks shall not be allowed for any  
9 net operating losses attributable to taxable years beginning before  
10 January 1, 2013.

11 (2) A net operating loss attributable to taxable years beginning  
12 on or after January 1, 2013, shall be a net operating loss carryback  
13 to each of the two taxable years preceding the taxable year of the  
14 loss in lieu of the number of years provided therein.

15 (A) For a net operating loss attributable to a taxable year  
16 beginning on or after January 1, 2013, and before January 1, 2014,  
17 the amount of carryback to any taxable year shall not exceed 50  
18 percent of the net operating loss.

19 (B) For a net operating loss attributable to a taxable year  
20 beginning on or after January 1, 2014, and before January 1, 2015,  
21 the amount of carryback to any taxable year shall not exceed 75  
22 percent of the net operating loss.

23 (C) For a net operating loss attributable to a taxable year  
24 beginning on or after January 1, 2015, the amount of carryback to  
25 any taxable year shall not exceed 100 percent of the net operating  
26 loss.

27 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
28 Internal Revenue Code, relating to special rules for REITs, and  
29 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
30 excess interest loss, and Section 172(h) of the Internal Revenue  
31 Code, relating to corporate equity reduction interest losses, shall  
32 apply as provided.

33 (4) A net operating loss carryback shall not be carried back to  
34 any taxable year beginning before January 1, 2011.

35 (d) (1) (A) For a net operating loss for any taxable year  
36 beginning on or after January 1, 1987, and before January 1, 2000,  
37 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
38 to substitute “five taxable years” in lieu of “20 taxable years”  
39 except as otherwise provided in paragraphs (2) and (3).

1 (B) For a net operating loss for any taxable year beginning on  
2 or after January 1, 2000, and before January 1, 2008, Section  
3 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
4 substitute “10 taxable years” in lieu of “20 taxable years.”

5 (2) For any taxable year beginning before January 1, 2000, in  
6 the case of a “new business,” the “five taxable years” in paragraph  
7 (1) shall be modified to read as follows:

8 (A) “Eight taxable years” for a net operating loss attributable  
9 to the first taxable year of that new business.

10 (B) “Seven taxable years” for a net operating loss attributable  
11 to the second taxable year of that new business.

12 (C) “Six taxable years” for a net operating loss attributable to  
13 the third taxable year of that new business.

14 (3) For any carryover of a net operating loss for which a  
15 deduction is denied by Section 17276.3, the carryover period  
16 specified in this subdivision shall be extended as follows:

17 (A) By one year for a net operating loss attributable to taxable  
18 years beginning in 1991.

19 (B) By two years for a net operating loss attributable to taxable  
20 years beginning prior to January 1, 1991.

21 (4) The net operating loss attributable to taxable years beginning  
22 on or after January 1, 1987, and before January 1, 1994, shall be  
23 a net operating loss carryover to each of the 10 taxable years  
24 following the year of the loss if it is incurred by a taxpayer that is  
25 under the jurisdiction of the court in a Title 11 or similar case at  
26 any time during the income year. The loss carryover provided in  
27 the preceding sentence shall not apply to any loss incurred after  
28 the date the taxpayer is no longer under the jurisdiction of the court  
29 in a Title 11 or similar case.

30 (e) For purposes of this section:

31 (1) “Eligible small business” means any trade or business that  
32 has gross receipts, less returns and allowances, of less than one  
33 million dollars (\$1,000,000) during the taxable year.

34 (2) Except as provided in subdivision (f), “new business” means  
35 any trade or business activity that is first commenced in this state  
36 on or after January 1, 1994.

37 (3) “Title 11 or similar case” shall have the same meaning as  
38 in Section 368(a)(3) of the Internal Revenue Code.

1 (4) In the case of any trade or business activity conducted by a  
2 partnership or “S” corporation paragraphs (1) and (2) shall be  
3 applied to the partnership or “S” corporation.

4 (f) For purposes of this section, in determining whether a trade  
5 or business activity qualifies as a new business under paragraph  
6 (2) of subdivision (e), the following rules shall apply:

7 (1) In any case where a taxpayer purchases or otherwise acquires  
8 all or any portion of the assets of an existing trade or business  
9 (irrespective of the form of entity) that is doing business in this  
10 state (within the meaning of Section 23101), the trade or business  
11 thereafter conducted by the taxpayer (or any related person) shall  
12 not be treated as a new business if the aggregate fair market value  
13 of the acquired assets (including real, personal, tangible, and  
14 intangible property) used by the taxpayer (or any related person)  
15 in the conduct of its trade or business exceeds 20 percent of the  
16 aggregate fair market value of the total assets of the trade or  
17 business being conducted by the taxpayer (or any related person).  
18 For purposes of this paragraph only, the following rules shall apply:

19 (A) The determination of the relative fair market values of the  
20 acquired assets and the total assets shall be made as of the last day  
21 of the first taxable year in which the taxpayer (or any related  
22 person) first uses any of the acquired trade or business assets in  
23 its business activity.

24 (B) Any acquired assets that constituted property described in  
25 Section 1221(1) of the Internal Revenue Code in the hands of the  
26 transferor shall not be treated as assets acquired from an existing  
27 trade or business, unless those assets also constitute property  
28 described in Section 1221(1) of the Internal Revenue Code in the  
29 hands of the acquiring taxpayer (or related person).

30 (2) In any case where a taxpayer (or any related person) is  
31 engaged in one or more trade or business activities in this state, or  
32 has been engaged in one or more trade or business activities in this  
33 state within the preceding 36 months (“prior trade or business  
34 activity”), and thereafter commences an additional trade or business  
35 activity in this state, the additional trade or business activity shall  
36 only be treated as a new business if the additional trade or business  
37 activity is classified under a different division of the Standard  
38 Industrial Classification (SIC) Manual published by the United  
39 States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior  
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,  
4 is engaged in trade or business activities wholly outside of this  
5 state and the taxpayer first commences doing business in this state  
6 (within the meaning of Section 23101) after December 31, 1993  
7 (other than by purchase or other acquisition described in paragraph  
8 (1)), the trade or business activity shall be treated as a new business  
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or  
11 business activity is being conducted is changed, the change in form  
12 shall be disregarded and the determination of whether the trade or  
13 business activity is a new business shall be made by treating the  
14 taxpayer as having purchased or otherwise acquired all or any  
15 portion of the assets of an existing trade or business under the rules  
16 of paragraph (1).

17 (5) "Related person" shall mean any person that is related to  
18 the taxpayer under either Section 267 or 318 of the Internal  
19 Revenue Code.

20 (6) "Acquire" shall include any gift, inheritance, transfer incident  
21 to divorce, or any other transfer, whether or not for consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,  
23 the term "new business" shall include any taxpayer that is engaged  
24 in biopharmaceutical activities or other biotechnology activities  
25 that are described in Codes 2833 to 2836, inclusive, of the Standard  
26 Industrial Classification (SIC) Manual published by the United  
27 States Office of Management and Budget, 1987 edition, and as  
28 further amended, and that has not received regulatory approval for  
29 any product from the Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that  
32 use organisms or materials derived from organisms, and their  
33 cellular, subcellular, or molecular components, in order to provide  
34 pharmaceutical products for human or animal therapeutics and  
35 diagnostics. Biopharmaceutical activities make use of living  
36 organisms to make commercial products, as opposed to  
37 pharmaceutical activities that make use of chemical compounds  
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting  
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical  
2 delivery systems designed to provide a measure of control over  
3 the rate, duration, and site of pharmaceutical delivery.

4 (g) In computing the modifications under Section 172(d)(2) of  
5 the Internal Revenue Code, relating to capital gains and losses of  
6 taxpayers other than corporations, the exclusion provided by  
7 Section 18152.5 shall not be allowed.

8 (h) Notwithstanding any provisions of this section to the  
9 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
10 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
11 and 17276.7.

12 (i) The Franchise Tax Board may prescribe appropriate  
13 regulations to carry out the purposes of this section, including any  
14 regulations necessary to prevent the avoidance of the purposes of  
15 this section through splitups, shell corporations, partnerships, tiered  
16 ownership structures, or otherwise.

17 (j) The Franchise Tax Board may reclassify any net operating  
18 loss carryover determined under either paragraph (2) or (3) of  
19 subdivision (b) as a net operating loss carryover under paragraph  
20 (1) of subdivision (b) upon a showing that the reclassification is  
21 necessary to prevent evasion of the purposes of this section.

22 (k) Except as otherwise provided, the amendments made by  
23 Chapter 107 of the Statutes of 2000 shall apply to net operating  
24 losses for taxable years beginning on or after January 1, 2000.

25 SEC. 186. Section 18152.5 of the Revenue and Taxation Code  
26 is amended to read:

27 18152.5. (a) For purposes of this part, gross income shall not  
28 include 50 percent of any gain from the sale or exchange of  
29 qualified small business stock held for more than five years.

30 (b) (1) If the taxpayer has eligible gain for the taxable year  
31 from one or more dispositions of stock issued by any corporation,  
32 the aggregate amount of the gain from dispositions of stock issued  
33 by the corporation which may be taken into account under  
34 subdivision (a) for the taxable year shall not exceed the greater of  
35 either of the following:

36 (A) Ten million dollars (\$10,000,000) reduced by the aggregate  
37 amount of eligible gain taken into account by the taxpayer under  
38 subdivision (a) for prior taxable years and attributable to  
39 dispositions of stock issued by the corporation.

1 (B) Ten times the aggregate adjusted bases of qualified small  
2 business stock issued by the corporation and disposed of by the  
3 taxpayer during the taxable year. For purposes of this subparagraph,  
4 the adjusted basis of any stock shall be determined without regard  
5 to any addition to the basis after the date on which the stock was  
6 originally issued.

7 (2) For purposes of this subdivision, the term “eligible gain”  
8 means any gain from the sale or exchange of qualified small  
9 business stock held for more than five years.

10 (3) (A) In the case of a married individual filing a separate  
11 return, subparagraph (A) of paragraph (1) shall be applied by  
12 substituting five million dollars (\$5,000,000) for ten million dollars  
13 (\$10,000,000).

14 (B) In the case of a married taxpayer filing a joint return, the  
15 amount of gain taken into account under subdivision (a) shall be  
16 allocated equally between the spouses for purposes of applying  
17 this subdivision to subsequent taxable years.

18 (C) For purposes of this subdivision, marital status shall be  
19 determined under Section 7703 of the Internal Revenue Code.

20 (c) For purposes of this section:

21 (1) Except as otherwise provided in this section, the term  
22 “qualified small business stock” means any stock in a C corporation  
23 which is originally issued after August 10, 1993, if both of the  
24 following apply:

25 (A) As of the date of issuance, the corporation is a qualified  
26 small business.

27 (B) Except as provided in subdivisions (f) and (h), the stock is  
28 acquired by the taxpayer at its original issue (directly or through  
29 an underwriter) in either of the following manners:

30 (i) In exchange for money or other property (not including  
31 stock).

32 (ii) As compensation for services provided to the corporation  
33 (other than services performed as an underwriter of the stock).

34 (2) (A) Stock in a corporation shall not be treated as qualified  
35 small business stock unless, during substantially all of the  
36 taxpayer’s holding period for the stock, the corporation meets the  
37 active business requirements of subdivision (e) and the corporation  
38 is a C corporation.

39 (B) (i) Notwithstanding subdivision (e), a corporation shall be  
40 treated as meeting the active business requirements of subdivision

1 (e) for any period during which the corporation qualifies as a  
2 specialized small business investment company.

3 (ii) For purposes of clause (i), the term “specialized small  
4 business investment company” means any eligible corporation (as  
5 defined in paragraph (4) of subdivision (e)) that is licensed to  
6 operate under former Section 301(d) of the federal Small Business  
7 Investment Act of 1958 (as in effect on May 13, 1993).

8 (3) (A) Stock acquired by the taxpayer shall not be treated as  
9 qualified small business stock if, at any time during the four-year  
10 period beginning on the date two years before the issuance of the  
11 stock, the corporation issuing the stock purchased (directly or  
12 indirectly) any of its stock from the taxpayer or from a related  
13 person (within the meaning of Section 267(b) or 707(b)) to the  
14 taxpayer.

15 (B) Stock issued by a corporation shall not be treated as qualified  
16 small business stock if, during the two-year period beginning on  
17 the date one year before the issuance of the stock, the corporation  
18 made one or more purchases of its stock with an aggregate value  
19 (as of the time of the respective purchases) exceeding 5 percent  
20 of the aggregate value of all of its stock as of the beginning of the  
21 two-year period.

22 (C) If any transaction is treated under Section 304(a) of the  
23 Internal Revenue Code as a distribution in redemption of the stock  
24 of any corporation, for purposes of subparagraphs (A) and (B), the  
25 corporation shall be treated as purchasing an amount of its stock  
26 equal to the amount treated as a distribution in redemption of the  
27 stock of the corporation under Section 304(a) of the Internal  
28 Revenue Code.

29 (d) For purposes of this section:

30 (1) The term “qualified small business” means any domestic  
31 corporation (as defined in Section 7701(a)(4) of the Internal  
32 Revenue Code) which is a C corporation if all of the following  
33 apply:

34 (A) The aggregate gross assets of the corporation (or any  
35 predecessor thereof) at all times on or after July 1, 1993, and before  
36 the issuance did not exceed fifty million dollars (\$50,000,000).

37 (B) The aggregate gross assets of the corporation immediately  
38 after the issuance (determined by taking into account amounts  
39 received in the issuance) do not exceed fifty million dollars  
40 (\$50,000,000).



1 (C) At least 80 percent of the corporation’s payroll, as measured  
2 by total dollar value, is attributable to employment located within  
3 California.

4 (D) The corporation agrees to submit those reports to the  
5 Franchise Tax Board and to shareholders as the Franchise Tax  
6 Board may require to carry out the purposes of this section.

7 (2) (A) For purposes of paragraph (1), the term “aggregate  
8 gross assets” means the amount of cash and the aggregate adjusted  
9 basis of other property held by the corporation.

10 (B) For purposes of subparagraph (A), the adjusted basis of any  
11 property contributed to the corporation (or other property with a  
12 basis determined in whole or in part by reference to the adjusted  
13 basis of property so contributed) shall be determined as if the basis  
14 of the property contributed to the corporation immediately after  
15 the contribution was equal to its fair market value as of the time  
16 of the contribution.

17 (3) (A) All corporations which are members of the same  
18 parent-subsidiary controlled group shall be treated as one  
19 corporation for purposes of this subdivision.

20 (B) For purposes of subparagraph (A), the term  
21 “parent-subsidiary controlled group” means any controlled group  
22 of corporations as defined in Section 1563(a)(1) of the Internal  
23 Revenue Code, except that both of the following shall apply:

24 (i) “More than 50 percent” shall be substituted for “at least 80  
25 percent” each place it appears in Section 1563(a)(1) of the Internal  
26 Revenue Code.

27 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not  
28 apply.

29 (e) (1) For purposes of paragraph (2) of subdivision (c), the  
30 requirements of this subdivision are met by a corporation for any  
31 period if during that period both of the following apply:

32 (A) At least 80 percent (by value) of the assets of the corporation  
33 are used by the corporation in the active conduct of one or more  
34 qualified trades or businesses in California.

35 (B) The corporation is an eligible corporation.

36 (2) For purposes of paragraph (1), if, in connection with any  
37 future qualified trade or business, a corporation is engaged in:

38 (A) Startup activities described in Section 195(c)(1)(A) of the  
39 Internal Revenue Code,

1 (B) Activities resulting in the payment or incurring of  
2 expenditures which may be treated as research and experimental  
3 expenditures under Section 174 of the Internal Revenue Code, or

4 (C) Activities with respect to in-house research expenses  
5 described in Section ~~41(b)(2)~~ 41(b)(4) of the Internal Revenue  
6 Code, then assets used in those activities shall be treated as used  
7 in the active conduct of a qualified trade or business. Any  
8 determination under this paragraph shall be made without regard  
9 to whether a corporation has any gross income from those activities  
10 at the time of the determination.

11 (3) For purposes of this subdivision, the term “qualified trade  
12 or business” means any trade or business other than any of the  
13 following:

14 (A) Any trade or business involving the performance of services  
15 in the fields of health, law, engineering, architecture, accounting,  
16 actuarial science, performing arts, consulting, athletics, financial  
17 services, brokerage services, or any trade or business where the  
18 principal asset of the trade or business is the reputation or skill of  
19 one or more of its employees.

20 (B) Any banking, insurance, financing, leasing, investing, or  
21 similar business.

22 (C) Any farming business (including the business of raising or  
23 harvesting trees).

24 (D) Any business involving the production or extraction of  
25 products of a character with respect to which a deduction is  
26 allowable under Section 613 or 613A of the Internal Revenue  
27 Code.

28 (E) Any business of operating a hotel, motel, restaurant, or  
29 similar business.

30 (4) For purposes of this subdivision, the term “eligible  
31 corporation” means any domestic corporation, except that the term  
32 shall not include any of the following:

33 (A) A DISC or former DISC.

34 (B) A corporation with respect to which an election under  
35 Section 936 of the Internal Revenue Code is in effect or which has  
36 a direct or indirect subsidiary with respect to which the election  
37 is in effect.

38 (C) A regulated investment company, real estate investment  
39 trust (REIT), or real estate mortgage investment conduit (REMIC).

40 (D) A cooperative.

1 (5) (A) For purposes of this subdivision, stock and debt in any  
2 subsidiary corporation shall be disregarded and the parent  
3 corporation shall be deemed to own its ratable share of the  
4 subsidiary's assets, and to conduct its ratable share of the  
5 subsidiary's activities.

6 (B) A corporation shall be treated as failing to meet the  
7 requirements of paragraph (1) for any period during which more  
8 than 10 percent of the value of its assets (in excess of liabilities)  
9 consists of stock or securities in other corporations which are not  
10 subsidiaries of the corporation (other than assets described in  
11 paragraph (6)).

12 (C) For purposes of this paragraph, a corporation shall be  
13 considered a subsidiary if the parent owns more than 50 percent  
14 of the combined voting power of all classes of stock entitled to  
15 vote, or more than 50 percent in value of all outstanding stock, of  
16 the corporation.

17 (6) For purposes of subparagraph (A) of paragraph (1), the  
18 following assets shall be treated as used in the active conduct of  
19 a qualified trade or business:

20 (A) Assets that are held as a part of the reasonably required  
21 working capital needs of a qualified trade or business of the  
22 corporation.

23 (B) Assets that are held for investment and are reasonably  
24 expected to be used within two years to finance research and  
25 experimentation in a qualified trade or business or increases in  
26 working capital needs of a qualified trade or business. For periods  
27 after the corporation has been in existence for at least two years,  
28 in no event may more than 50 percent of the assets of the  
29 corporation qualify as used in the active conduct of a qualified  
30 trade or business by reason of this paragraph.

31 (7) A corporation shall not be treated as meeting the  
32 requirements of paragraph (1) for any period during which more  
33 than 10 percent of the total value of its assets consists of real  
34 property that is not used in the active conduct of a qualified trade  
35 or business. For purposes of the preceding sentence, the ownership  
36 of, dealing in, or renting of, real property shall not be treated as  
37 the active conduct of a qualified trade or business.

38 (8) For purposes of paragraph (1), rights to computer software  
39 that produces active business computer software royalties (within  
40 the meaning of Section 543(d)(1) of the Internal Revenue Code)

1 shall be treated as an asset used in the active conduct of a trade or  
2 business.

3 (9) A corporation shall not be treated as meeting the  
4 requirements of paragraph (1) for any period during which more  
5 than 20 percent of the corporation's total payroll expense is  
6 attributable to employment located outside of California.

7 (f) If any stock in a corporation is acquired solely through the  
8 conversion of other stock in the corporation that is qualified small  
9 business stock in the hands of the taxpayer, both of the following  
10 shall apply:

11 (1) The stock so acquired shall be treated as qualified small  
12 business stock in the hands of the taxpayer.

13 (2) The stock so acquired shall be treated as having been held  
14 during the period during which the converted stock was held.

15 (g) (1) If any amount included in gross income by reason of  
16 holding an interest in a pass-thru entity meets the requirements of  
17 paragraph (2), then both of the following shall apply:

18 (A) The amount shall be treated as gain described in subdivision  
19 (a).

20 (B) For purposes of applying subdivision (b), the amount shall  
21 be treated as gain from a disposition of stock in the corporation  
22 issuing the stock disposed of by the pass-thru entity and the  
23 taxpayer's proportionate share of the adjusted basis of the pass-thru  
24 entity in the stock shall be taken into account.

25 (2) An amount meets the requirements of this paragraph if both  
26 of the following apply:

27 (A) The amount is attributable to gain on the sale or exchange  
28 by the pass-thru entity of stock that is qualified small business  
29 stock in the hands of the entity (determined by treating the entity  
30 as an individual) and that was held by that entity for more than  
31 five years.

32 (B) The amount is includable in the gross income of the taxpayer  
33 by reason of the holding of an interest in the entity that was held  
34 by the taxpayer on the date on which the pass-thru entity acquired  
35 the stock and at all times thereafter before the disposition of the  
36 stock by the pass-thru entity.

37 (3) Paragraph (1) shall not apply to any amount to the extent  
38 the amount exceeds the amount to which paragraph (1) would have  
39 applied if the amount was determined by reference to the interest

1 the taxpayer held in the pass-thru entity on the date the qualified  
2 small business stock was acquired.

3 (4) For purposes of this subdivision, the term—~~“pass-through~~  
4 *“pass-thru entity”* means any of the following:

- 5 (A) Any partnership.
- 6 (B) Any S corporation.
- 7 (C) Any regulated investment company.
- 8 (D) Any common trust fund.
- 9 (h) For purposes of this section:

10 (1) In the case of a transfer described in paragraph (2), the  
11 transferee shall be treated as meeting both of the following:

12 (A) Having acquired the stock in the same manner as the  
13 transferor.

14 (B) Having held the stock during any continuous period  
15 immediately preceding the transfer during which it was held (or  
16 treated as held under this subdivision) by the transferor.

17 (2) A transfer is described in this subdivision if the transfer is  
18 any of the following:

- 19 (A) By gift.
- 20 (B) At death.
- 21 (C) From a partnership to a partner of stock with respect to  
22 which requirements similar to the requirements of subdivision (g)  
23 are met at the time of the transfer (without regard to the five-year  
24 holding period requirement).

25 (3) Rules similar to the rules of Section 1244(d)(2) of the  
26 Internal Revenue Code shall apply for purposes of this section.

27 (4) (A) In the case of a transaction described in Section 351 of  
28 the Internal Revenue Code or a reorganization described in Section  
29 368 of the Internal Revenue Code, if qualified small business stock  
30 is exchanged for other stock that would not qualify as qualified  
31 small business stock but for this subparagraph, the other stock  
32 shall be treated as qualified small business stock acquired on the  
33 date on which the exchanged stock was acquired.

34 (B) This section shall apply to gain from the sale or exchange  
35 of stock treated as qualified small business stock by reason of  
36 subparagraph (A) only to the extent of the gain that would have  
37 been recognized at the time of the transfer described in  
38 subparagraph (A) if Section 351 or 368 of the Internal Revenue  
39 Code had not applied at that time. The preceding sentence shall  
40 not apply if the stock that is treated as qualified small business

1 stock by reason of subparagraph (A) is issued by a corporation  
2 that (as of the time of the transfer described in subparagraph (A))  
3 is a qualified small business.

4 (C) For purposes of this paragraph, stock treated as qualified  
5 small business stock under subparagraph (A) shall be so treated  
6 for subsequent transactions or reorganizations, except that the  
7 limitation of subparagraph (B) shall be applied as of the time of  
8 the first transfer to which the limitation applied (determined after  
9 the application of the second sentence of subparagraph (B)).

10 (D) In the case of a transaction described in Section 351 of the  
11 Internal Revenue Code, this paragraph shall apply only if  
12 immediately after the transaction the corporation issuing the stock  
13 owns directly or indirectly stock representing control (within the  
14 meaning of Section 368(c) of the Internal Revenue Code) of the  
15 corporation whose stock was exchanged.

16 (i) For purposes of this section:

17 (1) In the case where the taxpayer transfers property (other than  
18 money or stock) to a corporation in exchange for stock in the  
19 corporation, both of the following shall apply:

20 (A) The stock shall be treated as having been acquired by the  
21 taxpayer on the date of the exchange.

22 (B) The basis of the stock in the hands of the taxpayer shall in  
23 no event be less than the fair market value of the property  
24 exchanged.

25 (2) If the adjusted basis of any qualified small business stock  
26 is adjusted by reason of any contribution to capital after the date  
27 on which the stock was originally issued, in determining the  
28 amount of the adjustment by reason of the contribution, the basis  
29 of the contributed property shall in no event be treated as less than  
30 its fair market value on the date of the contribution.

31 (j) (1) If the taxpayer has an offsetting short position with  
32 respect to any qualified small business stock, subdivision (a) shall  
33 not apply to any gain from the sale or exchange of the stock unless  
34 both of the following apply:

35 (A) The stock was held by the taxpayer for more than five years  
36 as of the first day on which there was such a short position.

37 (B) The taxpayer elects to recognize gain as if the stock was  
38 sold on that first day for its fair market value.

1 (2) For purposes of paragraph (1), the taxpayer shall be treated  
2 as having an offsetting short position with respect to any qualified  
3 small business stock if any of the following apply:

4 (A) The taxpayer has made a short sale of substantially identical  
5 property.

6 (B) The taxpayer has acquired an option to sell substantially  
7 identical property at a fixed price.

8 (C) To the extent provided in regulations, the taxpayer has  
9 entered into any other transaction that substantially reduces the  
10 risk of loss from holding the qualified small business stock. For  
11 purposes of the preceding sentence, any reference to the taxpayer  
12 shall be treated as including a reference to any person who is  
13 related (within the meaning of Section 267(b) or 707(b) of the  
14 Internal Revenue Code) to the taxpayer.

15 (k) The Franchise Tax Board may prescribe those regulations  
16 as may be appropriate to carry out the purposes of this section,  
17 including regulations to prevent the avoidance of the purposes of  
18 this section through splitups, shell corporations, partnerships, or  
19 otherwise.

20 (l) It is the intent of the Legislature that, in construing this  
21 section, any regulations that may be promulgated by the Secretary  
22 of the Treasury under Section 1202(k) of the Internal Revenue  
23 Code shall apply to the extent that those regulations do not conflict  
24 with this section or with any regulations that may be promulgated  
25 by the Franchise Tax Board.

26 SEC. 187. Section 18738 of the Revenue and Taxation Code,  
27 as added by Section 1 of Chapter 228 of the Statutes of 2012, is  
28 amended to read:

29 18738. (a) All moneys transferred to the California YMCA  
30 Youth and Government Fund pursuant to Section 18736, upon  
31 appropriation by the Legislature, shall be allocated as follows:

32 (1) To the Franchise Tax Board, the Controller, and the State  
33 Department of Education for reimbursement of all costs incurred  
34 by the Franchise Tax Board, the Controller, and the State  
35 Department of Education in connection with their duties under  
36 this article.

37 (2) The balance to the State Department of Education for  
38 distribution as follows:

39 (A) If the California YMCA Youth and Government Fund  
40 collects contributions of less than three hundred thousand dollars

1 (\$300,000), all funds shall be distributed to the California YMCA  
2 Youth and Government Program.

3 (B) If the California YMCA Youth and Government Fund  
4 collects contributions in excess of three hundred thousand dollars  
5 (\$300,000), the balance of the fund shall be distributed as follows:

6 (i) To provide an annual grant of ten thousand dollars (\$10,000)  
7 to each of the following nonprofit civic youth organizations in  
8 order to operate civic education and mock legislative programs:

9 (I) African American Leaders for Tomorrow Program.

10 (II) Asian Pacific Youth Leadership Project.

11 (III) Chicano Latino Youth Leadership Project.

12 (ii) (I) All remaining funds shall be distributed to the California  
13 YMCA Youth and Government Program.

14 (II) The California YMCA Youth and Government Board of  
15 Directors may award additional nonprofit civic youth organizations  
16 a grant of up to ten thousand dollars (\$10,000) each in order to  
17 operate civic education and mock legislative programs. Grants  
18 shall be administered by the California YMCA Youth and  
19 Government Board of Directors, who shall be responsible for  
20 developing criteria, evaluating applications, and awarding grants  
21 to eligible organizations.

22 (b) All moneys allocated pursuant to subdivision (a) may be  
23 carried over from the year in which they were received.

24 (c) Funds distributed to the California YMCA Youth and  
25 Government Program, the African American Leaders for Tomorrow  
26 Program, the Asian Pacific Youth Leadership Project, the Chicano  
27 Latino Youth Leadership Project, and any other nonprofit civic  
28 youth organizations awarded a grant pursuant to clause (i) of  
29 subparagraph (B) of paragraph (2) of subdivision (a) shall be used  
30 to support program participation by underserved students and for  
31 direct program-related expenses.

32 (d) The funds distributed to the California YMCA Youth and  
33 Government Program by the State Department of Education shall  
34 be used exclusively for program-related expenses.

35 SEC. 188. Section 23685 of the Revenue and Taxation Code  
36 is amended to read:

37 23685. (a) (1) For taxable years beginning on or after January  
38 1, 2011, there shall be allowed to a qualified taxpayer a credit  
39 against the "tax," as defined in Section 23036, in an amount equal  
40 to the applicable percentage, as specified in paragraph (4), of the



1 qualified expenditures for the production of a qualified motion  
2 picture in California.

3 (2) The credit shall be allowed for the taxable year in which the  
4 California Film Commission issues the credit certificate pursuant  
5 to subdivision (g) for the qualified motion picture, and shall be for  
6 the applicable percentage of all qualified expenditures paid or  
7 incurred by the qualified taxpayer in all taxable years for that  
8 qualified motion picture.

9 (3) The amount of the credit allowed to a qualified taxpayer  
10 shall be limited to the amount specified in the credit certificate  
11 issued to the qualified taxpayer by the California Film Commission  
12 pursuant to subdivision (g).

13 (4) For purposes of paragraphs (1) and (2), the applicable  
14 percentage shall be:

15 (A) Twenty percent of the qualified expenditures attributable  
16 to the production of a qualified motion picture in California.

17 (B) Twenty-five percent of the qualified expenditures  
18 attributable to the production of a qualified motion picture in  
19 California where the qualified motion picture is a television series  
20 that relocated to California or an independent film.

21 (b) For purposes of this section:

22 (1) “Ancillary product” means any article for sale to the public  
23 that contains a portion of, or any element of, the qualified motion  
24 picture.

25 (2) “Budget” means an estimate of all expenses paid or incurred  
26 during the production period of a qualified motion picture. It shall  
27 be the same budget used by the qualified taxpayer and production  
28 company for all qualified motion picture purposes.

29 (3) “Clip use” means a use of any portion of a motion picture,  
30 other than the qualified motion picture, used in the qualified motion  
31 picture.

32 (4) “Credit certificate” means the certificate issued by the  
33 California Film Commission pursuant to subparagraph (C) of  
34 paragraph (2) of subdivision (g).

35 (5) (A) “Employee fringe benefits” means the amount allowable  
36 as a deduction under this part to the qualified taxpayer involved  
37 in the production of the qualified motion picture, exclusive of any  
38 amounts contributed by employees, for any year during the  
39 production period with respect to any of the following:

1 (i) Employer contributions under any pension, profit-sharing,  
2 annuity, or similar plan.

3 (ii) Employer-provided coverage under any accident or health  
4 plan for employees.

5 (iii) The employer's cost of life or disability insurance provided  
6 to employees.

7 (B) Any amount treated as wages under clause (i) of  
8 subparagraph (A) of paragraph (18) shall not be taken into account  
9 under this paragraph.

10 (6) "Independent film" means a motion picture with a minimum  
11 budget of one million dollars (\$1,000,000) and a maximum budget  
12 of ten million dollars (\$10,000,000) that is produced by a company  
13 that is not publicly traded and publicly traded companies do not  
14 own, directly or indirectly, more than 25 percent of the producing  
15 company.

16 (7) "Licensing" means any grant of rights to distribute the  
17 qualified motion picture, in whole or in part.

18 (8) "New use" means any use of a motion picture in a medium  
19 other than the medium for which it was initially created.

20 (9) (A) "Postproduction" means the final activities in a qualified  
21 motion picture's production, including editing, foley recording,  
22 automatic dialogue replacement, sound editing, scoring and music  
23 editing, beginning and end credits, negative cutting, negative  
24 processing and duplication, the addition of sound and visual effects,  
25 soundmixing, film-to-tape transfers, encoding, and color correction.

26 (B) "Postproduction" does not include the manufacture or  
27 shipping of release prints.

28 (10) "Preproduction" means the process of preparation for actual  
29 physical production which begins after a qualified motion picture  
30 has received a firm agreement of financial commitment, or is  
31 greenlit, with, for example, the establishment of a dedicated  
32 production office, the hiring of key crew members, and includes,  
33 but is not limited to, activities that include location scouting and  
34 execution of contracts with vendors of equipment and stage space.

35 (11) "Principal photography" means the phase of production  
36 during which the motion picture is actually shot, as distinguished  
37 from preproduction and postproduction.

38 (12) "Production period" means the period beginning with  
39 preproduction and ending upon completion of postproduction.

1 (13) “Qualified entity” means a personal service corporation as  
2 defined in Section 269A(b)(1) of the Internal Revenue Code, a  
3 payroll services corporation, or any entity receiving qualified wages  
4 with respect to services performed by a qualified individual.

5 (14) (A) “Qualified individual” means any individual who  
6 performs services during the production period in an activity related  
7 to the production of a qualified motion picture.

8 (B) “Qualified individual” shall not include either of the  
9 following:

10 (i) Any individual related to the qualified taxpayer as described  
11 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal  
12 Revenue Code.

13 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
14 the Internal Revenue Code, of the qualified taxpayer.

15 (15) (A) “Qualified motion picture” means a motion picture  
16 that is produced for distribution to the general public, regardless  
17 of medium, that is one of the following:

18 (i) A feature with a minimum production budget of one million  
19 dollars (\$1,000,000) and a maximum production budget of  
20 seventy-five million dollars (\$75,000,000).

21 (ii) A movie of the week or miniseries with a minimum  
22 production budget of five hundred thousand dollars (\$500,000).

23 (iii) A new television series produced in California with a  
24 minimum production budget of one million dollars (\$1,000,000)  
25 licensed for original distribution on basic cable.

26 (iv) An independent film.

27 (v) A television series that relocated to California.

28 (B) To qualify as a “qualified motion picture,” all of the  
29 following conditions shall be satisfied:

30 (i) At least 75 percent of the production days occur wholly in  
31 California or 75 percent of the production budget is incurred for  
32 payment for services performed within the state and the purchase  
33 or rental of property used within the state.

34 (ii) Production of the qualified motion picture is completed  
35 within 30 months from the date on which the qualified taxpayer’s  
36 application is approved by the California Film Commission. For  
37 purposes of this section, a qualified motion picture is “completed”  
38 when the process of postproduction has been finished.

1 (iii) The copyright for the motion picture is registered with the  
2 United States Copyright Office pursuant to Title 17 of the United  
3 States Code.

4 (iv) Principal photography of the qualified motion picture  
5 commences after the date on which the application is approved by  
6 the California Film Commission, but no later than 180 days after  
7 the date of that approval.

8 (C) For the purposes of subparagraph (A), in computing the  
9 total wages paid or incurred for the production of a qualified  
10 motion picture, all amounts paid or incurred by all persons or  
11 entities that share in the costs of the qualified motion picture shall  
12 be aggregated.

13 (D) “Qualified motion picture” shall not include commercial  
14 advertising, music videos, a motion picture produced for private  
15 noncommercial use, such as weddings, graduations, or as part of  
16 an educational course and made by students, a news program,  
17 current events or public events program, talk show, game show,  
18 sporting event or activity, awards show, telethon or other  
19 production that solicits funds, reality television program, clip-based  
20 programming if more than 50 percent of the content is comprised  
21 of licensed footage, documentaries, variety programs, daytime  
22 dramas, strip shows, one-half hour (air time) episodic television  
23 shows, or any production that falls within the recordkeeping  
24 requirements of Section 2257 of Title 18 of the United States Code.

25 (16) “Qualified expenditures” means amounts paid or incurred  
26 to purchase or lease tangible personal property used within this  
27 state in the production of a qualified motion picture and payments,  
28 including qualified wages, for services performed within this state  
29 in the production of a qualified motion picture.

30 (17) (A) “Qualified taxpayer” means a taxpayer who has paid  
31 or incurred qualified expenditures and has been issued a credit  
32 certificate by the California Film Commission pursuant to  
33 subdivision (g).

34 (B) (i) In the case of any pass-thru entity, the determination of  
35 whether a taxpayer is a qualified taxpayer under this section shall  
36 be made at the entity level and any credit under this section is not  
37 allowed to the pass-thru entity, but shall be passed through to the  
38 partners or shareholders in accordance with applicable provisions  
39 of Part 10 (commencing with Section 17001) or Part 11  
40 (commencing with Section 23001). For purposes of this paragraph,

1 “pass-thru entity” means any entity taxed as a partnership or “S”  
2 corporation.

3 (ii) In the case of an “S” corporation, the credit allowed under  
4 this section shall not be used by an “S” corporation as a credit  
5 against a tax imposed under Chapter 4.5 (commencing with Section  
6 23800) of Part 11 of Division 2.

7 (18) (A) “Qualified wages” means all of the following:

8 (i) Any wages subject to withholding under Division 6  
9 (commencing with Section 13000) of the Unemployment Insurance  
10 Code that were paid or incurred by any taxpayer involved in the  
11 production of a qualified motion picture with respect to a qualified  
12 individual for services performed on the qualified motion picture  
13 production within this state.

14 (ii) The portion of any employee fringe benefits paid or incurred  
15 by any taxpayer involved in the production of the qualified motion  
16 picture that are properly allocable to qualified wage amounts  
17 described in clause (i).

18 (iii) Any payments made to a qualified entity for services  
19 performed in this state by qualified individuals within the meaning  
20 of paragraph (14).

21 (iv) Remuneration paid to an independent contractor who is a  
22 qualified individual for services performed within this state by that  
23 qualified individual.

24 (B) “Qualified wages” shall not include any of the following:

25 (i) Expenses, including wages, related to new use, reuse, clip  
26 use, licensing, secondary markets, or residual compensation, or  
27 the creation of any ancillary product, including, but not limited to,  
28 a soundtrack album, toy, game, trailer, or teaser.

29 (ii) Expenses, including wages, paid or incurred with respect to  
30 acquisition, development, turnaround, or any rights thereto.

31 (iii) Expenses, including wages, related to financing, overhead,  
32 marketing, promotion, or distribution of a qualified motion picture.

33 (iv) Expenses, including wages, paid per person per qualified  
34 motion picture for writers, directors, music directors, music  
35 composers, music supervisors, producers, and performers, other  
36 than background actors with no scripted lines.

37 (19) “Residual compensation” means supplemental  
38 compensation paid at the time that a motion picture is exhibited  
39 through new use, reuse, clip use, or in secondary markets, as  
40 distinguished from payments made during production.

1 (20) “Reuse” means any use of a qualified motion picture in the  
2 same medium for which it was created, following the initial use  
3 in that medium.

4 (21) “Secondary markets” means media in which a qualified  
5 motion picture is exhibited following the initial media in which it  
6 is exhibited.

7 (22) “Television series that relocated to California” means a  
8 television series, without regard to episode length or initial media  
9 exhibition, that filmed all of its prior season or seasons outside of  
10 California and for which the taxpayer certifies that the credit  
11 provided pursuant to this section is the primary reason for  
12 relocating to California.

13 (c) (1) Notwithstanding subdivision (i) of Section 23036, in  
14 the case where the credit allowed by this section exceeds the  
15 taxpayer’s tax liability computed under this part, a qualified  
16 taxpayer may elect to assign any portion of the credit allowed  
17 under this section to one or more affiliated corporations for each  
18 taxable year in which the credit is allowed. For purposes of this  
19 subdivision, “affiliated corporation” has the meaning provided in  
20 subdivision (b) of Section 25110, as that section was amended by  
21 Chapter 881 of the Statutes of 1993, as of the last day of the taxable  
22 year in which the credit is allowed, except that “100 percent” is  
23 substituted for “more than 50 percent” wherever it appears in the  
24 section, and “voting common stock” is substituted for “voting  
25 stock” wherever it appears in the section.

26 (2) The election provided in paragraph (1):

27 (A) May be based on any method selected by the qualified  
28 taxpayer that originally receives the credit.

29 (B) Shall be irrevocable for the taxable year the credit is allowed,  
30 once made.

31 (C) May be changed for any subsequent taxable year if the  
32 election to make the assignment is expressly shown on each of the  
33 returns of the qualified taxpayer and the qualified taxpayer’s  
34 affiliated corporations that assign and receive the credits.

35 (D) Shall be reported to the Franchise Tax Board, in the form  
36 and manner specified by the Franchise Tax Board, along with all  
37 required information regarding the assignment of the credit,  
38 including the corporation number, the federal employer  
39 identification number, or other taxpayer identification number of  
40 the assignee, and the amount of the credit assigned.

1 (3) (A) Notwithstanding any other law, a qualified taxpayer  
2 may sell any credit allowed under this section that is attributable  
3 to an independent film, as defined in paragraph (6) of subdivision  
4 (b), to an unrelated party.

5 (B) The qualified taxpayer shall report to the Franchise Tax  
6 Board prior to the sale of the credit, in the form and manner  
7 specified by the Franchise Tax Board, all required information  
8 regarding the purchase and sale of the credit, including the social  
9 security or other taxpayer identification number of the unrelated  
10 party to whom the credit has been sold, the face amount of the  
11 credit sold, and the amount of consideration received by the  
12 qualified taxpayer for the sale of the credit.

13 (4) In the case where the credit allowed under this section  
14 exceeds the “tax,” the excess credit may be carried over to reduce  
15 the “tax” in the following taxable year, and succeeding five taxable  
16 years, if necessary, until the credit has been exhausted.

17 (5) A credit shall not be sold pursuant to this subdivision to  
18 more than one taxpayer, nor may the credit be resold by the  
19 unrelated party to another taxpayer or other party.

20 (6) A party that has been assigned or acquired tax credits under  
21 this paragraph shall be subject to the requirements of this section.

22 (7) In no event may a qualified taxpayer assign or sell any tax  
23 credit to the extent the tax credit allowed by this section is claimed  
24 on any tax return of the qualified taxpayer.

25 (8) In the event that both the taxpayer originally allocated a  
26 credit under this section by the California Film Commission and  
27 a taxpayer to whom the credit has been sold both claim the same  
28 amount of credit on their tax returns, the Franchise Tax Board may  
29 disallow the credit of either taxpayer, so long as the statute of  
30 limitations upon assessment remains open.

31 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
32 Division 3 of Title 2 of the Government Code does not apply to  
33 any standard, criterion, procedure, determination, rule, notice, or  
34 guideline established or issued by the Franchise Tax Board  
35 pursuant to this subdivision.

36 (10) Subdivision (i) of Section 23036 shall not apply to any  
37 credit sold pursuant to this subdivision.

38 (11) For purposes of this subdivision:

1 (A) An affiliated corporation or corporations that are assigned  
2 a credit pursuant to paragraph (1) shall be treated as a qualified  
3 taxpayer pursuant to paragraph (1) of subdivision (a).

4 (B) The unrelated party or parties that purchase a credit pursuant  
5 to paragraph (3) shall be treated as a qualified taxpayer pursuant  
6 to paragraph (1) of subdivision (a).

7 (d) No credit shall be allowed pursuant to this section unless  
8 the qualified taxpayer provides the following to the California  
9 Film Commission:

10 (1) Identification of each qualified individual.

11 (2) The specific start and end dates of production.

12 (3) The total wages paid.

13 (4) The amount of qualified wages paid to each qualified  
14 individual.

15 (5) The copyright registration number, as reflected on the  
16 certificate of registration issued under the authority of Section 410  
17 of Title 17 of the United States Code, relating to registration of  
18 claim and issuance of certificate. The registration number shall be  
19 provided on the return claiming the credit.

20 (6) The total amounts paid or incurred to purchase or lease  
21 tangible personal property used in the production of a qualified  
22 motion picture.

23 (7) Information to substantiate its qualified expenditures.

24 (8) Information required by the California Film Commission  
25 under regulations promulgated pursuant to subdivision (g)  
26 necessary to verify the amount of credit claimed.

27 (e) The California Film Commission may prescribe rules and  
28 regulations to carry out the purposes of this section including any  
29 rules and regulations necessary to establish procedures, processes,  
30 requirements, and rules identified in or required to implement this  
31 section. The regulations shall include provisions to set aside a  
32 percentage of annual credit allocations for independent films.

33 (f) If the qualified taxpayer fails to provide the copyright  
34 registration number as required in paragraph (5) of subdivision  
35 (d), the credit shall be disallowed and assessed and collected under  
36 Section 19051 until the procedures are satisfied.

37 (g) For purposes of this section, the California Film Commission  
38 shall do the following:

39 (1) On or after July 1, 2009, and before July 1, 2017, allocate  
40 tax credits to applicants.



- 1 (A) Establish a procedure for applicants to file with the  
2 California Film Commission a written application, on a form jointly  
3 prescribed by the California Film Commission and the Franchise  
4 Tax Board for the allocation of the tax credit. The application shall  
5 include, but not be limited to, the following information:
- 6 (i) The budget for the motion picture production.
  - 7 (ii) The number of production days.
  - 8 (iii) A financing plan for the production.
  - 9 (iv) The diversity of the workforce employed by the applicant,  
10 including, but not limited to, the ethnic and racial makeup of the  
11 individuals employed by the applicant during the production of  
12 the qualified motion picture, to the extent possible.
  - 13 (v) All members of a combined reporting group, if known at  
14 the time of the application.
  - 15 (vi) Financial information, if available, including, but not limited  
16 to, the most recently produced balance sheets, annual statements  
17 of profits and losses, audited or unaudited financial statements,  
18 summary budget projections or results, or the functional equivalent  
19 of these documents of a partnership or owner of a single member  
20 limited liability company that is disregarded pursuant to Section  
21 23038. The information provided pursuant to this clause shall be  
22 confidential and shall not be subject to public disclosure.
  - 23 (vii) The names of all partners in a partnership not publicly  
24 traded or the names of all members of a limited liability company  
25 classified as a partnership not publicly traded for California income  
26 tax purposes that have a financial interest in the applicant's  
27 qualified motion picture. The information provided pursuant to  
28 this clause shall be confidential and shall not be subject to public  
29 disclosure.
  - 30 (viii) Detailed narratives, for use only by the Legislative  
31 Analyst's Office in conducting a study of the effectiveness of this  
32 credit, that describe the extent to which the credit is expected to  
33 influence or affect filming and other business location decisions,  
34 hiring decisions, salary decisions, and any other financial matters  
35 of the applicant.
  - 36 (ix) Any other information deemed relevant by the California  
37 Film Commission or the Franchise Tax Board.
- 38 (B) Establish criteria, consistent with the requirements of this  
39 section, for allocating tax credits.

1 (C) Determine and designate applicants who meet the  
2 requirements of this section.

3 (D) Process and approve, or reject, all applications on a  
4 first-come-first-served basis.

5 (E) Subject to the annual cap established as provided in  
6 subdivision (i), allocate an aggregate amount of credits under this  
7 section and Section 17053.85, and allocate any carryover of  
8 unallocated credits from prior years.

9 (2) Certify tax credits allocated to qualified taxpayers.

10 (A) Establish a verification procedure for the amount of qualified  
11 expenditures paid or incurred by the applicant, including, but not  
12 limited to, updates to the information in subparagraph (A) of  
13 paragraph (1) of subdivision (g).

14 (B) Establish audit requirements that must be satisfied before  
15 a credit certificate may be issued by the California Film  
16 Commission.

17 (C) (i) Establish a procedure for a qualified taxpayer to report  
18 to the California Film Commission, prior to the issuance of a credit  
19 certificate, the following information:

20 (I) If readily available, a list of the states, provinces, or other  
21 jurisdictions in which any member of the applicant's combined  
22 reporting group in the same business unit as the qualified taxpayer  
23 that, in the preceding calendar year, has produced a qualified  
24 motion picture intended for release in the United States market.  
25 For purposes of this clause, "qualified motion picture" shall not  
26 include any episodes of a television series that were complete or  
27 in production prior to July 1, 2009.

28 (II) Whether a qualified motion picture described in subclause  
29 (I) was awarded any financial incentive by the state, province, or  
30 other jurisdiction that was predicated on the performance of  
31 primary principal photography or postproduction in that location.

32 (ii) The California Film Commission may provide that the report  
33 required by this subparagraph be filed in a single report provided  
34 on a calendar year basis for those qualified taxpayers that receive  
35 multiple credit certificates in a calendar year.

36 (D) Issue a credit certificate to a qualified taxpayer upon  
37 completion of the qualified motion picture reflecting the credit  
38 amount allocated after qualified expenditures have been verified  
39 under this section. The amount of credit shown in the credit

1 certificate shall not exceed the amount of credit allocated to that  
2 qualified taxpayer pursuant to this section.

3 (3) Obtain, when possible, the following information from  
4 applicants that do not receive an allocation of credit:

5 (A) Whether the qualified motion picture that was the subject  
6 of the application was completed.

7 (B) If completed, in which state or foreign jurisdiction was the  
8 primary principal photography completed.

9 (C) Whether the applicant received any financial incentives  
10 from the state or foreign jurisdiction to make the qualified motion  
11 picture in that location.

12 (4) Provide the Legislative Analyst's Office, upon request, any  
13 or all application materials or any other materials received from,  
14 or submitted by, the applicants, in electronic format when available,  
15 including, but not limited to, information provided pursuant to  
16 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

17 (5) The information provided to the California Film Commission  
18 pursuant to this section shall constitute confidential tax information  
19 for purposes of Article 2 (commencing with Section 19542) of  
20 Chapter 7 of Part 10.2.

21 (h) (1) The California Film Commission shall annually provide  
22 the Legislative Analyst's Office, the Franchise Tax Board, and the  
23 board with a list of qualified taxpayers and the tax credit amounts  
24 allocated to each qualified taxpayer by the California Film  
25 Commission. The list shall include the names and taxpayer  
26 identification numbers, including taxpayer identification numbers  
27 of each partner or shareholder, as applicable, of the qualified  
28 taxpayer.

29 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the  
30 California Film Commission shall annually post on its Internet  
31 Web site and make available for public release the following:

32 (i) A table which includes all of the following information: a  
33 list of qualified taxpayers and the tax credit amounts allocated to  
34 each qualified taxpayer by the California Film Commission, the  
35 number of production days in California the qualified taxpayer  
36 represented in its application would occur, the number of California  
37 jobs that the qualified taxpayer represented in its application would  
38 be directly created by the production, and the total amount of  
39 qualified expenditures expected to be spent by the production.

1 (ii) A narrative staff summary describing the production of the  
2 qualified taxpayer as well as background information regarding  
3 the qualified taxpayer contained in the qualified taxpayer's  
4 application for the credit.

5 (B) Nothing in this subdivision shall be construed to make the  
6 information submitted by an applicant for a tax credit under this  
7 section a public record.

8 (i) (1) The aggregate amount of credits that may be allocated  
9 in any fiscal year pursuant to this section and Section 17053.85  
10 shall be an amount equal to the sum of all of the following:

11 (A) One hundred million dollars (\$100,000,000) in credits for  
12 the 2009–10 fiscal year and each fiscal year thereafter, through  
13 and including the 2016–17 fiscal year.

14 (B) The unused allocation credit amount, if any, for the  
15 preceding fiscal year.

16 (C) The amount of previously allocated credits not certified.

17 (2) If the amount of credits applied for in any particular fiscal  
18 year exceeds the aggregate amount of tax credits authorized to be  
19 allocated under this section, such excess shall be treated as having  
20 been applied for on the first day of the subsequent fiscal year.  
21 However, credits may not be allocated from a fiscal year other  
22 than the fiscal year in which the credit was originally applied for  
23 or the immediately succeeding fiscal year.

24 (3) Notwithstanding the foregoing, the California Film  
25 Commission shall set aside up to ten million dollars (\$10,000,000)  
26 of tax credits each fiscal year for independent films allocated in  
27 accordance with rules and regulations developed pursuant to  
28 subdivision (e).

29 (4) Any act that reduces the amount that may be allocated  
30 pursuant to paragraph (1) constitutes a change in state taxes for  
31 the purpose of increasing revenues within the meaning of Section  
32 3 of Article XIII A of the California Constitution and may be passed  
33 by not less than two-thirds of all Members elected to each of the  
34 two houses of the Legislature.

35 (j) The California Film Commission shall have the authority to  
36 allocate tax credits in accordance with this section and in  
37 accordance with any regulations prescribed pursuant to subdivision  
38 (e) upon adoption.

39 SEC. 189. Section 24416.20 of the Revenue and Taxation Code  
40 is amended to read:

1 24416.20. Except as provided in Sections 24416.1, 24416.2,  
2 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
3 deduction shall be allowed in computing net income under Section  
4 24341 and shall be determined in accordance with Section 172 of  
5 the Internal Revenue Code, except as otherwise provided.

6 (a) (1) Net operating losses attributable to taxable years  
7 beginning before January 1, 1987, shall not be allowed.

8 (2) A net operating loss shall not be carried forward to any  
9 taxable year beginning before January 1, 1987.

10 (b) (1) Except as provided in paragraphs (2) and (3), the  
11 provisions of Section 172(b)(2) of the Internal Revenue Code,  
12 relating to amount of carrybacks and carryovers, shall be modified  
13 so that the applicable percentage of the entire amount of the net  
14 operating loss for any taxable year shall be eligible for carryover  
15 to any subsequent taxable year. For purposes of this subdivision,  
16 the applicable percentage shall be:

17 (A) Fifty percent for any taxable year beginning before January  
18 1, 2000.

19 (B) Fifty-five percent for any taxable year beginning on or after  
20 January 1, 2000, and before January 1, 2002.

21 (C) Sixty percent for any taxable year beginning on or after  
22 January 1, 2002, and before January 1, 2004.

23 (D) One hundred percent for any taxable year beginning on or  
24 after January 1, 2004.

25 (2) In the case of a taxpayer who has a net operating loss in any  
26 taxable year beginning on or after January 1, 1994, and who  
27 operates a new business during that taxable year, each of the  
28 following shall apply to each loss incurred during the first three  
29 taxable years of operating the new business:

30 (A) If the net operating loss is equal to or less than the net loss  
31 from the new business, 100 percent of the net operating loss shall  
32 be carried forward as provided in subdivision (e).

33 (B) If the net operating loss is greater than the net loss from the  
34 new business, the net operating loss shall be carried over as  
35 follows:

36 (i) With respect to an amount equal to the net loss from the new  
37 business, 100 percent of that amount shall be carried forward as  
38 provided in subdivision (e).

39 (ii) With respect to the portion of the net operating loss that  
40 exceeds the net loss from the new business, the applicable

1 percentage of that amount shall be carried forward as provided in  
2 subdivision (d).

3 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
4 Code, the amount described in clause (ii) of subparagraph (B) shall  
5 be absorbed before the amount described in clause (i) of  
6 subparagraph (B).

7 (3) In the case of a taxpayer who has a net operating loss in any  
8 taxable year beginning on or after January 1, 1994, and who  
9 operates an eligible small business during that taxable year, each  
10 of the following shall apply:

11 (A) If the net operating loss is equal to or less than the net loss  
12 from the eligible small business, 100 percent of the net operating  
13 loss shall be carried forward to the taxable years specified in  
14 paragraph (1) of subdivision (e).

15 (B) If the net operating loss is greater than the net loss from the  
16 eligible small business, the net operating loss shall be carried over  
17 as follows:

18 (i) With respect to an amount equal to the net loss from the  
19 eligible small business, 100 percent of that amount shall be carried  
20 forward as provided in subdivision (e).

21 (ii) With respect to that portion of the net operating loss that  
22 exceeds the net loss from the eligible small business, the applicable  
23 percentage of that amount shall be carried forward as provided in  
24 subdivision (e).

25 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
26 Code, the amount described in clause (ii) of subparagraph (B) shall  
27 be absorbed before the amount described in clause (i) of  
28 subparagraph (B).

29 (4) In the case of a taxpayer who has a net operating loss in a  
30 taxable year beginning on or after January 1, 1994, and who  
31 operates a business that qualifies as both a new business and an  
32 eligible small business under this section, that business shall be  
33 treated as a new business for the first three taxable years of the  
34 new business.

35 (5) In the case of a taxpayer who has a net operating loss in a  
36 taxable year beginning on or after January 1, 1994, and who  
37 operates more than one business, and more than one of those  
38 businesses qualifies as either a new business or an eligible small  
39 business under this section, paragraph (2) shall be applied first,  
40 except that if there is any remaining portion of the net operating

1 loss after application of clause (i) of subparagraph (B) of paragraph  
2 (2), paragraph (3) shall be applied to the remaining portion of the  
3 net operating loss as though that remaining portion of the net  
4 operating loss constituted the entire net operating loss.

5 (6) For purposes of this section, “net loss” means the amount  
6 of net loss after application of Sections 465 and 469 of the Internal  
7 Revenue Code.

8 (c) For any taxable year in which the taxpayer has in effect a  
9 water’s-edge election under Section 25110, the deduction of a net  
10 operating loss carryover shall be denied to the extent that the net  
11 operating loss carryover was determined by taking into account  
12 the income and factors of an affiliated corporation in a combined  
13 report whose income and apportionment factors would not have  
14 been taken into account if a water’s-edge election under Section  
15 25110 had been in effect for the taxable year in which the loss was  
16 incurred.

17 (d) Section 172(b)(1) of the Internal Revenue Code, relating to  
18 years to which the loss may be carried, is modified as follows:

19 (1) Net operating loss carrybacks shall not be allowed for any  
20 net operating losses attributable to taxable years beginning before  
21 January 1, 2013.

22 (2) A net operating loss attributable to taxable years beginning  
23 on or after January 1, 2013, shall be a net operating loss carryback  
24 to each of the two taxable years preceding the taxable year of the  
25 loss in lieu of the number of years provided therein.

26 (A) For a net operating loss attributable to a taxable year  
27 beginning on or after January 1, 2013, and before January 1, 2014,  
28 the amount of carryback to any taxable year shall not exceed 50  
29 percent of the net operating loss.

30 (B) For a net operating loss attributable to a taxable year  
31 beginning on or after January 1, 2014, and before January 1, 2015,  
32 the amount of carryback to any taxable year shall not exceed 75  
33 percent of the net operating loss.

34 (C) For a net operating loss attributable to a taxable year  
35 beginning on or after January 1, 2015, the amount of carryback to  
36 any taxable year shall not exceed 100 percent of the net operating  
37 loss.

38 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
39 Internal Revenue Code, relating to special rules for REITs, and  
40 Section 172(b)(1)(E) of the Internal Revenue Code, relating to

1 excess interest loss, and Section 172(h) of the Internal Revenue  
2 Code, relating to corporate equity reduction interest losses, shall  
3 apply as provided.

4 (4) A net operating loss carryback shall not be carried back to  
5 any taxable year beginning before January 1, 2011.

6 (e) (1) (A) For a net operating loss for any taxable year  
7 beginning on or after January 1, 1987, and before January 1, 2000,  
8 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
9 to substitute “five taxable years” in lieu of “20 years” except as  
10 otherwise provided in paragraphs (2), (3), and (4).

11 (B) For a net operating loss for any income year beginning on  
12 or after January 1, 2000, and before January 1, 2008, Section  
13 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
14 substitute “10 taxable years” in lieu of “20 taxable years.”

15 (2) For any income year beginning before January 1, 2000, in  
16 the case of a “new business,” the “five taxable years” referred to  
17 in paragraph (1) shall be modified to read as follows:

18 (A) “Eight taxable years” for a net operating loss attributable  
19 to the first taxable year of that new business.

20 (B) “Seven taxable years” for a net operating loss attributable  
21 to the second taxable year of that new business.

22 (C) “Six taxable years” for a net operating loss attributable to  
23 the third taxable year of that new business.

24 (3) For any carryover of a net operating loss for which a  
25 deduction is denied by Section 24416.3, the carryover period  
26 specified in this subdivision shall be extended as follows:

27 (A) By one year for a net operating loss attributable to taxable  
28 years beginning in 1991.

29 (B) By two years for a net operating loss attributable to taxable  
30 years beginning prior to January 1, 1991.

31 (4) The net operating loss attributable to taxable years beginning  
32 on or after January 1, 1987, and before January 1, 1994, shall be  
33 a net operating loss carryover to each of the 10 taxable years  
34 following the year of the loss if it is incurred by a corporation that  
35 was either of the following:

36 (A) Under the jurisdiction of the court in a Title 11 or similar  
37 case at any time prior to January 1, 1994. The loss carryover  
38 provided in the preceding sentence shall not apply to any loss  
39 incurred in an income year after the taxable year during which the



1 corporation is no longer under the jurisdiction of the court in a  
2 Title 11 or similar case.

3 (B) In receipt of assets acquired in a transaction that qualifies  
4 as a tax-free reorganization under Section 368(a)(1)(G) of the  
5 Internal Revenue Code.

6 (f) For purposes of this section:

7 (1) “Eligible small business” means any trade or business that  
8 has gross receipts, less returns and allowances, of less than one  
9 million dollars (\$1,000,000) during the income year.

10 (2) Except as provided in subdivision (g), “new business” means  
11 any trade or business activity that is first commenced in this state  
12 on or after January 1, 1994.

13 (3) “Title 11 or similar case” shall have the same meaning as  
14 in Section 368(a)(3) of the Internal Revenue Code.

15 (4) In the case of any trade or business activity conducted by a  
16 partnership or an “S” corporation, paragraphs (1) and (2) shall be  
17 applied to the partnership or “S” corporation.

18 (g) For purposes of this section, in determining whether a trade  
19 or business activity qualifies as a new business under paragraph  
20 (2) of subdivision (e), the following rules shall apply:

21 (1) In any case where a taxpayer purchases or otherwise acquires  
22 all or any portion of the assets of an existing trade or business  
23 (irrespective of the form of entity) that is doing business in this  
24 state (within the meaning of Section 23101), the trade or business  
25 thereafter conducted by the taxpayer (or any related person) shall  
26 not be treated as a new business if the aggregate fair market value  
27 of the acquired assets (including real, personal, tangible, and  
28 intangible property) used by the taxpayer (or any related person)  
29 in the conduct of its trade or business exceeds 20 percent of the  
30 aggregate fair market value of the total assets of the trade or  
31 business being conducted by the taxpayer (or any related person).  
32 For purposes of this paragraph only, the following rules shall apply:

33 (A) The determination of the relative fair market values of the  
34 acquired assets and the total assets shall be made as of the last day  
35 of the first taxable year in which the taxpayer (or any related  
36 person) first uses any of the acquired trade or business assets in  
37 its business activity.

38 (B) Any acquired assets that constituted property described in  
39 Section 1221(1) of the Internal Revenue Code in the hands of the  
40 transferor shall not be treated as assets acquired from an existing

1 trade or business, unless those assets also constitute property  
2 described in Section 1221(1) of the Internal Revenue Code in the  
3 hands of the acquiring taxpayer (or related person).

4 (2) In any case where a taxpayer (or any related person) is  
5 engaged in one or more trade or business activities in this state, or  
6 has been engaged in one or more trade or business activities in this  
7 state within the preceding 36 months (“prior trade or business  
8 activity”), and thereafter commences an additional trade or business  
9 activity in this state, the additional trade or business activity shall  
10 only be treated as a new business if the additional trade or business  
11 activity is classified under a different division of the Standard  
12 Industrial Classification (SIC) Manual published by the United  
13 States Office of Management and Budget, 1987 edition, than are  
14 any of the taxpayer’s (or any related person’s) current or prior  
15 trade or business activities.

16 (3) In any case where a taxpayer, including all related persons,  
17 is engaged in trade or business activities wholly outside of this  
18 state and the taxpayer first commences doing business in this state  
19 (within the meaning of Section 23101) after December 31, 1993  
20 (other than by purchase or other acquisition described in paragraph  
21 (1)), the trade or business activity shall be treated as a new business  
22 under paragraph (2) of subdivision (e).

23 (4) In any case where the legal form under which a trade or  
24 business activity is being conducted is changed, the change in form  
25 shall be disregarded and the determination of whether the trade or  
26 business activity is a new business shall be made by treating the  
27 taxpayer as having purchased or otherwise acquired all or any  
28 portion of the assets of an existing trade or business under the rules  
29 of paragraph (1).

30 (5) “Related person” shall mean any person that is related to  
31 the taxpayer under either Section 267 or 318 of the Internal  
32 Revenue Code.

33 (6) “Acquire” shall include any transfer, whether or not for  
34 consideration.

35 (7) (A) For taxable years beginning on or after January 1, 1997,  
36 the term “new business” shall include any taxpayer that is engaged  
37 in biopharmaceutical activities or other biotechnology activities  
38 that are described in Codes 2833 to 2836, inclusive, of the Standard  
39 Industrial Classification (SIC) Manual published by the United  
40 States Office of Management and Budget, 1987 edition, and as

1 further amended, and that has not received regulatory approval for  
2 any product from the Food and Drug Administration.

3 (B) For purposes of this paragraph:

4 (i) “Biopharmaceutical activities” means those activities that  
5 use organisms or materials derived from organisms, and their  
6 cellular, subcellular, or molecular components, in order to provide  
7 pharmaceutical products for human or animal therapeutics and  
8 diagnostics. Biopharmaceutical activities make use of living  
9 organisms to make commercial products, as opposed to  
10 pharmaceutical activities that make use of chemical compounds  
11 to produce commercial products.

12 (ii) “Other biotechnology activities” means activities consisting  
13 of the application of recombinant DNA technology to produce  
14 commercial products, as well as activities regarding pharmaceutical  
15 delivery systems designed to provide a measure of control over  
16 the rate, duration, and site of pharmaceutical delivery.

17 (h) For purposes of corporations whose net income is determined  
18 under Chapter 17 (commencing with Section 25101), Section  
19 25108 shall apply to each of the following:

20 (1) The amount of net operating loss incurred in any taxable  
21 year that may be carried forward to another taxable year.

22 (2) The amount of any loss carry forward that may be deducted  
23 in any taxable year.

24 (i) The provisions of Section 172(b)(1)(D) of the Internal  
25 Revenue Code, relating to bad debt losses of commercial banks,  
26 shall not be applicable.

27 (j) The Franchise Tax Board may prescribe appropriate  
28 regulations to carry out the purposes of this section, including any  
29 regulations necessary to prevent the avoidance of the purposes of  
30 this section through splitups, shell corporations, partnerships, tiered  
31 ownership structures, or otherwise.

32 (k) The Franchise Tax Board may reclassify any net operating  
33 loss carryover determined under either paragraph (2) or (3) of  
34 subdivision (b) as a net operating loss carryover under paragraph  
35 (1) of subdivision (b) upon a showing that the reclassification is  
36 necessary to prevent evasion of the purposes of this section.

37 (l) Except as otherwise provided, the amendments made by  
38 Chapter 107 of the Statutes of 2000 shall apply to net operating  
39 losses for taxable years beginning on or after January 1, 2000.

1 SEC. 190. Section 24900 of the Revenue and Taxation Code  
2 is amended and renumbered to read:

3 ~~24452.~~

4 24455. (a) The Franchise Tax Board may include in the gross  
5 income of the taxpayer (or a member of the taxpayer's combined  
6 reporting group) in that taxable year the taxpayer's pro rata share  
7 (or the pro rata share of a member of the taxpayer's combined  
8 reporting group) of any of those insurers' current earnings and  
9 profits in that taxable year, but not to exceed an amount equal to  
10 the specific insurer's net income attributable to investment income  
11 for that year minus that insurer's net written premiums received  
12 in that same taxable year, if all of the following apply:

13 (1) For any taxable year an insurer is a member of a taxpayer's  
14 commonly controlled group.

15 (2) The ratio of the five-year average net written premiums to  
16 the five-year average total income of all insurers in the commonly  
17 controlled group is equal to or less than 0.10 (or, for taxable years  
18 beginning on or after January 1, 2008, 0.15).

19 (3) The accumulation of earnings and profits of the insurers in  
20 the commonly controlled group had a substantial purpose of  
21 avoidance of taxes on, according to, or measured by income, of  
22 this state or any other state.

23 The amount so included shall be treated as a dividend received  
24 from an insurance company during the taxable year, and to the  
25 extent applicable, Section 24410 shall apply to that amount.

26 (b) If the insurer members of the commonly controlled group  
27 constitute a predominantly captive insurance group (as defined in  
28 paragraph (6) of subdivision (e)), then the ratio described in  
29 subdivision (a) shall be 0.40.

30 (c) To the extent that amounts are included in the gross income  
31 of a taxpayer (or a member of the taxpayer's combined reporting  
32 group) pursuant to subdivision (a), those amounts shall not again  
33 be considered as investment income in the application of the ratio  
34 described in paragraph (2) of subdivision (a).

35 (d) The amounts included in gross income under subdivision  
36 (a) shall not again be included in gross income when subsequent  
37 distributions are made to the taxpayer (or a member of the  
38 taxpayer's combined reporting group), or another taxpayer that  
39 acquires an interest in the stock of the taxpayer (or a member of  
40 the taxpayer's combined reporting group with respect to which

1 subdivision (a) was applied), or any successor or assign of the  
2 respective taxpayers (or a member of the taxpayer’s combined  
3 reporting group) described in this subdivision. For purposes of  
4 applying this subdivision, distributions from an insurer shall be  
5 considered first made from amounts included under subdivision  
6 (a).

7 (e) For purposes of this section, the following definitions shall  
8 apply:

9 (1) Except as otherwise provided, the phrases “net written  
10 premiums,” “five-year average net written premiums” and the  
11 “five-year average total income” shall each have the same meaning,  
12 respectively, as applicable for purposes of subdivision (c) of  
13 Section 24410, whether or not a dividend is actually received from  
14 any insurer member of the taxpayer’s commonly controlled group  
15 in that taxable year.

16 (2) “Net income attributable to investment income” means net  
17 income of the insurer multiplied by a ratio, the numerator of which  
18 is the insurer’s gross investment income from interest, dividends  
19 (other than dividends from members of the taxpayer’s commonly  
20 controlled group), rent, and realized gains or losses, and the  
21 denominator of which is the insurer’s gross income (other than  
22 dividends from members of the taxpayer’s commonly controlled  
23 group) from all sources. In the application of the preceding  
24 sentence, if an insurer is required to file a Statutory Annual  
25 Statement pursuant to the Annual Statement Instructions and  
26 Accounting Practices and Procedures Manual promulgated by the  
27 National Association of Insurance Commissioners, “net income”  
28 means net income required to be reported in the insurer’s Statutory  
29 Annual Statement.

30 (3) An insurer is any insurer within the meaning of Section 28  
31 of Article XIII of the California Constitution, whether or not the  
32 insurer is engaged in business in California.

33 (4) The phrase “commonly controlled group” shall have the  
34 same meaning as that phrase has under Section 25105.

35 (5) The phrase “combined reporting group” means those  
36 corporations whose income is required to be included in the same  
37 combined report pursuant to Section 25101 or 25110.

38 (6) A “predominantly captive insurance group” means the  
39 insurer members of a commonly controlled group where the  
40 insurers receive more than 50 percent of their net written premiums

1 (without regard to the weighting factors in paragraph (1) of  
2 subdivision (e) of Section 24410) from members of the commonly  
3 controlled group or the ratios in clause (i) or clause (ii) of  
4 subparagraph (B) of paragraph (1) of subdivision (d) of Section  
5 24410 is greater than 50 percent. The provisions of paragraph (4)  
6 of subdivision (d) of Section 24410 shall apply for purposes of  
7 this paragraph.

8 (7) (A) The taxpayer's "pro rata share" of the current earnings  
9 and profits of an insurer member of a commonly controlled group  
10 is the amount that would have been received as a dividend by the  
11 taxpayer (or a member of the taxpayer's combined reporting group)  
12 if both of the following apply:

13 (i) The insurer had directly distributed its current earnings and  
14 profits with respect to its stock held by the taxpayer (or member  
15 of the taxpayer's combined reporting group).

16 (ii) In the case of an insurer holding the stock of another insurer,  
17 all other insurer members of the taxpayer's commonly controlled  
18 group had distributed the same current earnings and profits with  
19 respect to their stock, in the same taxable year, until amounts were  
20 received as a dividend by the taxpayer (or a member of the  
21 taxpayer's combined reporting group) from an insurer member of  
22 the commonly controlled group.

23 (B) In the application of this section, amounts treated as a  
24 dividend received by a partnership shall be considered a dividend  
25 received by each partner that is a member of the commonly  
26 controlled group, either directly or through a series of tiered  
27 partnerships.

28 (f) The Franchise Tax Board may prescribe those regulations  
29 that are appropriate to describe conditions under which the  
30 accumulation of earnings and profits of those insurers described  
31 in paragraph (2) of subdivision (a) do not have the substantial  
32 purpose of avoidance of taxes on, according to, or measured by  
33 income, of this state or any other state.

34 (g) If this section or any portion of this section is held invalid,  
35 or the application of this section to any person or circumstance is  
36 held invalid, that invalidity shall not affect other provisions of the  
37 act adding this section, or the provisions of this section that are  
38 severable.

39 SEC. 191. Section 1755 of the Unemployment Insurance Code  
40 is amended to read:

1 1755. (a) If any person or employing unit is delinquent in the  
2 payment of any contributions, penalties, or interest provided for  
3 in this division, the director may, not later than three years after  
4 the payment became delinquent or within 10 years after the last  
5 entry of a judgment under Article 5 (commencing with Section  
6 1815) or within 10 years after the last recording or filing of a notice  
7 of state tax lien under Section 7171 of the Government Code,  
8 collect the delinquency or enforce any liens by levy served either  
9 personally or by first-class mail, to all persons having in their  
10 possession or under their control any credits or personal property  
11 belonging to the delinquent person or employing unit, or owing  
12 any debts to the person or employing unit at the time of the receipt  
13 of the notice of levy or coming into their possession or under their  
14 control for the period of one year from the time of receipt of the  
15 notice of levy. Any person upon whom a levy has been served  
16 having in his or her possession or under his or her control any  
17 credits or personal property belonging to the delinquent person or  
18 employing unit or owing any debts to the person or employing  
19 unit at the time of the receipt of the levy or coming into his or her  
20 possession or under his or her control for the period of one year  
21 from the time of receipt of the notice of levy, shall surrender the  
22 credits or personal property to the director or pay to the director  
23 the amount of any debt owing the delinquent employer within five  
24 days of service of the levy, and shall surrender the credits or  
25 personal property, or the amount of any debt owing to the  
26 delinquent employer coming into his or her possession or under  
27 his or her control within one year of receipt of the notice of levy  
28 within five days of the date of coming into possession or control  
29 of the credits or personal property, or the amount of any debt owing  
30 to the delinquent employer is incurred. Any person in possession  
31 of any credits or personal property or owing any debts to the  
32 delinquent person or employing unit who surrenders the credits or  
33 personal property or pays the debts owing the delinquent person  
34 or employing unit shall be discharged from any obligation or  
35 liability to the delinquent person or employing unit with respect  
36 to the credits or personal property surrendered or debts paid to the  
37 director.

38 (b) (1) If the levy is made on a deposit or credits or personal  
39 property in the possession or under the control of a financial  
40 institution, the notice of levy shall be served on that financial

1 institution at the same location as legal process is required to be  
2 served pursuant to Section 684.115 of the Code of Civil Procedure,  
3 and the levy will apply to all credits or personal property in the  
4 deposit account only at the time that notice of levy is received by  
5 the financial institution.

6 (2) For purposes of this section:

7 (A) “Deposit account” has the same meaning as in paragraph  
8 (29) of subdivision (a) of Section 9102 of the Commercial Code.

9 (B) “Financial institution” has the same meaning as in Section  
10 481.113 of the Code of Civil Procedure.

11 (C) “Legal process” has the same meaning as in Section 482.070  
12 of the Code of Civil Procedure.

13 SEC. 192. Section 14211 of the Unemployment Insurance  
14 Code is amended to read:

15 14211. (a) (1) Beginning program year 2012, an amount equal  
16 to at least 25 percent of funds available under Title I of the federal  
17 Workforce Investment Act of 1998 (Public Law 105-220) provided  
18 to local workforce investment boards for adults and dislocated  
19 workers shall be spent on workforce training programs. This  
20 minimum may be met either by spending 25 percent of those base  
21 formula funds on training or by combining a portion of those base  
22 formula funds with leveraged funds as specified in subdivision  
23 (b).

24 (2) Beginning program year 2016, an amount equal to at least  
25 30 percent of funds available under Title I of the federal Workforce  
26 Investment Act of 1998 (Public Law 105-220) provided to local  
27 workforce investment boards for adults and dislocated workers  
28 shall be spent on workforce training programs. This minimum may  
29 be met either by spending 30 percent of those base formula funds  
30 on training or by combining a portion of those base formula funds  
31 with leveraged funds as specified in subdivision (b).

32 (3) Expenditures that shall count toward the minimum  
33 percentage of funds shall include only training services as defined  
34 in Section 2864(d)(4)(D) of Title 29 of the United States Code and  
35 Sections 663.300 and 663.508 of Title 20 of the Code of Federal  
36 Regulations, including all of the following:

37 (A) Occupational skills training, including training for  
38 nontraditional employment.

39 (B) On-the-job training.



- 1 (C) Programs that combine workplace training with related
- 2 instruction, which may include cooperative education programs.
- 3 (D) Training programs operated by the private sector.
- 4 (E) Skill upgrading and retraining.
- 5 (F) Entrepreneurial training.
- 6 (G) Job readiness training.
- 7 (H) Adult education and literacy activities provided in
- 8 combination with services described in any of subparagraphs (A)
- 9 to (G), inclusive.
- 10 (I) Customized training conducted with a commitment by an
- 11 employer or group of employers to employ an individual upon
- 12 successful completion of the training.
- 13 (b) (1) Local workforce investment boards may receive a credit
- 14 of up to 10 percent of their adult and dislocated worker formula
- 15 fund base allocations for public education and training funds and
- 16 private resources from industry and from joint labor-management
- 17 trusts that are leveraged by a local workforce investment board
- 18 for training services described in paragraph (3) of subdivision (a).
- 19 This credit may be applied toward the minimum training
- 20 requirements in paragraphs (1) and (2) of subdivision (a).
- 21 (A) Leveraged funds that may be applied toward the credit
- 22 allowed by this subdivision shall only include the following:
- 23 (i) Federal Pell Grants established under Title IV of the federal
- 24 Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).
- 25 (ii) Programs authorized by the federal Workforce Investment
- 26 Act of 1998 (Public Law 105-220).
- 27 (iii) Trade adjustment assistance.
- 28 (iv) Department of Labor National Emergency Grants.
- 29 (v) Match funds from employers, industry, and industry
- 30 associations.
- 31 (vi) Match funds from joint labor-management trusts.
- 32 (vii) Employment training panel grants.
- 33 (B) Credit for leveraged funds shall only be given if the local
- 34 workforce investment board keeps records of all training
- 35 expenditures it chooses to apply to the credit. Training expenditures
- 36 may only be applied to the credit if the relevant training costs can
- 37 be independently verified by the Employment Development
- 38 Department and training participants must be coenrolled in the
- 39 federal Workforce Investment Act of 1998 performance monitoring
- 40 system.

1 (2) The use of leveraged funds to partially meet the training  
2 requirements specified in paragraphs (1) and (2) of subdivision  
3 (a) is the prerogative of a local workforce investment board. Costs  
4 arising from the recordkeeping required to demonstrate compliance  
5 with the leveraging requirements of this subdivision are the  
6 responsibility of the board.

7 (c) Beginning program year 2012, the Employment Development  
8 Department shall calculate for each local workforce investment  
9 board, within six months after the end of the second program year  
10 of the two-year period of availability for expenditure of federal  
11 Workforce Investment Act of 1998 funds, whether the local  
12 workforce investment board met the requirements of subdivision  
13 (a). The Employment Development Department shall provide to  
14 each local workforce investment board its individual calculations  
15 with respect to the expenditure requirements of subdivision (a).

16 (d) A local workforce investment area that does not meet the  
17 requirements of subdivision (a) shall submit a corrective action  
18 plan to the Employment Development Department that provides  
19 reasons for not meeting the requirements and describes actions  
20 taken to address the identified expenditure deficiencies. A local  
21 workforce investment area shall provide a corrective action plan  
22 to the Employment Development Department pursuant to this  
23 section within 90 days of receiving the calculations described in  
24 subdivision (c).

25 (e) For the purpose of this section, “program year” has the same  
26 meaning as provided in Section 667.100 of Title 20 of the Code  
27 of Federal Regulations.

28 SEC. 193. Section 11205 of the Vehicle Code, as amended by  
29 Section 456 of Chapter 931 of the Statutes of 1998, is amended to  
30 read:

31 11205. (a) The department shall publish semiannually, or more  
32 often as necessary to serve the purposes of this act, a list of all  
33 traffic violator schools which are licensed pursuant to this section.  
34 The list shall identify classroom facilities within a judicial district  
35 that are at a different location from a licensed school’s principal  
36 facility. The department shall transmit the list to each municipal  
37 court and to each superior court in a county in which there is no  
38 municipal court, with a sufficient number of copies to allow the  
39 courts to provide one copy to each person referred to a licensed  
40 traffic violator school. The department shall, at least semiannually,

1 revise the list to ensure that each court has a current list of all  
2 licensed traffic violator schools.

3 (b) Each licensed traffic violator school owner shall be permitted  
4 one school name per judicial district.

5 (c) The referral list shall be organized alphabetically, in sections  
6 for each county, and contain subsections for each judicial district  
7 within the county. The order of the names within each judicial  
8 district shall be random pursuant to a drawing or lottery conducted  
9 by the department.

10 (d) Except as otherwise provided in subdivision (d) of Section  
11 42005, the court shall use either the current referral list of traffic  
12 violator schools published by the department when it orders a  
13 person to complete a traffic violator school pursuant to subdivision  
14 (a) or (b) of Section 42005 or, when a court utilizing a nonprofit  
15 agency for traffic violator school administration and monitoring  
16 services in which all traffic violator schools licensed by the  
17 department are allowed the opportunity to participate, a statewide  
18 referral list may be published by the nonprofit agency and  
19 distributed by the court. The agency shall monitor each classroom  
20 location situated within the judicial districts in which that agency  
21 provides services to the courts and is represented on its referral  
22 list. The monitoring shall occur at least once every 90 days with  
23 reports forwarded to the department and the respective courts on  
24 a monthly basis.

25 (e) The court may charge a traffic violator a fee to defray the  
26 costs incurred by the agency for the monitoring reports and services  
27 provided to the court. The court may delegate collection of the fee  
28 to the agency. Fees shall be approved and regulated by the court.  
29 Until December 31, 1996, the fee shall not exceed the actual cost  
30 incurred by the agency or five dollars (\$5), whichever is less.

31 SEC. 194. Section 12804.11 of the Vehicle Code is amended  
32 to read:

33 12804.11. (a) To operate firefighting equipment, a driver,  
34 including a tiller operator, is required to do either of the following:

35 (1) Obtain and maintain a firefighter endorsement issued by the  
36 department and obtain and maintain a class C license as described  
37 in Section 12804.9, a restricted class A license as described in  
38 Section 12804.12, or a noncommercial class B license as described  
39 in Section 12804.10.

1 (2) Obtain and maintain a class A or B license as described in  
2 Section 12804.9 and, as appropriate, for the size and configuration  
3 of the firefighting equipment operated.  
4 (b) To qualify for a firefighter endorsement the driver shall do  
5 all of the following:  
6 (1) (A) Provide to the department proof of current employment  
7 as a firefighter or registration as a volunteer firefighter with a fire  
8 department and evidence of fire equipment operation training by  
9 providing a letter or other indication from the chief of the fire  
10 department or his or her designee.  
11 (B) For purposes of this section, evidence of fire equipment  
12 operation training means the applicant has successfully completed  
13 Fire Apparatus Driver/Operator 1A taught by an instructor  
14 registered with the Office of the State Fire Marshal or fire  
15 department driver training that meets all of the following  
16 requirements:  
17 (i) Meets or exceeds the standards outlined in NFPA 1002,  
18 Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator  
19 1A course adopted by the Office of the State Fire Marshal.  
20 (ii) Prepares the applicant to safely operate the department's  
21 fire equipment that the applicant will be authorized to operate.  
22 (iii) Includes a classroom (cognitive) portion of at least 16 hours.  
23 (iv) Includes a manipulative portion of at least 14 hours, which  
24 includes directly supervised behind-the-wheel driver training.  
25 (C) Driver training shall be conducted by a person who is  
26 registered with the Office of the State Fire Marshal to instruct a  
27 Fire Apparatus Driver/Operator 1A course or a person who meets  
28 all of the following criteria:  
29 (i) Possesses a minimum of five years of fire service experience  
30 as an emergency vehicle operator, three of which must be at the  
31 rank of engineer or higher.  
32 (ii) Possesses a valid California class A or B license or a class  
33 A or B license restricted to the operation of firefighting equipment.  
34 (iii) Is certified as a qualified training instructor or training  
35 officer by the State of California, the federal government, or a  
36 county training officers' association.  
37 (2) Pass the written firefighter examination developed by the  
38 department with the cooperation of the Office of the State Fire  
39 Marshal.

1 (3) Upon application and every two years thereafter, submit  
2 medical information on a form approved by the department.

3 (c) There shall be no additional charge for adding a firefighter  
4 endorsement to an original license or when renewing a license. To  
5 add a firefighter endorsement to an existing license when not  
6 renewing the license, the applicant shall pay the fee for a duplicate  
7 license pursuant to Section 14901.

8 (d) (1) A driver of firefighting equipment is subject to the  
9 requirements of subdivision (a) if both of the following conditions  
10 exist:

11 (A) The equipment is operated by a person employed as a  
12 firefighter by a federal or state agency, by a regularly organized  
13 fire department of a city, county, city and county, or district, or by  
14 a tribal fire department or registered as a volunteer member of a  
15 regularly organized fire department having official recognition of  
16 the city, county, city and county, or district in which the department  
17 is located, or of a tribal fire department.

18 (B) The motor vehicle is used to travel to and from the scene  
19 of an emergency situation, or to transport equipment used in the  
20 control of an emergency situation, and which is owned, leased, or  
21 rented by, or under the exclusive control of, a federal or state  
22 agency, a regularly organized fire department of a city, county,  
23 city and county, or district, a volunteer fire department having  
24 official recognition of the city, county, city and county, or district  
25 in which the department is located, or a tribal fire department.

26 (2) A driver of firefighting equipment is not required to obtain  
27 and maintain a firefighter endorsement pursuant to paragraph (1)  
28 of subdivision (a) if the driver is operating the firefighting  
29 equipment for training purposes, during a nonemergency, while  
30 under the direct supervision of a fire department employee who is  
31 properly licensed to operate the equipment and is authorized by  
32 the fire department to provide training.

33 (e) For purposes of this section, a tiller operator is the driver of  
34 the rear free-axle portion of a ladder truck.

35 (f) For purposes of this section, “firefighting equipment” means  
36 a motor vehicle, that meets the definition of a class A or class B  
37 vehicle described in subdivision (b) of Section 12804.9, that is  
38 used to travel to and from the scene of an emergency situation, or  
39 to transport equipment used in the control of an emergency  
40 situation, and that is owned, leased, or rented by, or under the

1 exclusive control of, a federal or state agency, a regularly organized  
2 fire department of a city, county, city and county, or district, or a  
3 volunteer fire department having official recognition of the city,  
4 county, city and county, or district in which the department is  
5 located.

6 (g) Notwithstanding paragraph (1) of subdivision (a), a regularly  
7 organized fire department, having official recognition of the city,  
8 county, city and county, or district in which the department is  
9 located, may require an employee or a volunteer of the fire  
10 department who is a driver or operator of firefighting equipment  
11 to hold a class A or B license.

12 (h) This section applies to a person hired by a fire department,  
13 or to a person renewing a driver’s license, on or after January 1,  
14 2011.

15 SEC. 195. Section 16028 of the Vehicle Code is amended to  
16 read:

17 16028. (a) Upon the demand of a peace officer pursuant to  
18 subdivision (b) or upon the demand of a peace officer or traffic  
19 collision investigator pursuant to subdivision (c), every person  
20 who drives a motor vehicle upon a highway shall provide evidence  
21 of financial responsibility for the vehicle that is in effect at the  
22 time the demand is made. The evidence of financial responsibility  
23 may be provided using a mobile electronic device. However, a  
24 peace officer shall not stop a vehicle for the sole purpose of  
25 determining whether the vehicle is being driven in violation of this  
26 subdivision.

27 (b) If a notice to appear is issued for any alleged violation of  
28 this code, except a violation specified in Chapter 9 (commencing  
29 with Section 22500) of Division 11 or any local ordinance adopted  
30 pursuant to that chapter, the cited driver shall furnish written  
31 evidence of financial responsibility or may provide electronic  
32 verification of evidence of financial responsibility using a mobile  
33 electronic device upon request of the peace officer issuing the  
34 citation. The peace officer shall request and write the driver’s  
35 evidence of financial responsibility on the notice to appear, except  
36 when the peace officer is unable to write the driver’s evidence of  
37 financial responsibility on the notice to appear due to an emergency  
38 that requires his or her presence elsewhere. If the cited driver fails  
39 to provide evidence of financial responsibility at the time the notice  
40 to appear is issued, the peace officer may issue the driver a notice

1 to appear for violation of subdivision (a). The notice to appear for  
2 violation of subdivision (a) shall be written on the same citation  
3 form as the original violation.

4 (c) If a peace officer, or a regularly employed and salaried  
5 employee of a city or county who has been trained as a traffic  
6 collision investigator, is summoned to the scene of an accident  
7 described in Section 16000, the driver of a motor vehicle that is  
8 in any manner involved in the accident shall furnish written  
9 evidence of financial responsibility or may provide electronic  
10 verification of evidence of financial responsibility using a mobile  
11 electronic device upon the request of the peace officer or traffic  
12 collision investigator. If the driver fails to provide evidence of  
13 financial responsibility when requested, the peace officer may  
14 issue the driver a notice to appear for violation of this subdivision.  
15 A traffic collision investigator may cause a notice to appear to be  
16 issued for a violation of this subdivision, upon review of that  
17 citation by a peace officer.

18 (d) (1) If, at the time a notice to appear for a violation of  
19 subdivision (a) is issued, the person is driving a motor vehicle  
20 owned or leased by the driver's employer, and the vehicle is being  
21 driven with the permission of the employer, this section shall apply  
22 to the employer rather than the driver. In that case, a notice to  
23 appear shall be issued to the employer rather than the driver, and  
24 the driver may sign the notice on behalf of the employer.

25 (2) The driver shall notify the employer of the receipt of the  
26 notice issued pursuant to paragraph (1) not later than five days  
27 after receipt.

28 (e) A person issued a notice to appear for a violation of  
29 subdivision (a) may personally appear before the clerk of the court,  
30 as designated in the notice to appear, and provide written evidence  
31 of financial responsibility in a form consistent with Section 16020,  
32 showing that the driver was in compliance with that section at the  
33 time the notice to appear for violating subdivision (a) was issued.  
34 In lieu of the personal appearance, the person may submit by mail  
35 to the court written evidence of having had financial responsibility  
36 at the time the notice to appear was issued. Upon receipt by the  
37 clerk of that written evidence of financial responsibility in a form  
38 consistent with Section 16020, further proceedings on the notice  
39 to appear for the violation of subdivision (a) shall be dismissed.

1 (f) For the purposes of this section, “mobile electronic device”  
2 means a portable computing and communication device that has  
3 a display screen with touch input or a miniature keyboard.

4 (g) For the purposes of this section, when a person provides  
5 evidence of financial responsibility using a mobile electronic device  
6 to a peace officer, the peace officer shall only view the evidence  
7 of financial responsibility and is prohibited from viewing any other  
8 content on the mobile electronic device.

9 (h) If a person presents a mobile electronic device pursuant to  
10 this section, that person assumes all liability for any damage to the  
11 mobile electronic device.

12 SEC. 196. Section 23612 of the Vehicle Code is amended to  
13 read:

14 23612. (a) (1) (A) A person who drives a motor vehicle is  
15 deemed to have given his or her consent to chemical testing of his  
16 or her blood or breath for the purpose of determining the alcoholic  
17 content of his or her blood, if lawfully arrested for an offense  
18 allegedly committed in violation of Section 23140, 23152, or  
19 23153. If a blood or breath test, or both, are unavailable, then  
20 paragraph (2) of subdivision (d) applies.

21 (B) A person who drives a motor vehicle is deemed to have  
22 given his or her consent to chemical testing of his or her blood for  
23 the purpose of determining the drug content of his or her blood, if  
24 lawfully arrested for an offense allegedly committed in violation  
25 of Section 23140, 23152, or 23153. If a blood test is unavailable,  
26 the person shall be deemed to have given his or her consent to  
27 chemical testing of his or her urine and shall submit to a urine test.

28 (C) The testing shall be incidental to a lawful arrest and  
29 administered at the direction of a peace officer having reasonable  
30 cause to believe the person was driving a motor vehicle in violation  
31 of Section 23140, 23152, or 23153.

32 (D) The person shall be told that his or her failure to submit to,  
33 or the failure to complete, the required chemical testing will result  
34 in a fine, mandatory imprisonment if the person is convicted of a  
35 violation of Section 23152 or 23153, and (i) the suspension of the  
36 person’s privilege to operate a motor vehicle for a period of one  
37 year, (ii) the revocation of the person’s privilege to operate a motor  
38 vehicle for a period of two years if the refusal occurs within 10  
39 years of a separate violation of Section 23103 as specified in  
40 Section 23103.5, or of Section 23140, 23152, or 23153 of this



1 code, or of Section 191.5 or subdivision (a) of Section 192.5 of  
2 the Penal Code that resulted in a conviction, or if the person's  
3 privilege to operate a motor vehicle has been suspended or revoked  
4 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that  
5 occurred on a separate occasion, or (iii) the revocation of the  
6 person's privilege to operate a motor vehicle for a period of three  
7 years if the refusal occurs within 10 years of two or more separate  
8 violations of Section 23103 as specified in Section 23103.5, or of  
9 Section 23140, 23152, or 23153 of this code, or of Section 191.5  
10 or subdivision (a) of Section 192.5 of the Penal Code, or any  
11 combination thereof, that resulted in convictions, or if the person's  
12 privilege to operate a motor vehicle has been suspended or revoked  
13 two or more times pursuant to Section 13353, 13353.1, or 13353.2  
14 for offenses that occurred on separate occasions, or if there is any  
15 combination of those convictions, administrative suspensions, or  
16 revocations.

17 (2) (A) If the person is lawfully arrested for driving under the  
18 influence of an alcoholic beverage, the person has the choice of  
19 whether the test shall be of his or her blood or breath and the officer  
20 shall advise the person that he or she has that choice. If the person  
21 arrested either is incapable, or states that he or she is incapable,  
22 of completing the chosen test, the person shall submit to the  
23 remaining test. If a blood or breath test, or both, are unavailable,  
24 then paragraph (2) of subdivision (d) applies.

25 (B) If the person is lawfully arrested for driving under the  
26 influence of any drug or the combined influence of an alcoholic  
27 beverage and any drug, the person has the choice of whether the  
28 test shall be of his or her blood or breath, and the officer shall  
29 advise the person that he or she has that choice.

30 (C) A person who chooses to submit to a breath test may also  
31 be requested to submit to a blood test if the officer has reasonable  
32 cause to believe that the person was driving under the influence  
33 of a drug or the combined influence of an alcoholic beverage and  
34 a drug and if the officer has a clear indication that a blood test will  
35 reveal evidence of the person being under the influence. The officer  
36 shall state in his or her report the facts upon which that belief and  
37 that clear indication are based. The officer shall advise the person  
38 that he or she is required to submit to an additional test. The person  
39 shall submit to and complete a blood test. If the person arrested is

1 incapable of completing the blood test, the person shall submit to  
2 and complete a urine test.

3 (3) If the person is lawfully arrested for an offense allegedly  
4 committed in violation of Section 23140, 23152, or 23153, and,  
5 because of the need for medical treatment, the person is first  
6 transported to a medical facility where it is not feasible to  
7 administer a particular test of, or to obtain a particular sample of,  
8 the person's blood or breath, the person has the choice of those  
9 tests, including a urine test, that are available at the facility to  
10 which that person has been transported. In that case, the officer  
11 shall advise the person of those tests that are available at the  
12 medical facility and that the person's choice is limited to those  
13 tests that are available.

14 (4) The officer shall also advise the person that he or she does  
15 not have the right to have an attorney present before stating whether  
16 he or she will submit to a test or tests, before deciding which test  
17 or tests to take, or during administration of the test or tests chosen,  
18 and that, in the event of refusal to submit to a test or tests, the  
19 refusal may be used against him or her in a court of law.

20 (5) A person who is unconscious or otherwise in a condition  
21 rendering him or her incapable of refusal is deemed not to have  
22 withdrawn his or her consent and a test or tests may be  
23 administered whether or not the person is told that his or her failure  
24 to submit to, or the noncompletion of, the test or tests will result  
25 in the suspension or revocation of his or her privilege to operate  
26 a motor vehicle. A person who is dead is deemed not to have  
27 withdrawn his or her consent and a test or tests may be  
28 administered at the direction of a peace officer.

29 (b) A person who is afflicted with hemophilia is exempt from  
30 the blood test required by this section, but shall submit to, and  
31 complete, a urine test.

32 (c) A person who is afflicted with a heart condition and is using  
33 an anticoagulant under the direction of a licensed physician and  
34 surgeon is exempt from the blood test required by this section, but  
35 shall submit to, and complete, a urine test.

36 (d) (1) A person lawfully arrested for an offense allegedly  
37 committed while the person was driving a motor vehicle in  
38 violation of Section 23140, 23152, or 23153 may request the  
39 arresting officer to have a chemical test made of the arrested  
40 person's blood or breath for the purpose of determining the

1 alcoholic content of that person's blood, and, if so requested, the  
2 arresting officer shall have the test performed.

3 (2) If a blood or breath test is not available under subparagraph  
4 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)  
5 of paragraph (2) of subdivision (a), or under paragraph (1) of this  
6 subdivision, the person shall submit to the remaining test in order  
7 to determine the percent, by weight, of alcohol in the person's  
8 blood. If both the blood and breath tests are unavailable, the person  
9 shall be deemed to have given his or her consent to chemical testing  
10 of his or her urine and shall submit to a urine test.

11 (e) If the person, who has been arrested for a violation of Section  
12 23140, 23152, or 23153, refuses or fails to complete a chemical  
13 test or tests, or requests that a blood or urine test be taken, the  
14 peace officer, acting on behalf of the department, shall serve the  
15 notice of the order of suspension or revocation of the person's  
16 privilege to operate a motor vehicle personally on the arrested  
17 person. The notice shall be on a form provided by the department.

18 (f) If the peace officer serves the notice of the order of  
19 suspension or revocation of the person's privilege to operate a  
20 motor vehicle, the peace officer shall take possession of all driver's  
21 licenses issued by this state that are held by the person. The  
22 temporary driver's license shall be an endorsement on the notice  
23 of the order of suspension and shall be valid for 30 days from the  
24 date of arrest.

25 (g) (1) The peace officer shall immediately forward a copy of  
26 the completed notice of suspension or revocation form and any  
27 driver's license taken into possession under subdivision (f), with  
28 the report required by Section 13380, to the department. If the  
29 person submitted to a blood or urine test, the peace officer shall  
30 forward the results immediately to the appropriate forensic  
31 laboratory. The forensic laboratory shall forward the results of the  
32 chemical tests to the department within 15 calendar days of the  
33 date of the arrest.

34 (2) (A) Notwithstanding any other law, a document containing  
35 data prepared and maintained in the governmental forensic  
36 laboratory computerized database system that is electronically  
37 transmitted or retrieved through public or private computer  
38 networks to or by the department is the best available evidence of  
39 the chemical test results in all administrative proceedings conducted  
40 by the department. In addition, any other official record that is

1 maintained in the governmental forensic laboratory, relates to a  
2 chemical test analysis prepared and maintained in the governmental  
3 forensic laboratory computerized database system, and is  
4 electronically transmitted and retrieved through a public or private  
5 computer network to or by the department is admissible as evidence  
6 in the department's administrative proceedings. In order to be  
7 admissible as evidence in administrative proceedings, a document  
8 described in this subparagraph shall bear a certification by the  
9 employee of the department who retrieved the document certifying  
10 that the information was received or retrieved directly from the  
11 computerized database system of a governmental forensic  
12 laboratory and that the document accurately reflects the data  
13 received or retrieved.

14 (B) Notwithstanding any other law, the failure of an employee  
15 of the department to certify under subparagraph (A) is not a public  
16 offense.

17 (h) A preliminary alcohol screening test that indicates the  
18 presence or concentration of alcohol based on a breath sample in  
19 order to establish reasonable cause to believe the person was  
20 driving a vehicle in violation of Section 23140, 23152, or 23153  
21 is a field sobriety test and may be used by an officer as a further  
22 investigative tool.

23 (i) If the officer decides to use a preliminary alcohol screening  
24 test, the officer shall advise the person that he or she is requesting  
25 that person to take a preliminary alcohol screening test to assist  
26 the officer in determining if that person is under the influence of  
27 alcohol or drugs, or a combination of alcohol and drugs. The  
28 person's obligation to submit to a blood, breath, or urine test, as  
29 required by this section, for the purpose of determining the alcohol  
30 or drug content of that person's blood, is not satisfied by the person  
31 submitting to a preliminary alcohol screening test. The officer shall  
32 advise the person of that fact and of the person's right to refuse to  
33 take the preliminary alcohol screening test.

34 SEC. 197. Section 34510.5 of the Vehicle Code is amended to  
35 read:

36 34510.5. (a) (1) A broker of construction trucking services,  
37 as defined in Section 3322 of the Civil Code, shall not furnish  
38 construction transportation services to any construction project  
39 unless it has secured a surety bond of not less than fifteen thousand  
40 dollars (\$15,000) executed by an admitted surety insurer. The

1 surety bond shall ensure the payment of the claims of a contracted  
2 motor carrier of property in dump truck equipment if the broker  
3 fails to pay the contracted motor carrier within the time period  
4 specified in paragraph (1) of subdivision (a) of Section 3322 of  
5 the Civil Code.

6 (2) (A) A broker of construction trucking services annually  
7 shall provide written evidence of the broker's valid surety bond  
8 to a third-party nonprofit organization that is related to the industry  
9 and regularly maintains a published database of bonded brokers  
10 or post a current copy of the surety bond on the broker's Internet  
11 Web site.

12 (B) When a copy of a surety bond is provided to a third-party  
13 nonprofit organization, the broker shall notify the third-party  
14 nonprofit organization if at any time the surety bond is cancelled  
15 or expired. When a copy of the surety bond is posted on the  
16 broker's Internet Web site, the broker shall remove the copy of  
17 the surety bond from his or her Internet Web site if at any time the  
18 surety bond is cancelled or expired.

19 (C) A third-party nonprofit organization shall not charge a  
20 broker for posting evidence of a valid surety bond or limit the  
21 posting of the bond only to the organization's members.

22 (D) A third-party nonprofit organization shall not be liable for  
23 any damages caused by the publication of any information provided  
24 pursuant to this paragraph that is erroneous or outdated.

25 (b) A broker of construction trucking services shall not hire,  
26 or otherwise engage the services of, a motor carrier of property to  
27 furnish construction transportation services unless the broker  
28 provides, prior to the commencement of work each calendar year,  
29 written evidence of the broker's valid surety bond to any person  
30 that hires, or otherwise engages the services of, the broker to  
31 furnish construction transportation services and also to the hired  
32 motor carrier of property.

33 (c) A broker of construction trucking services who furnishes  
34 construction transportation services in violation of this section is  
35 guilty of a misdemeanor and subject to a fine of up to five thousand  
36 dollars (\$5,000).

37 (d) In any civil action brought against a broker of construction  
38 trucking services by a motor carrier of property in dump truck  
39 equipment with whom the broker contracted during any period of  
40 time in which the broker did not have a surety bond in violation

1 of this section, the failure to have the bond shall create a rebuttable  
2 presumption that the broker failed to pay to the motor carrier the  
3 amount due and owing.

4 (e) For purposes of this section, “a broker of construction  
5 trucking services” does not include a facility that meets all the  
6 following requirements:

- 7 (1) Arranges for transportation services of its product.
- 8 (2) Primarily handles raw materials to produce a new product.
- 9 (3) Is a rock product operation (such as an “aggregate”  
10 operation), a hot mixing asphalt plant, or a concrete, concrete  
11 product, or Portland cement product manufacturing facility.
- 12 (4) Does not accept a fee for the arrangement.

13 (f) For the purposes of this section, “written evidence of the  
14 broker’s valid surety bond” includes a copy of the surety bond, a  
15 certificate of insurance, a continuation certificate, or other similar  
16 documentation originally issued from the surety that includes the  
17 surety’s and broker’s name, the bond number, and the effective  
18 and expiration dates of the bond.

19 SEC. 198. Section 40000.20 of the Vehicle Code is amended  
20 to read:

21 40000.20. A third or subsequent violation of Section 23225,  
22 relating to the storage of an opened container of an alcoholic  
23 beverage, or Section 23223, relating to the possession of an open  
24 container of an alcoholic beverage, by a driver of a vehicle used  
25 to provide transportation services on a prearranged basis, operating  
26 under a valid certificate or permit pursuant to the Passenger  
27 Charter-party Carriers’ Act (Chapter 8 (commencing with Section  
28 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

29 SEC. 199. Section 85057.5 of the Water Code is amended to  
30 read:

31 85057.5. (a) “Covered action” means a plan, program, or  
32 project as defined pursuant to Section 21065 of the Public  
33 Resources Code that meets all of the following conditions:

- 34 (1) Will occur, in whole or in part, within the boundaries of the  
35 Delta or Suisun Marsh.
- 36 (2) Will be carried out, approved, or funded by the state or a  
37 local public agency.
- 38 (3) Is covered by one or more provisions of the Delta Plan.
- 39 (4) Will have a significant impact on achievement of one or  
40 both of the coequal goals or the implementation of

1 government-sponsored flood control programs to reduce risks to  
2 people, property, and state interests in the Delta.

3 (b) “Covered action” does not include any of the following:

4 (1) A regulatory action of a state agency.

5 (2) Routine maintenance and operation of the State Water  
6 Project or the federal Central Valley Project.

7 (3) Regional transportation plans prepared pursuant to Section  
8 65080 of the Government Code.

9 (4) A plan, program, project, or activity within the secondary  
10 zone of the Delta that the applicable metropolitan planning  
11 organization pursuant to Section 65080 of the Government Code  
12 has determined is consistent with either a sustainable communities  
13 strategy or an alternative planning strategy that the State Air  
14 Resources Board has determined would, if implemented, achieve  
15 the greenhouse gas emission reduction targets established by that  
16 board pursuant to subparagraph (A) of paragraph (2) of subdivision  
17 (b) of Section 65080 of the Government Code. For purposes of  
18 this paragraph, “consistent with” means consistent with the use  
19 designation, density, building intensity, transportation plan, and  
20 applicable policies specified for the area in the sustainable  
21 communities strategy or the alternative planning strategy, as  
22 applicable, and any infrastructure necessary to support the plan,  
23 program, project, or activity.

24 (5) Routine maintenance and operation of a facility located, in  
25 whole or in part, in the Delta, that is owned or operated by a local  
26 public agency.

27 (6) A plan, program, project, or activity that occurs, in whole  
28 or in part, in the Delta, if both of the following conditions are met:

29 (A) The plan, program, project, or activity is undertaken by a  
30 local public agency that is located, in whole or in part, in the Delta.

31 (B) Either a notice of determination is filed, pursuant to Section  
32 21152 of the Public Resources Code, for the plan, program, project,  
33 or activity by, or the plan, program, project, or activity is fully  
34 permitted by, September 30, 2009.

35 (7) (A) A project within the secondary zone, as defined pursuant  
36 to Section 29731 of the Public Resources Code as of January 1,  
37 2009, for which a notice of approval or determination pursuant to  
38 Section 21152 of the Public Resources Code has been filed before  
39 the date on which the Delta Plan becomes effective.

1 (B) A project for which a notice of approval or determination  
2 is filed on or after the date on which the final Bay Delta  
3 Conservation Plan becomes effective, and before the date on which  
4 the Delta Plan becomes effective, is not a covered action but shall  
5 be consistent with the Bay Delta Conservation Plan.

6 (C) Subparagraphs (A) and (B) do not apply to either of the  
7 following:

8 (i) A project that is within a Restoration Opportunity Area as  
9 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of  
10 the Bay Delta Conservation Plan, August 3, 2009, or as shown in  
11 a final Bay Delta Conservation Plan.

12 (ii) A project that is within the alignment of a conveyance  
13 facility as shown in Figures 1 to 5, inclusive, of the Final Draft  
14 Initial Assessment of Dual Delta Water Conveyance Report, April  
15 23, 2008, and in future revisions of this document by the  
16 department.

17 (8) Leases approved by a special district if all of the following  
18 apply:

19 (A) The uses proposed by the lease are authorized by the  
20 applicable general plan and zoning ordinances of the city where  
21 the special district is located.

22 (B) The uses proposed by the lease are approved by the city  
23 where the special district is located and the city complies with  
24 Chapter 3 (commencing with Section 85225) of Part 3, if  
25 applicable, prior to approval of the lease by the special district.

26 (C) The special district complies with the California  
27 Environmental Quality Act (Division 13 (commencing with Section  
28 21000) of the Public Resources Code) prior to approving the lease.

29 (9) (A) Routine dredging activities that are necessary for  
30 maintenance of facilities operated by a special district.

31 (B) For purposes of this paragraph, “routine dredging activities”  
32 are limited to the following:

33 (i) Dredging to maintain the Stockton Deep Water Ship Channel  
34 at a depth of 40 feet in the sediment trap at the confluence of the  
35 San Joaquin River, between river mile 39.3 to river mile 40.2, and  
36 to maintain the remaining Stockton Deep Water Ship Channel at  
37 a depth of 35 feet plus two feet of overdredge from river mile 35  
38 to river mile 43.

39 (ii) Dredging designed to maintain the Sacramento Deep Water  
40 Ship Channel at a depth of 30 feet plus two feet of overdredge



1 from river mile 0.0 to river mile 30, and at a depth of 35 feet from  
2 river mile 35 to river mile 43.

3 (C) Except as provided by this subdivision, it is the intent of  
4 the Legislature that this exemption shall not be interpreted or  
5 treated as changing or modifying current substantive and procedural  
6 regulations applicable to the decision to approve dredging  
7 operations.

8 (c) For purposes of this section, “special district” means the  
9 Port of Stockton or the Port of West Sacramento.

10 (d) This section shall not be interpreted to authorize the  
11 abrogation of a vested right whether created by statute or by  
12 common law.

13 SEC. 200. Section 366.21 of the Welfare and Institutions Code  
14 is amended to read:

15 366.21. (a) Every hearing conducted by the juvenile court  
16 reviewing the status of a dependent child shall be placed on the  
17 appearance calendar. The court shall advise all persons present at  
18 the hearing of the date of the future hearing and of their right to  
19 be present and represented by counsel.

20 (b) Except as provided in Sections 294 and 295, notice of the  
21 hearing shall be provided pursuant to Section 293.

22 (c) At least 10 calendar days prior to the hearing, the social  
23 worker shall file a supplemental report with the court regarding  
24 the services provided or offered to the parent or legal guardian to  
25 enable him or her to assume custody and the efforts made to  
26 achieve legal permanence for the child if efforts to reunify fail,  
27 including, but not limited to, efforts to maintain relationships  
28 between a child who is 10 years of age or older and has been in  
29 out-of-home placement for six months or longer and individuals  
30 who are important to the child, consistent with the child’s best  
31 interests; the progress made; and, where relevant, the prognosis  
32 for return of the child to the physical custody of his or her parent  
33 or legal guardian; and shall make his or her recommendation for  
34 disposition. If the child is a member of a sibling group described  
35 in subparagraph (C) of paragraph (1) of subdivision (a) of Section  
36 361.5, the report and recommendation may also take into account  
37 those factors described in subdivision (e) relating to the child’s  
38 sibling group. If the recommendation is not to return the child to  
39 a parent or legal guardian, the report shall specify why the return  
40 of the child would be detrimental to the child. The social worker

1 shall provide the parent or legal guardian, counsel for the child,  
2 and any court-appointed child advocate with a copy of the report,  
3 including his or her recommendation for disposition, at least 10  
4 calendar days prior to the hearing. In the case of a child removed  
5 from the physical custody of his or her parent or legal guardian,  
6 the social worker shall, at least 10 calendar days prior to the  
7 hearing, provide a summary of his or her recommendation for  
8 disposition to any foster parents, relative caregivers, and certified  
9 foster parents who have been approved for adoption by the State  
10 Department of Social Services when it is acting as an adoption  
11 agency or by a county adoption agency, community care facility,  
12 or foster family agency having the physical custody of the child.  
13 The social worker shall include a copy of the Judicial Council  
14 Caregiver Information Form (JV-290) with the summary of  
15 recommendations to the child's foster parents, relative caregivers,  
16 or foster parents approved for adoption, in the caregiver's primary  
17 language when available, along with information on how to file  
18 the form with the court.

19 (d) Prior to any hearing involving a child in the physical custody  
20 of a community care facility or a foster family agency that may  
21 result in the return of the child to the physical custody of his or  
22 her parent or legal guardian, or in adoption or the creation of a  
23 legal guardianship, or in the case of an Indian child, in consultation  
24 with the child's tribe, tribal customary adoption, the facility or  
25 agency shall file with the court a report, or a Judicial Council  
26 Caregiver Information Form (JV-290), containing its  
27 recommendation for disposition. Prior to the hearing involving a  
28 child in the physical custody of a foster parent, a relative caregiver,  
29 or a certified foster parent who has been approved for adoption by  
30 the State Department of Social Services when it is acting as an  
31 adoption agency or by a county adoption agency, the foster parent,  
32 relative caregiver, or the certified foster parent who has been  
33 approved for adoption by the State Department of Social Services  
34 when it is acting as an adoption agency or by a county adoption  
35 agency, may file with the court a report containing his or her  
36 recommendation for disposition. The court shall consider the report  
37 and recommendation filed pursuant to this subdivision prior to  
38 determining any disposition.

39 (e) At the review hearing held six months after the initial  
40 dispositional hearing, but no later than 12 months after the date

1 the child entered foster care as determined in Section 361.49,  
2 whichever occurs earlier, after considering the admissible and  
3 relevant evidence, the court shall order the return of the child to  
4 the physical custody of his or her parent or legal guardian unless  
5 the court finds, by a preponderance of the evidence, that the return  
6 of the child to his or her parent or legal guardian would create a  
7 substantial risk of detriment to the safety, protection, or physical  
8 or emotional well-being of the child. The social worker shall have  
9 the burden of establishing that detriment. At the hearing, the court  
10 shall consider the criminal history, obtained pursuant to paragraph  
11 (1) of subdivision (f) of Section 16504.5, of the parent or legal  
12 guardian subsequent to the child's removal to the extent that the  
13 criminal record is substantially related to the welfare of the child  
14 or the parent's or guardian's ability to exercise custody and control  
15 regarding his or her child, provided the parent or legal guardian  
16 agreed to submit fingerprint images to obtain criminal history  
17 information as part of the case plan. The failure of the parent or  
18 legal guardian to participate regularly and make substantive  
19 progress in court-ordered treatment programs shall be prima facie  
20 evidence that return would be detrimental. In making its  
21 determination, the court shall review and consider the social  
22 worker's report and recommendations and the report and  
23 recommendations of any child advocate appointed pursuant to  
24 Section 356.5; and shall consider the efforts or progress, or both,  
25 demonstrated by the parent or legal guardian and the extent to  
26 which he or she availed himself or herself to services provided,  
27 taking into account the particular barriers to an incarcerated,  
28 institutionalized, detained, or deported parent's or legal guardian's  
29 access to those court-mandated services and ability to maintain  
30 contact with his or her child.

31 Regardless of whether the child is returned to a parent or legal  
32 guardian, the court shall specify the factual basis for its conclusion  
33 that the return would be detrimental or would not be detrimental.  
34 The court also shall make appropriate findings pursuant to  
35 subdivision (a) of Section 366; and, where relevant, shall order  
36 any additional services reasonably believed to facilitate the return  
37 of the child to the custody of his or her parent or legal guardian.  
38 The court shall also inform the parent or legal guardian that if the  
39 child cannot be returned home by the 12-month permanency  
40 hearing, a proceeding pursuant to Section 366.26 may be instituted.

1 This section does not apply in a case where, pursuant to Section  
2 361.5, the court has ordered that reunification services shall not  
3 be provided.

4 If the child was under three years of age on the date of the initial  
5 removal, or is a member of a sibling group described in  
6 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
7 361.5, and the court finds by clear and convincing evidence that  
8 the parent failed to participate regularly and make substantive  
9 progress in a court-ordered treatment plan, the court may schedule  
10 a hearing pursuant to Section 366.26 within 120 days. If, however,  
11 the court finds there is a substantial probability that the child, who  
12 was under three years of age on the date of initial removal or is a  
13 member of a sibling group described in subparagraph (C) of  
14 paragraph (1) of subdivision (a) of Section 361.5, may be returned  
15 to his or her parent or legal guardian within six months or that  
16 reasonable services have not been provided, the court shall continue  
17 the case to the 12-month permanency hearing.

18 For the purpose of placing and maintaining a sibling group  
19 together in a permanent home, the court, in making its  
20 determination to schedule a hearing pursuant to Section 366.26  
21 for some or all members of a sibling group, as described in  
22 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
23 361.5, shall review and consider the social worker's report and  
24 recommendations. Factors the report shall address, and the court  
25 shall consider, may include, but need not be limited to, whether  
26 the sibling group was removed from parental care as a group, the  
27 closeness and strength of the sibling bond, the ages of the siblings,  
28 the appropriateness of maintaining the sibling group together, the  
29 detriment to the child if sibling ties are not maintained, the  
30 likelihood of finding a permanent home for the sibling group,  
31 whether the sibling group is currently placed together in a  
32 preadoptive home or has a concurrent plan goal of legal  
33 permanency in the same home, the wishes of each child whose  
34 age and physical and emotional condition permits a meaningful  
35 response, and the best interests of each child in the sibling group.  
36 The court shall specify the factual basis for its finding that it is in  
37 the best interests of each child to schedule a hearing pursuant to  
38 Section 366.26 within 120 days for some or all of the members of  
39 the sibling group.

1 If the child was removed initially under subdivision (g) of  
2 Section 300 and the court finds by clear and convincing evidence  
3 that the whereabouts of the parent are still unknown, or the parent  
4 has failed to contact and visit the child, the court may schedule a  
5 hearing pursuant to Section 366.26 within 120 days. The court  
6 shall take into account any particular barriers to a parent's ability  
7 to maintain contact with his or her child due to the parent's  
8 incarceration, institutionalization, detention by the United States  
9 Department of Homeland Security, or deportation. If the court  
10 finds by clear and convincing evidence that the parent has been  
11 convicted of a felony indicating parental unfitness, the court may  
12 schedule a hearing pursuant to Section 366.26 within 120 days.

13 If the child had been placed under court supervision with a  
14 previously noncustodial parent pursuant to Section 361.2, the court  
15 shall determine whether supervision is still necessary. The court  
16 may terminate supervision and transfer permanent custody to that  
17 parent, as provided for by paragraph (1) of subdivision (b) of  
18 Section 361.2.

19 In all other cases, the court shall direct that any reunification  
20 services previously ordered shall continue to be offered to the  
21 parent or legal guardian pursuant to the time periods set forth in  
22 subdivision (a) of Section 361.5, provided that the court may  
23 modify the terms and conditions of those services.

24 If the child is not returned to his or her parent or legal guardian,  
25 the court shall determine whether reasonable services that were  
26 designed to aid the parent or legal guardian in overcoming the  
27 problems that led to the initial removal and the continued custody  
28 of the child have been provided or offered to the parent or legal  
29 guardian. The court shall order that those services be initiated,  
30 continued, or terminated.

31 (f) The permanency hearing shall be held no later than 12  
32 months after the date the child entered foster care, as that date is  
33 determined pursuant to Section 361.49. At the permanency hearing,  
34 the court shall determine the permanent plan for the child, which  
35 shall include a determination of whether the child will be returned  
36 to the child's home and, if so, when, within the time limits of  
37 subdivision (a) of Section 361.5. After considering the relevant  
38 and admissible evidence, the court shall order the return of the  
39 child to the physical custody of his or her parent or legal guardian  
40 unless the court finds, by a preponderance of the evidence, that

1 the return of the child to his or her parent or legal guardian would  
2 create a substantial risk of detriment to the safety, protection, or  
3 physical or emotional well-being of the child. The social worker  
4 shall have the burden of establishing that detriment. At the  
5 permanency hearing, the court shall consider the criminal history,  
6 obtained pursuant to paragraph (1) of subdivision (f) of Section  
7 16504.5, of the parent or legal guardian subsequent to the child's  
8 removal to the extent that the criminal record is substantially related  
9 to the welfare of the child or the parent's or legal guardian's ability  
10 to exercise custody and control regarding his or her child, provided  
11 that the parent or legal guardian agreed to submit fingerprint images  
12 to obtain criminal history information as part of the case plan. The  
13 court shall also determine whether reasonable services that were  
14 designed to aid the parent or legal guardian to overcome the  
15 problems that led to the initial removal and continued custody of  
16 the child have been provided or offered to the parent or legal  
17 guardian. For each youth 16 years of age and older, the court shall  
18 also determine whether services have been made available to assist  
19 him or her in making the transition from foster care to independent  
20 living. The failure of the parent or legal guardian to participate  
21 regularly and make substantive progress in court-ordered treatment  
22 programs shall be prima facie evidence that return would be  
23 detrimental. In making its determination, the court shall review  
24 and consider the social worker's report and recommendations and  
25 the report and recommendations of any child advocate appointed  
26 pursuant to Section 356.5, shall consider the efforts or progress,  
27 or both, demonstrated by the parent or legal guardian and the extent  
28 to which he or she availed himself or herself of services provided,  
29 taking into account the particular barriers to an incarcerated,  
30 institutionalized, detained, or deported parent's or legal guardian's  
31 access to those court-mandated services and ability to maintain  
32 contact with his or her child, and shall make appropriate findings  
33 pursuant to subdivision (a) of Section 366.

34 Regardless of whether the child is returned to his or her parent  
35 or legal guardian, the court shall specify the factual basis for its  
36 decision. If the child is not returned to a parent or legal guardian,  
37 the court shall specify the factual basis for its conclusion that the  
38 return would be detrimental. The court also shall make a finding  
39 pursuant to subdivision (a) of Section 366. If the child is not  
40 returned to his or her parent or legal guardian, the court shall

1 consider, and state for the record, in-state and out-of-state  
2 placement options. If the child is placed out of the state, the court  
3 shall make a determination whether the out-of-state placement  
4 continues to be appropriate and in the best interests of the child.

5 (g) If the time period in which the court-ordered services were  
6 provided has met or exceeded the time period set forth in  
7 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)  
8 of Section 361.5, as appropriate, and a child is not returned to the  
9 custody of a parent or legal guardian at the permanency hearing  
10 held pursuant to subdivision (f), the court shall do one of the  
11 following:

12 (1) Continue the case for up to six months for a permanency  
13 review hearing, provided that the hearing shall occur within 18  
14 months of the date the child was originally taken from the physical  
15 custody of his or her parent or legal guardian. The court shall  
16 continue the case only if it finds that there is a substantial  
17 probability that the child will be returned to the physical custody  
18 of his or her parent or legal guardian and safely maintained in the  
19 home within the extended period of time or that reasonable services  
20 have not been provided to the parent or legal guardian. For the  
21 purposes of this section, in order to find a substantial probability  
22 that the child will be returned to the physical custody of his or her  
23 parent or legal guardian and safely maintained in the home within  
24 the extended period of time, the court shall be required to find all  
25 of the following:

26 (A) That the parent or legal guardian has consistently and  
27 regularly contacted and visited with the child.

28 (B) That the parent or legal guardian has made significant  
29 progress in resolving problems that led to the child's removal from  
30 the home.

31 (C) The parent or legal guardian has demonstrated the capacity  
32 and ability both to complete the objectives of his or her treatment  
33 plan and to provide for the child's safety, protection, physical and  
34 emotional well-being, and special needs.

35 For purposes of this subdivision, the court's decision to continue  
36 the case based on a finding or substantial probability that the child  
37 will be returned to the physical custody of his or her parent or legal  
38 guardian is a compelling reason for determining that a hearing  
39 held pursuant to Section 366.26 is not in the best interests of the  
40 child.

1 The court shall inform the parent or legal guardian that if the  
2 child cannot be returned home by the next permanency review  
3 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
4 The court may not order that a hearing pursuant to Section 366.26  
5 be held unless there is clear and convincing evidence that  
6 reasonable services have been provided or offered to the parent or  
7 legal guardian.

8 (2) Continue the case for up to six months for a permanency  
9 review hearing, provided that the hearing shall occur within 18  
10 months of the date the child was originally taken from the physical  
11 custody of his or her parent or legal guardian, if the parent has  
12 been arrested and issued an immigration hold, detained by the  
13 United States Department of Homeland Security, or deported to  
14 his or her country of origin, and the court determines either that  
15 there is a substantial probability that the child will be returned to  
16 the physical custody of his or her parent or legal guardian and  
17 safely maintained in the home within the extended period of time  
18 or that reasonable services have not been provided to the parent  
19 or legal guardian.

20 (3) For purposes of paragraph (2), in order to find a substantial  
21 probability that the child will be returned to the physical custody  
22 of his or her parent or legal guardian and safely maintained in the  
23 home within the extended period of time, the court must find all  
24 of the following:

25 (A) The parent or legal guardian has consistently and regularly  
26 contacted and visited with the child, taking into account any  
27 particular barriers to a parent's ability to maintain contact with his  
28 or her child due to the parent's arrest and receipt of an immigration  
29 hold, detention by the United States Department of Homeland  
30 Security, or deportation.

31 (B) The parent or legal guardian has made significant progress  
32 in resolving the problems that led to the child's removal from the  
33 home.

34 (C) The parent or legal guardian has demonstrated the capacity  
35 or ability both to complete the objectives of his or her treatment  
36 plan and to provide for the child's safety, protection, physical and  
37 emotional well-being, and special needs.

38 (4) Order that a hearing be held within 120 days, pursuant to  
39 Section 366.26, but only if the court does not continue the case to  
40 the permanency planning review hearing and there is clear and



1 convincing evidence that reasonable services have been provided  
2 or offered to the parents or legal guardians. On and after January  
3 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered  
4 if the child is a nonminor dependent, unless the nonminor  
5 dependent is an Indian child and tribal customary adoption is  
6 recommended as the permanent plan.

7 (5) Order that the child remain in long-term foster care, but only  
8 if the court finds by clear and convincing evidence, based upon  
9 the evidence already presented to it, including a recommendation  
10 by the State Department of Social Services when it is acting as an  
11 adoption agency or by a county adoption agency, that there is a  
12 compelling reason for determining that a hearing held pursuant to  
13 Section 366.26 is not in the best interests of the child because the  
14 child is not a proper subject for adoption and has no one willing  
15 to accept legal guardianship. For purposes of this section, a  
16 recommendation by the State Department of Social Services when  
17 it is acting as an adoption agency or by a county adoption agency  
18 that adoption is not in the best interests of the child shall constitute  
19 a compelling reason for the court's determination. That  
20 recommendation shall be based on the present circumstances of  
21 the child and shall not preclude a different recommendation at a  
22 later date if the child's circumstances change. On and after January  
23 1, 2012, the nonminor dependent's legal status as an adult is in  
24 and of itself a compelling reason not to hold a hearing pursuant to  
25 Section 366.26. The court may order that a nonminor dependent  
26 who otherwise is eligible pursuant to Section 11403 remain in a  
27 planned, permanent living arrangement.

28 If the court orders that a child who is 10 years of age or older  
29 remain in long-term foster care, the court shall determine whether  
30 the agency has made reasonable efforts to maintain the child's  
31 relationships with individuals other than the child's siblings who  
32 are important to the child, consistent with the child's best interests,  
33 and may make any appropriate order to ensure that those  
34 relationships are maintained.

35 If the child is not returned to his or her parent or legal guardian,  
36 the court shall consider, and state for the record, in-state and  
37 out-of-state options for permanent placement. If the child is placed  
38 out of the state, the court shall make a determination whether the  
39 out-of-state placement continues to be appropriate and in the best  
40 interests of the child.

1 (h) In any case in which the court orders that a hearing pursuant  
2 to Section 366.26 shall be held, it shall also order the termination  
3 of reunification services to the parent or legal guardian. The court  
4 shall continue to permit the parent or legal guardian to visit the  
5 child pending the hearing unless it finds that visitation would be  
6 detrimental to the child. The court shall make any other appropriate  
7 orders to enable the child to maintain relationships with individuals,  
8 other than the child's siblings, who are important to the child,  
9 consistent with the child's best interests. When the court orders a  
10 termination of reunification services to the parent or legal guardian,  
11 it shall also order that the child's caregiver receive the child's birth  
12 certificate in accordance with Sections 16010.4 and 16010.5.  
13 Additionally, when the court orders a termination of reunification  
14 services to the parent or legal guardian, it shall order, when  
15 appropriate, that a child who is 16 years of age or older receive  
16 his or her birth certificate.

17 (i) (1) Whenever a court orders that a hearing pursuant to  
18 Section 366.26, including, when, in consultation with the child's  
19 tribe, tribal customary adoption is recommended, shall be held, it  
20 shall direct the agency supervising the child and the county  
21 adoption agency, or the State Department of Social Services when  
22 it is acting as an adoption agency, to prepare an assessment that  
23 shall include:

24 (A) Current search efforts for an absent parent or parents or  
25 legal guardians.

26 (B) A review of the amount of and nature of any contact between  
27 the child and his or her parents or legal guardians and other  
28 members of his or her extended family since the time of placement.  
29 Although the extended family of each child shall be reviewed on  
30 a case-by-case basis, "extended family" for the purpose of this  
31 subparagraph shall include, but not be limited to, the child's  
32 siblings, grandparents, aunts, and uncles.

33 (C) An evaluation of the child's medical, developmental,  
34 scholastic, mental, and emotional status.

35 (D) A preliminary assessment of the eligibility and commitment  
36 of any identified prospective adoptive parent or legal guardian,  
37 including the prospective tribal customary adoptive parent,  
38 particularly the caretaker, to include a social history including  
39 screening for criminal records and prior referrals for child abuse  
40 or neglect, the capability to meet the child's needs, and the

1 understanding of the legal and financial rights and responsibilities  
2 of adoption and guardianship. If a proposed guardian is a relative  
3 of the minor, the assessment shall also consider, but need not be  
4 limited to, all of the factors specified in subdivision (a) of Section  
5 361.3 and in Section 361.4.

6 (E) The relationship of the child to any identified prospective  
7 adoptive parent or legal guardian, the duration and character of  
8 the relationship, the degree of attachment of the child to the  
9 prospective relative guardian or adoptive parent, the relative's or  
10 adoptive parent's strong commitment to caring permanently for  
11 the child, the motivation for seeking adoption or guardianship, a  
12 statement from the child concerning placement and the adoption  
13 or guardianship, and whether the child, if over 12 years of age,  
14 has been consulted about the proposed relative guardianship  
15 arrangements, unless the child's age or physical, emotional, or  
16 other condition precludes his or her meaningful response, and if  
17 so, a description of the condition.

18 (F) A description of efforts to be made to identify a prospective  
19 adoptive parent or legal guardian, including, but not limited to,  
20 child-specific recruitment and listing on an adoption exchange  
21 within the state or out of the state.

22 (G) An analysis of the likelihood that the child will be adopted  
23 if parental rights are terminated.

24 (H) In the case of an Indian child, in addition to subparagraphs  
25 (A) to (G), inclusive, an assessment of the likelihood that the child  
26 will be adopted, when, in consultation with the child's tribe, a  
27 tribal customary adoption, as defined in Section 366.24, is  
28 recommended. If tribal customary adoption is recommended, the  
29 assessment shall include an analysis of both of the following:

30 (i) Whether tribal customary adoption would or would not be  
31 detrimental to the Indian child and the reasons for reaching that  
32 conclusion.

33 (ii) Whether the Indian child cannot or should not be returned  
34 to the home of the Indian parent or Indian custodian and the reasons  
35 for reaching that conclusion.

36 (2) (A) A relative caregiver's preference for legal guardianship  
37 over adoption, if it is due to circumstances that do not include an  
38 unwillingness to accept legal or financial responsibility for the  
39 child, shall not constitute the sole basis for recommending removal

1 of the child from the relative caregiver for purposes of adoptive  
2 placement.

3 (B) Regardless of his or her immigration status, a relative  
4 caregiver shall be given information regarding the permanency  
5 options of guardianship and adoption, including the long-term  
6 benefits and consequences of each option, prior to establishing  
7 legal guardianship or pursuing adoption. If the proposed permanent  
8 plan is guardianship with an approved relative caregiver for a  
9 minor eligible for aid under the Kin-GAP Program, as provided  
10 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
11 of Part 3 of Division 9, the relative caregiver shall be informed  
12 about the terms and conditions of the negotiated agreement  
13 pursuant to Section 11387 and shall agree to its execution prior to  
14 the hearing held pursuant to Section 366.26. A copy of the executed  
15 negotiated agreement shall be attached to the assessment.

16 (j) If, at any hearing held pursuant to Section 366.26, a  
17 guardianship is established for the minor with an approved relative  
18 caregiver, and juvenile court dependency is subsequently  
19 dismissed, the minor shall be eligible for aid under the Kin-GAP  
20 Program, as provided for in Article 4.5 (commencing with Section  
21 11360) or Article 4.7 (commencing with Section 11385), as  
22 applicable, of Chapter 2 of Part 3 of Division 9.

23 (k) As used in this section, “relative” means an adult who is  
24 related to the minor by blood, adoption, or affinity within the fifth  
25 degree of kinship, including stepparents, stepsiblings, and all  
26 relatives whose status is preceded by the words “great,”  
27 “great-great,” or “grand,” or the spouse of any of those persons  
28 even if the marriage was terminated by death or dissolution. If the  
29 proposed permanent plan is guardianship with an approved relative  
30 caregiver for a minor eligible for aid under the Kin-GAP Program,  
31 as provided for in Article 4.7 (commencing with Section 11385)  
32 of Chapter 2 of Part 3 of Division 9, “relative” as used in this  
33 section has the same meaning as “relative” as defined in  
34 subdivision (c) of Section 11391.

35 (l) For purposes of this section, evidence of any of the following  
36 circumstances may not, in and of itself, be deemed a failure to  
37 provide or offer reasonable services:

38 (1) The child has been placed with a foster family that is eligible  
39 to adopt a child, or has been placed in a preadoptive home.

1 (2) The case plan includes services to make and finalize a  
2 permanent placement for the child if efforts to reunify fail.

3 (3) Services to make and finalize a permanent placement for  
4 the child, if efforts to reunify fail, are provided concurrently with  
5 services to reunify the family.

6 (m) The implementation and operation of the amendments to  
7 subdivisions (c) and (g) enacted at the 2005–06 Regular Session  
8 shall be subject to appropriation through the budget process and  
9 by phase, as provided in Section 366.35.

10 SEC. 201. Section 366.22 of the Welfare and Institutions Code  
11 is amended to read:

12 366.22. (a) When a case has been continued pursuant to  
13 paragraph (1) or (2) of subdivision (g) of Section 366.21, the  
14 permanency review hearing shall occur within 18 months after the  
15 date the child was originally removed from the physical custody  
16 of his or her parent or legal guardian. After considering the  
17 admissible and relevant evidence, the court shall order the return  
18 of the child to the physical custody of his or her parent or legal  
19 guardian unless the court finds, by a preponderance of the evidence,  
20 that the return of the child to his or her parent or legal guardian  
21 would create a substantial risk of detriment to the safety, protection,  
22 or physical or emotional well-being of the child. The social worker  
23 shall have the burden of establishing that detriment. At the  
24 permanency review hearing, the court shall consider the criminal  
25 history, obtained pursuant to paragraph (1) of subdivision (f) of  
26 Section 16504.5, of the parent or legal guardian subsequent to the  
27 child’s removal, to the extent that the criminal record is  
28 substantially related to the welfare of the child or the parent’s or  
29 legal guardian’s ability to exercise custody and control regarding  
30 his or her child, provided that the parent or legal guardian agreed  
31 to submit fingerprint images to obtain criminal history information  
32 as part of the case plan. The failure of the parent or legal guardian  
33 to participate regularly and make substantive progress in  
34 court-ordered treatment programs shall be prima facie evidence  
35 that return would be detrimental. In making its determination, the  
36 court shall review and consider the social worker’s report and  
37 recommendations and the report and recommendations of any child  
38 advocate appointed pursuant to Section 356.5; shall consider the  
39 efforts or progress, or both, demonstrated by the parent or legal  
40 guardian and the extent to which he or she availed himself or

1 herself of services provided, taking into account the particular  
2 barriers of an incarcerated or institutionalized parent's or legal  
3 guardian's access to those court-mandated services and ability to  
4 maintain contact with his or her child; and shall make appropriate  
5 findings pursuant to subdivision (a) of Section 366.

6 Whether or not the child is returned to his or her parent or legal  
7 guardian, the court shall specify the factual basis for its decision.  
8 If the child is not returned to a parent or legal guardian, the court  
9 shall specify the factual basis for its conclusion that return would  
10 be detrimental. If the child is not returned to his or her parent or  
11 legal guardian, the court shall consider, and state for the record,  
12 in-state and out-of-state options for the child's permanent  
13 placement. If the child is placed out of the state, the court shall  
14 make a determination whether the out-of-state placement continues  
15 to be appropriate and in the best interests of the child.

16 Unless the conditions in subdivision (b) are met and the child is  
17 not returned to a parent or legal guardian at the permanency review  
18 hearing, the court shall order that a hearing be held pursuant to  
19 Section 366.26 in order to determine whether adoption, or, in the  
20 case of an Indian child, in consultation with the child's tribe, tribal  
21 customary adoption, guardianship, or long-term foster care is the  
22 most appropriate plan for the child. On and after January 1, 2012,  
23 a hearing pursuant to Section 366.26 shall not be ordered if the  
24 child is a nonminor dependent, unless the nonminor dependent is  
25 an Indian child, and tribal customary adoption is recommended as  
26 the permanent plan. However, if the court finds by clear and  
27 convincing evidence, based on the evidence already presented to  
28 it, including a recommendation by the State Department of Social  
29 Services when it is acting as an adoption agency or by a county  
30 adoption agency, that there is a compelling reason, as described  
31 in paragraph (5) of subdivision (g) of Section 366.21, for  
32 determining that a hearing held under Section 366.26 is not in the  
33 best interests of the child because the child is not a proper subject  
34 for adoption and has no one willing to accept legal guardianship,  
35 the court may, only under these circumstances, order that the child  
36 remain in long-term foster care. On and after January 1, 2012, the  
37 nonminor dependent's legal status as an adult is in and of itself a  
38 compelling reason not to hold a hearing pursuant to Section 366.26.  
39 The court may order that a nonminor dependent who otherwise is  
40 eligible pursuant to Section 11403 remain in a planned, permanent

1 living arrangement. If the court orders that a child who is 10 years  
2 of age or older remain in long-term foster care, the court shall  
3 determine whether the agency has made reasonable efforts to  
4 maintain the child's relationships with individuals other than the  
5 child's siblings who are important to the child, consistent with the  
6 child's best interests, and may make any appropriate order to ensure  
7 that those relationships are maintained. The hearing shall be held  
8 no later than 120 days from the date of the permanency review  
9 hearing. The court shall also order termination of reunification  
10 services to the parent or legal guardian. The court shall continue  
11 to permit the parent or legal guardian to visit the child unless it  
12 finds that visitation would be detrimental to the child. The court  
13 shall determine whether reasonable services have been offered or  
14 provided to the parent or legal guardian. For purposes of this  
15 subdivision, evidence of any of the following circumstances shall  
16 not, in and of themselves, be deemed a failure to provide or offer  
17 reasonable services:

18 (1) The child has been placed with a foster family that is eligible  
19 to adopt a child, or has been placed in a preadoptive home.

20 (2) The case plan includes services to make and finalize a  
21 permanent placement for the child if efforts to reunify fail.

22 (3) Services to make and finalize a permanent placement for  
23 the child, if efforts to reunify fail, are provided concurrently with  
24 services to reunify the family.

25 (b) If the child is not returned to a parent or legal guardian at  
26 the permanency review hearing and the court determines by clear  
27 and convincing evidence that the best interests of the child would  
28 be met by the provision of additional reunification services to a  
29 parent or legal guardian who is making significant and consistent  
30 progress in a court-ordered residential substance abuse treatment  
31 program, or a parent recently discharged from incarceration,  
32 institutionalization, or the custody of the United States Department  
33 of Homeland Security and making significant and consistent  
34 progress in establishing a safe home for the child's return, the court  
35 may continue the case for up to six months for a subsequent  
36 permanency review hearing, provided that the hearing shall occur  
37 within 24 months of the date the child was originally taken from  
38 the physical custody of his or her parent or legal guardian. The  
39 court shall continue the case only if it finds that there is a  
40 substantial probability that the child will be returned to the physical

1 custody of his or her parent or legal guardian and safely maintained  
2 in the home within the extended period of time or that reasonable  
3 services have not been provided to the parent or legal guardian.  
4 For the purposes of this section, in order to find a substantial  
5 probability that the child will be returned to the physical custody  
6 of his or her parent or legal guardian and safely maintained in the  
7 home within the extended period of time, the court shall be required  
8 to find all of the following:

9 (1) That the parent or legal guardian has consistently and  
10 regularly contacted and visited with the child.

11 (2) That the parent or legal guardian has made significant and  
12 consistent progress in the prior 18 months in resolving problems  
13 that led to the child's removal from the home.

14 (3) The parent or legal guardian has demonstrated the capacity  
15 and ability both to complete the objectives of his or her substance  
16 abuse treatment plan as evidenced by reports from a substance  
17 abuse provider as applicable, or complete a treatment plan  
18 postdischarge from incarceration, institutionalization, or detention,  
19 or following deportation to his or her country of origin and his or  
20 her return to the United States, and to provide for the child's safety,  
21 protection, physical and emotional well-being, and special needs.

22 For purposes of this subdivision, the court's decision to continue  
23 the case based on a finding or substantial probability that the child  
24 will be returned to the physical custody of his or her parent or legal  
25 guardian is a compelling reason for determining that a hearing  
26 held pursuant to Section 366.26 is not in the best interests of the  
27 child.

28 The court shall inform the parent or legal guardian that if the  
29 child cannot be returned home by the subsequent permanency  
30 review hearing, a proceeding pursuant to Section 366.26 may be  
31 instituted. The court may not order that a hearing pursuant to  
32 Section 366.26 be held unless there is clear and convincing  
33 evidence that reasonable services have been provided or offered  
34 to the parent or legal guardian.

35 (c) (1) Whenever a court orders that a hearing pursuant to  
36 Section 366.26, including when a tribal customary adoption is  
37 recommended, shall be held, it shall direct the agency supervising  
38 the child and the county adoption agency, or the State Department  
39 of Social Services when it is acting as an adoption agency, to  
40 prepare an assessment that shall include:



1 (A) Current search efforts for an absent parent or parents.

2 (B) A review of the amount of and nature of any contact between  
3 the child and his or her parents and other members of his or her  
4 extended family since the time of placement. Although the  
5 extended family of each child shall be reviewed on a case-by-case  
6 basis, “extended family” for the purposes of this subparagraph  
7 shall include, but not be limited to, the child’s siblings,  
8 grandparents, aunts, and uncles.

9 (C) An evaluation of the child’s medical, developmental,  
10 scholastic, mental, and emotional status.

11 (D) A preliminary assessment of the eligibility and commitment  
12 of any identified prospective adoptive parent or legal guardian,  
13 particularly the caretaker, to include a social history including  
14 screening for criminal records and prior referrals for child abuse  
15 or neglect, the capability to meet the child’s needs, and the  
16 understanding of the legal and financial rights and responsibilities  
17 of adoption and guardianship. If a proposed legal guardian is a  
18 relative of the minor, the assessment shall also consider, but need  
19 not be limited to, all of the factors specified in subdivision (a) of  
20 Section 361.3 and Section 361.4.

21 (E) The relationship of the child to any identified prospective  
22 adoptive parent or legal guardian, the duration and character of  
23 the relationship, the degree of attachment of the child to the  
24 prospective relative guardian or adoptive parent, the relative’s or  
25 adoptive parent’s strong commitment to caring permanently for  
26 the child, the motivation for seeking adoption or legal guardianship,  
27 a statement from the child concerning placement and the adoption  
28 or legal guardianship, and whether the child, if over 12 years of  
29 age, has been consulted about the proposed relative guardianship  
30 arrangements, unless the child’s age or physical, emotional, or  
31 other condition precludes his or her meaningful response, and if  
32 so, a description of the condition.

33 (F) An analysis of the likelihood that the child will be adopted  
34 if parental rights are terminated.

35 (G) In the case of an Indian child, in addition to subparagraphs  
36 (A) to (F), inclusive, an assessment of the likelihood that the child  
37 will be adopted, when, in consultation with the child’s tribe, a  
38 tribal customary adoption, as defined in Section 366.24, is  
39 recommended. If tribal customary adoption is recommended, the  
40 assessment shall include an analysis of both of the following:

1 (i) Whether tribal customary adoption would or would not be  
2 detrimental to the Indian child and the reasons for reaching that  
3 conclusion.

4 (ii) Whether the Indian child cannot or should not be returned  
5 to the home of the Indian parent or Indian custodian and the reasons  
6 for reaching that conclusion.

7 (2) (A) A relative caregiver's preference for legal guardianship  
8 over adoption, if it is due to circumstances that do not include an  
9 unwillingness to accept legal or financial responsibility for the  
10 child, shall not constitute the sole basis for recommending removal  
11 of the child from the relative caregiver for purposes of adoptive  
12 placement.

13 (B) Regardless of his or her immigration status, a relative  
14 caregiver shall be given information regarding the permanency  
15 options of guardianship and adoption, including the long-term  
16 benefits and consequences of each option, prior to establishing  
17 legal guardianship or pursuing adoption. If the proposed permanent  
18 plan is guardianship with an approved relative caregiver for a  
19 minor eligible for aid under the Kin-GAP Program, as provided  
20 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
21 of Part 3 of Division 9, the relative caregiver shall be informed  
22 about the terms and conditions of the negotiated agreement  
23 pursuant to Section 11387 and shall agree to its execution prior to  
24 the hearing held pursuant to Section 366.26. A copy of the executed  
25 negotiated agreement shall be attached to the assessment.

26 (d) This section shall become operative January 1, 1999. If at  
27 any hearing held pursuant to Section 366.26, a legal guardianship  
28 is established for the minor with an approved relative caregiver,  
29 and juvenile court dependency is subsequently dismissed, the minor  
30 shall be eligible for aid under the Kin-GAP Program, as provided  
31 for in Article 4.5 (commencing with Section 11360) or Article 4.7  
32 (commencing with Section 11385), as applicable, of Chapter 2 of  
33 Part 3 of Division 9.

34 (e) As used in this section, "relative" means an adult who is  
35 related to the child by blood, adoption, or affinity within the fifth  
36 degree of kinship, including stepparents, stepsiblings, and all  
37 relatives whose status is preceded by the words "great,"  
38 "great-great," or "grand," or the spouse of any of those persons  
39 even if the marriage was terminated by death or dissolution. If the  
40 proposed permanent plan is guardianship with an approved relative

1 caregiver for a minor eligible for aid under the Kin-GAP Program,  
2 as provided for in Article 4.7 (commencing with Section 11385)  
3 of Chapter 2 of Part 3 of Division 9, “relative” as used in this  
4 section has the same meaning as “relative” as defined in  
5 subdivision (c) of Section 11391.

6 (f) The implementation and operation of the amendments to  
7 subdivision (a) enacted at the 2005–06 Regular Session shall be  
8 subject to appropriation through the budget process and by phase,  
9 as provided in Section 366.35.

10 SEC. 202. Section 366.25 of the Welfare and Institutions Code  
11 is amended to read:

12 366.25. (a) (1) When a case has been continued pursuant to  
13 subdivision (b) of Section 366.22, the subsequent permanency  
14 review hearing shall occur within 24 months after the date the  
15 child was originally removed from the physical custody of his or  
16 her parent or legal guardian. After considering the relevant and  
17 admissible evidence, the court shall order the return of the child  
18 to the physical custody of his or her parent or legal guardian unless  
19 the court finds, by a preponderance of the evidence, that the return  
20 of the child to his or her parent or legal guardian would create a  
21 substantial risk of detriment to the safety, protection, or physical  
22 or emotional well-being of the child. The social worker shall have  
23 the burden of establishing that detriment. At the subsequent  
24 permanency review hearing, the court shall consider the criminal  
25 history, obtained pursuant to paragraph (1) of subdivision (f) of  
26 Section 16504.5, of the parent or legal guardian subsequent to the  
27 child’s removal to the extent that the criminal record is substantially  
28 related to the welfare of the child or parent’s or legal guardian’s  
29 ability to exercise custody and control regarding his or her child  
30 provided that the parent or legal guardian agreed to submit  
31 fingerprint images to obtain criminal history information as part  
32 of the case plan. The failure of the parent or legal guardian to  
33 participate regularly and make substantive progress in court-ordered  
34 treatment programs shall be prima facie evidence that return would  
35 be detrimental. In making its determination, the court shall review  
36 and consider the social worker’s report and recommendations and  
37 the report and recommendations of any child advocate appointed  
38 pursuant to Section 356.5; shall consider the efforts or progress,  
39 or both, demonstrated by the parent or legal guardian and the extent  
40 to which he or she availed himself or herself of services provided;

1 and shall make appropriate findings pursuant to subdivision (a) of  
2 Section 366.

3 (2) Whether or not the child is returned to his or her parent or  
4 legal guardian, the court shall specify the factual basis for its  
5 decision. If the child is not returned to a parent or legal guardian,  
6 the court shall specify the factual basis for its conclusion that return  
7 would be detrimental. If the child is not returned to his or her parent  
8 or legal guardian, the court shall consider and state for the record,  
9 in-state and out-of-state options for the child's permanent  
10 placement. If the child is placed out of the state, the court shall  
11 make a determination whether the out-of-state placement continues  
12 to be appropriate and in the best interests of the child.

13 (3) If the child is not returned to a parent or legal guardian at  
14 the subsequent permanency review hearing, the court shall order  
15 that a hearing be held pursuant to Section 366.26 in order to  
16 determine whether adoption, or, in the case of an Indian child,  
17 tribal customary adoption, guardianship, or long-term foster care  
18 is the most appropriate plan for the child. On and after January 1,  
19 2012, a hearing pursuant to Section 366.26 shall not be ordered if  
20 the child is a nonminor dependent, unless the nonminor dependent  
21 is an Indian child and tribal customary adoption is recommended  
22 as the permanent plan. However, if the court finds by clear and  
23 convincing evidence, based on the evidence already presented to  
24 it, including a recommendation by the State Department of Social  
25 Services when it is acting as an adoption agency or by a county  
26 adoption agency, that there is a compelling reason, as described  
27 in paragraph (5) of subdivision (g) of Section 366.21, for  
28 determining that a hearing held under Section 366.26 is not in the  
29 best interest of the child because the child is not a proper subject  
30 for adoption or, in the case of an Indian child, tribal customary  
31 adoption, and has no one willing to accept legal guardianship, then  
32 the court may, only under these circumstances, order that the child  
33 remain in long-term foster care. On and after January 1, 2012, the  
34 nonminor dependent's legal status as an adult is in and of itself a  
35 compelling reason not to hold a hearing pursuant to Section 366.26.  
36 The court may order that a nonminor dependent who otherwise is  
37 eligible pursuant to Section 11403 remain in a planned, permanent  
38 living arrangement. If the court orders that a child who is 10 years  
39 of age or older remain in long-term foster care, the court shall  
40 determine whether the agency has made reasonable efforts to

1 maintain the child’s relationships with individuals other than the  
2 child’s siblings who are important to the child, consistent with the  
3 child’s best interests, and may make any appropriate order to ensure  
4 that those relationships are maintained. The hearing shall be held  
5 no later than 120 days from the date of the subsequent permanency  
6 review hearing. The court shall also order termination of  
7 reunification services to the parent or legal guardian. The court  
8 shall continue to permit the parent or legal guardian to visit the  
9 child unless it finds that visitation would be detrimental to the  
10 child. The court shall determine whether reasonable services have  
11 been offered or provided to the parent or legal guardian. For  
12 purposes of this paragraph, evidence of any of the following  
13 circumstances shall not, in and of themselves, be deemed a failure  
14 to provide or offer reasonable services:

15 (A) The child has been placed with a foster family that is eligible  
16 to adopt a child, or has been placed in a preadoptive home.

17 (B) The case plan includes services to make and finalize a  
18 permanent placement for the child if efforts to reunify fail.

19 (C) Services to make and finalize a permanent placement for  
20 the child, if efforts to reunify fail, are provided concurrently with  
21 services to reunify the family.

22 (b) (1) Whenever a court orders that a hearing pursuant to  
23 Section 366.26 shall be held, it shall direct the agency supervising  
24 the child and the county adoption agency, or the State Department  
25 of Social Services when it is acting as an adoption agency, to  
26 prepare an assessment that shall include:

27 (A) Current search efforts for an absent parent or parents.

28 (B) A review of the amount of, and nature of, any contact  
29 between the child and his or her parents and other members of his  
30 or her extended family since the time of placement. Although the  
31 extended family of each child shall be reviewed on a case-by-case  
32 basis, “extended family” for the purposes of this paragraph shall  
33 include, but not be limited to, the child’s siblings, grandparents,  
34 aunts, and uncles.

35 (C) An evaluation of the child’s medical, developmental,  
36 scholastic, mental, and emotional status.

37 (D) A preliminary assessment of the eligibility and commitment  
38 of any identified prospective adoptive parent or legal guardian,  
39 including a prospective tribal customary adoptive parent,  
40 particularly the caretaker, to include a social history including

1 screening for criminal records and prior referrals for child abuse  
2 or neglect, the capability to meet the child's needs, and the  
3 understanding of the legal and financial rights and responsibilities  
4 of adoption and guardianship. If a proposed legal guardian is a  
5 relative of the minor, the assessment shall also consider, but need  
6 not be limited to, all of the factors specified in subdivision (a) of  
7 Section 361.3 and in Section 361.4.

8 (E) The relationship of the child to any identified prospective  
9 adoptive parent or legal guardian, including a prospective tribal  
10 customary adoptive parent, the duration and character of the  
11 relationship, the degree of attachment of the child to the prospective  
12 relative guardian or adoptive parent, the relative's or adoptive  
13 parent's strong commitment to caring permanently for the child,  
14 the motivation for seeking adoption or legal guardianship, a  
15 statement from the child concerning placement and the adoption  
16 or legal guardianship, and whether the child, if over 12 years of  
17 age, has been consulted about the proposed relative guardianship  
18 arrangements, unless the child's age or physical, emotional, or  
19 other condition precludes his or her meaningful response, and if  
20 so, a description of the condition.

21 (F) An analysis of the likelihood that the child will be adopted  
22 if parental rights are terminated.

23 (G) In the case of an Indian child, in addition to subparagraphs  
24 (A) to (F), inclusive, an assessment of the likelihood that the child  
25 will be adopted, when, in consultation with the child's tribe, a  
26 tribal customary adoption, as defined in Section 366.24, is  
27 recommended. If tribal customary adoption is recommended, the  
28 assessment shall include an analysis of both of the following:

29 (i) Whether tribal customary adoption would or would not be  
30 detrimental to the Indian child and the reasons for reaching that  
31 conclusion.

32 (ii) Whether the Indian child cannot or should not be returned  
33 to the home of the Indian parent or Indian custodian and the reasons  
34 for reaching that conclusion.

35 (2) (A) A relative caregiver's preference for legal guardianship  
36 over adoption, if it is due to circumstances that do not include an  
37 unwillingness to accept legal or financial responsibility for the  
38 child, shall not constitute the sole basis for recommending removal  
39 of the child from the relative caregiver for purposes of adoptive  
40 placement.

1 (B) Regardless of his or her immigration status, a relative  
2 caregiver shall be given information regarding the permanency  
3 options of guardianship and adoption, including the long-term  
4 benefits and consequences of each option, prior to establishing  
5 legal guardianship or pursuing adoption. If the proposed permanent  
6 plan is guardianship with an approved relative caregiver for a  
7 minor eligible for aid under the Kin-GAP Program, as provided  
8 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
9 of Part 3 of Division 9, the relative caregiver shall be informed  
10 about the terms and conditions of the negotiated agreement  
11 pursuant to Section 11387 and shall agree to its execution prior to  
12 the hearing held pursuant to Section 366.26. A copy of the executed  
13 negotiated agreement shall be attached to the assessment.

14 (c) If, at any hearing held pursuant to Section 366.26, a  
15 guardianship is established for the minor with an approved relative  
16 caregiver, and juvenile court dependency is subsequently  
17 dismissed, the minor shall be eligible for aid under the Kin-GAP  
18 Program, as provided for in Article 4.5 (commencing with Section  
19 11360) or Article 4.7 (commencing with Section 11385), as  
20 applicable, of Chapter 2 of Part 3 of Division 9.

21 (d) As used in this section, “relative” means an adult who is  
22 related to the minor by blood, adoption, or affinity within the fifth  
23 degree of kinship, including stepparents, stepsiblings, and all  
24 relatives whose status is preceded by the words “great,”  
25 “great-great,” or “grand,” or the spouse of any of those persons  
26 even if the marriage was terminated by death or dissolution. If the  
27 proposed permanent plan is guardianship with an approved relative  
28 caregiver for a minor eligible for aid under the Kin-GAP Program,  
29 as provided in Article 4.7 (commencing with Section 11385) of  
30 Chapter 2 of Part 3 of Division 9, “relative” as used in this section  
31 has the same meaning as “relative” as defined in subdivision (c)  
32 of Section 11391.

33 (e) The implementation and operation of subdivision (a) enacted  
34 at the 2005–06 Regular Session shall be subject to appropriation  
35 through the budget process and by phase, as provided in Section  
36 366.35.

37 SEC. 203. Section 4141 of the Welfare and Institutions Code  
38 is amended to read:

39 4141. (a) (1) Each state hospital shall update its injury and  
40 illness prevention plan at least once a year to include necessary

1 safeguards to prevent workplace safety hazards in connection with  
2 workplace violence associated with patient assaults on employees.

3 (2) Updated injury and illness prevention plans shall address,  
4 but shall not be limited to, all of the following:

5 (A) Control of physical access throughout the hospital and  
6 grounds.

7 (B) Alarm systems.

8 (C) Presence of security personnel.

9 (D) Training.

10 (E) Buddy systems.

11 (F) Communication.

12 (G) Emergency responses.

13 (3) (A) The department shall submit the updated injury and  
14 illness prevention plans to the Legislature every two years.

15 (B) (i) The requirement for submitting the updated injury and  
16 illness prevention plans imposed pursuant to subparagraph (A) is  
17 inoperative four years after the date the first report is due, pursuant  
18 to Section 10231.5 of the Government Code.

19 (ii) Updated injury and illness prevention plans submitted  
20 pursuant to subparagraph (A) shall be submitted in compliance  
21 with Section 9795 of the Government Code.

22 (b) Each state hospital shall establish an injury and illness  
23 prevention committee comprised of hospital management and  
24 employees designated by the hospital's director in consultation  
25 with the employee bargaining units. The committee shall be  
26 responsible for providing recommendations to the hospital director  
27 for updates to the injury and illness prevention plan. The committee  
28 shall meet at least four times per year.

29 (c) Each state hospital shall develop an incident reporting  
30 procedure that can be used, at a minimum, to develop reports of  
31 patient assaults on employees and assist the hospital in identifying  
32 risks of patient assaults on employees. Data obtained from the  
33 incident reporting procedures shall be accessible to staff. The  
34 incident reporting procedure shall be designed to provide hospital  
35 management with immediate notification of reported incidents.  
36 The hospital shall provide for timely and efficient responses and  
37 investigations to incident reports made under the incident reporting  
38 procedure. Incident reports shall also be forwarded to the injury  
39 and illness prevention committee established pursuant to  
40 subdivision (b).



1 SEC. 204. Section 4427.5 of the Welfare and Institutions Code  
2 is amended to read:

3 4427.5. (a) (1) A developmental center shall immediately  
4 report the following incidents involving a resident to the local law  
5 enforcement agency having jurisdiction over the city or county in  
6 which the developmental center is located, regardless of whether  
7 the Office of Protective Services has investigated the facts and  
8 circumstances relating to the incident:

9 (A) A death.

10 (B) A sexual assault, as defined in Section 15610.63.

11 (C) An assault with a deadly weapon, as described in Section  
12 245 of the Penal Code, by a nonresident of the developmental  
13 center.

14 (D) An assault with force likely to produce great bodily injury,  
15 as described in Section 245 of the Penal Code.

16 (E) An injury to the genitals when the cause of the injury is  
17 undetermined.

18 (F) A broken bone when the cause of the break is undetermined.

19 (2) If the incident is reported to the law enforcement agency by  
20 telephone, a written report of the incident shall also be submitted  
21 to the agency, within two working days.

22 (3) The reporting requirements of this subdivision are in addition  
23 to, and do not substitute for, the reporting requirements of  
24 mandated reporters, and any other reporting and investigative  
25 duties of the developmental center and the department as required  
26 by law.

27 (4) This subdivision does not prevent the developmental center  
28 from reporting any other criminal act constituting a danger to the  
29 health or safety of the residents of the developmental center to the  
30 local law enforcement agency.

31 (b) (1) The department shall report to the agency described in  
32 subdivision (i) of Section 4900 any of the following incidents  
33 involving a resident of a developmental center:

34 (A) Any unexpected or suspicious death, regardless of whether  
35 the cause is immediately known.

36 (B) Any allegation of sexual assault, as defined in Section  
37 15610.63, in which the alleged perpetrator is a developmental  
38 center or department employee or contractor.

39 (C) Any report made to the local law enforcement agency in  
40 the jurisdiction in which the facility is located that involves

1 physical abuse, as defined in Section 15610.63, in which a staff  
 2 member is implicated.

3 (2) A report pursuant to this subdivision shall be made no later  
 4 than the close of the first business day following the discovery of  
 5 the reportable incident.

6 (c) The department shall do both of the following:

7 (1) Annually provide written information to every developmental  
 8 center employee regarding all of the following:

9 (A) The statutory and departmental requirements for mandatory  
 10 reporting of suspected or known abuse.

11 (B) The rights and protections afforded to individuals' reporting  
 12 of suspected or known abuse.

13 (C) The penalties for failure to report suspected or known abuse.

14 (D) The telephone numbers for reporting suspected or known  
 15 abuse or neglect to designated investigators of the department and  
 16 to local law enforcement agencies.

17 (2) On or before August 1, 2001, in consultation with employee  
 18 organizations, advocates, consumers, and family members, develop  
 19 a poster that encourages staff, residents, and visitors to report  
 20 suspected or known abuse and provides information on how to  
 21 make these reports.

22 SEC. 205. Section 4648 of the Welfare and Institutions Code  
 23 is amended to read:

24 4648. In order to achieve the stated objectives of a consumer's  
 25 individual program plan, the regional center shall conduct activities,  
 26 including, but not limited to, all of the following:

27 (a) Securing needed services and supports.

28 (1) It is the intent of the Legislature that services and supports  
 29 assist individuals with developmental disabilities in achieving the  
 30 greatest self-sufficiency possible and in exercising personal  
 31 choices. The regional center shall secure services and supports  
 32 that meet the needs of the consumer, as determined in the  
 33 consumer's individual program plan, and within the context of the  
 34 individual program plan, the planning team shall give highest  
 35 preference to those services and supports which would allow  
 36 minors with developmental disabilities to live with their families,  
 37 adult persons with developmental disabilities to live as  
 38 independently as possible in the community, and that allow all  
 39 consumers to interact with persons without disabilities in positive,  
 40 meaningful ways.

1 (2) In implementing individual program plans, regional centers,  
2 through the planning team, shall first consider services and supports  
3 in natural community, home, work, and recreational settings.  
4 Services and supports shall be flexible and individually tailored  
5 to the consumer and, where appropriate, his or her family.

6 (3) A regional center may, pursuant to vendorization or a  
7 contract, purchase services or supports for a consumer from any  
8 individual or agency which the regional center and consumer or,  
9 where appropriate, his or her parents, legal guardian, or  
10 conservator, or authorized representatives, determines will best  
11 accomplish all or any part of that consumer's program plan.

12 (A) Vendorization or contracting is the process for identification,  
13 selection, and utilization of service vendors or contractors, based  
14 on the qualifications and other requirements necessary in order to  
15 provide the service.

16 (B) A regional center may reimburse an individual or agency  
17 for services or supports provided to a regional center consumer if  
18 the individual or agency has a rate of payment for vendored or  
19 contracted services established by the department, pursuant to this  
20 division, and is providing services pursuant to an emergency  
21 vendorization or has completed the vendorization procedures or  
22 has entered into a contract with the regional center and continues  
23 to comply with the vendorization or contracting requirements. The  
24 director shall adopt regulations governing the vendorization process  
25 to be utilized by the department, regional centers, vendors, and  
26 the individual or agency requesting vendorization.

27 (C) Regulations shall include, but not be limited to: the vendor  
28 application process, and the basis for accepting or denying an  
29 application; the qualification and requirements for each category  
30 of services that may be provided to a regional center consumer  
31 through a vendor; requirements for emergency vendorization;  
32 procedures for termination of vendorization; the procedure for an  
33 individual or an agency to appeal any vendorization decision made  
34 by the department or regional center.

35 (D) A regional center may vendorize a licensed facility for  
36 exclusive services to persons with developmental disabilities at a  
37 capacity equal to or less than the facility's licensed capacity. A  
38 facility already licensed on January 1, 1999, shall continue to be  
39 vendorized at their full licensed capacity until the facility agrees  
40 to vendorization at a reduced capacity.

1 (E) Effective July 1, 2009, notwithstanding any other provision  
2 of law or regulation to the contrary, a regional center shall not  
3 newly vendor a State Department of Social Services licensed  
4 24-hour residential care facility with a licensed capacity of 16 or  
5 more beds, unless the facility qualifies for receipt of federal funds  
6 under the Medicaid Program.

7 (4) Notwithstanding subparagraph (B), a regional center may  
8 contract or issue a voucher for services and supports provided to  
9 a consumer or family at a cost not to exceed the maximum rate of  
10 payment for that service or support established by the department.  
11 If a rate has not been established by the department, the regional  
12 center may, for an interim period, contract for a specified service  
13 or support with, and establish a rate of payment for, any provider  
14 of the service or support necessary to implement a consumer's  
15 individual program plan. Contracts may be negotiated for a period  
16 of up to three years, with annual review and subject to the  
17 availability of funds.

18 (5) In order to ensure the maximum flexibility and availability  
19 of appropriate services and supports for persons with  
20 developmental disabilities, the department shall establish and  
21 maintain an equitable system of payment to providers of services  
22 and supports identified as necessary to the implementation of a  
23 consumer's individual program plan. The system of payment shall  
24 include provision for a rate to ensure that the provider can meet  
25 the special needs of consumers and provide quality services and  
26 supports in the least restrictive setting as required by law.

27 (6) The regional center and the consumer, or where appropriate,  
28 his or her parents, legal guardian, conservator, or authorized  
29 representative, including those appointed pursuant to subdivision  
30 (d) of Section 4548, subdivision (b) of Section 4701.6, or  
31 subdivision (e) of Section 4705, shall, pursuant to the individual  
32 program plan, consider all of the following when selecting a  
33 provider of consumer services and supports:

34 (A) A provider's ability to deliver quality services or supports  
35 which can accomplish all or part of the consumer's individual  
36 program plan.

37 (B) A provider's success in achieving the objectives set forth  
38 in the individual program plan.

39 (C) Where appropriate, the existence of licensing, accreditation,  
40 or professional certification.

1 (D) The cost of providing services or supports of comparable  
2 quality by different providers, if available, shall be reviewed, and  
3 the least costly available provider of comparable service, including  
4 the cost of transportation, who is able to accomplish all or part of  
5 the consumer's individual program plan, consistent with the  
6 particular needs of the consumer and family as identified in the  
7 individual program plan, shall be selected. In determining the least  
8 costly provider, the availability of federal financial participation  
9 shall be considered. The consumer shall not be required to use the  
10 least costly provider if it will result in the consumer moving from  
11 an existing provider of services or supports to more restrictive or  
12 less integrated services or supports.

13 (E) The consumer's choice of providers, or, where appropriate,  
14 the consumer's parents', legal guardian's, authorized  
15 representative's, or conservator's choice of providers.

16 (7) No service or support provided by any agency or individual  
17 shall be continued unless the consumer or, where appropriate, his  
18 or her parents, legal guardian, or conservator, or authorized  
19 representative, including those appointed pursuant to subdivision  
20 (d) of Section 4548, subdivision (b) of Section 4701.6, or  
21 subdivision (e) of Section 4705, is satisfied and the regional center  
22 and the consumer or, when appropriate, the person's parents or  
23 legal guardian or conservator agree that planned services and  
24 supports have been provided, and reasonable progress toward  
25 objectives have been made.

26 (8) Regional center funds shall not be used to supplant the  
27 budget of any agency which has a legal responsibility to serve all  
28 members of the general public and is receiving public funds for  
29 providing those services.

30 (9) (A) A regional center may, directly or through an agency  
31 acting on behalf of the center, provide placement in, purchase of,  
32 or follow-along services to persons with developmental disabilities  
33 in, appropriate community living arrangements, including, but not  
34 limited to, support service for consumers in homes they own or  
35 lease, foster family placements, health care facilities, and licensed  
36 community care facilities. In considering appropriate placement  
37 alternatives for children with developmental disabilities, approval  
38 by the child's parent or guardian shall be obtained before placement  
39 is made.

1 (B) Effective July 1, 2012, notwithstanding any other provision  
2 of law or regulation to the contrary, a regional center shall not  
3 purchase residential services from a State Department of Social  
4 Services licensed 24-hour residential care facility with a licensed  
5 capacity of 16 or more beds. This prohibition on regional center  
6 purchase of residential services shall not apply to any of the  
7 following:

8 (i) A residential facility with a licensed capacity of 16 or more  
9 beds that has been approved to participate in the department’s  
10 Home and Community Based Services Waiver or another existing  
11 waiver program or certified to participate in the Medi-Cal program.

12 (ii) A residential facility service provider that has a written  
13 agreement and specific plan prior to July 1, 2012, with the  
14 vendoring regional center to downsize the existing facility by  
15 transitioning its residential services to living arrangements of 15  
16 beds or less or restructure the large facility to meet federal  
17 Medicaid eligibility requirements on or before June 30, 2013.

18 (iii) A residential facility licensed as a mental health  
19 rehabilitation center by the State Department of Mental Health or  
20 successor agency under any of the following circumstances:

21 (I) The facility is eligible for Medicaid reimbursement.

22 (II) The facility has a department-approved plan in place by  
23 June 30, 2013, to transition to a program structure eligible for  
24 federal Medicaid funding, and this transition will be completed by  
25 June 30, 2014. The department may grant an extension for the date  
26 by which the transition will be completed if the facility  
27 demonstrates that it has made significant progress toward transition,  
28 and states with specificity the timeframe by which the transition  
29 will be completed and the specified steps that will be taken to  
30 accomplish the transition. A regional center may pay for the costs  
31 of care and treatment of a consumer residing in the facility on June  
32 30, 2012, until June 30, 2013, inclusive, and, if the facility has a  
33 department-approved plan in place by June 30, 2013, may continue  
34 to pay the costs under this subparagraph until June 30, 2014, or  
35 until the end of any period during which the department has granted  
36 an extension.

37 (III) There is an emergency circumstance in which the regional  
38 center determines that it cannot locate alternate federally eligible  
39 services to meet the consumer’s needs. Under such an emergency  
40 circumstance, an assessment shall be completed by the regional

1 center as soon as possible and within 30 days of admission. An  
2 individual program plan meeting shall be convened immediately  
3 following the assessment to determine the services and supports  
4 needed for stabilization and to develop a plan to transition the  
5 consumer from the facility into the community. If transition is not  
6 expected within 90 days of admission, an individual program plan  
7 meeting shall be held to discuss the status of transition and to  
8 determine if the consumer is still in need of placement in the  
9 facility. Commencing October 1, 2012, this determination shall  
10 be made after also considering resource options identified by the  
11 statewide specialized resource service. If it is determined that  
12 emergency services continue to be necessary, the regional center  
13 shall submit an updated transition plan that can cover a period of  
14 up to 90 days. In no event shall placements under these emergency  
15 circumstances exceed 180 days.

16 (C) (i) Effective July 1, 2012, notwithstanding any other  
17 provision of law or regulation to the contrary, a regional center  
18 shall not purchase new residential services from institutions for  
19 mental disease, as described in Part 5 (commencing with Section  
20 5900) of Division 5, for which federal Medicaid funding is not  
21 available.

22 (ii) The prohibition described in clause (i) shall not apply to  
23 emergencies, as determined by the regional center, when a regional  
24 center cannot locate alternate federally eligible services to meet  
25 the consumer's needs. As soon as possible within 30 days of  
26 admission due to an emergency, an assessment shall be completed  
27 by the regional center. An individual program plan meeting shall  
28 be convened immediately following the assessment, to determine  
29 the services and supports needed for stabilization and to develop  
30 a plan to transition the consumer from the facility to the  
31 community. If transition is not expected within 90 days of  
32 admission, an emergency individual program plan meeting shall  
33 be held to discuss the status of transition and to determine if the  
34 consumer is still in need of placement in the facility. If emergency  
35 services continue to be necessary, the regional center shall submit  
36 an updated transition plan to the department for an extension of  
37 up to 90 days. Placement shall not exceed 180 days.

38 (iii) Regional centers shall complete a comprehensive  
39 assessment of any consumer residing in an institution for mental  
40 disease as of July 1, 2012, for which federal Medicaid funding is

1 not available. The comprehensive assessment shall be completed  
2 prior to the consumer's next scheduled individual program plan  
3 meeting and shall include identification of the services and supports  
4 needed and the timeline for identifying or developing those services  
5 needed to transition the consumer back to the community. Effective  
6 October 1, 2012, the regional center shall also consider resource  
7 options identified by the statewide specialized resource service.  
8 For each individual program plan meeting convened pursuant to  
9 this subparagraph, the clients' rights advocate for the regional  
10 center shall be notified of the meeting and may participate in the  
11 meeting unless the consumer objects on his or her own behalf.

12 (D) Each person with developmental disabilities placed by the  
13 regional center in a community living arrangement shall have the  
14 rights specified in this division. These rights shall be brought to  
15 the person's attention by any means necessary to reasonably  
16 communicate these rights to each resident, provided that, at a  
17 minimum, the Director of Developmental Services prepares,  
18 provides, and requires to be clearly posted in all residential  
19 facilities and day programs a poster using simplified language and  
20 pictures that is designed to be more understandable by persons  
21 with cognitive disabilities and that the rights information shall also  
22 be available through the regional center to each residential facility  
23 and day program in alternative formats, including, but not limited  
24 to, other languages, braille, and audio tapes, when necessary to  
25 meet the communication needs of consumers.

26 (E) Consumers are eligible to receive supplemental services,  
27 including, but not limited to, additional staffing, pursuant to the  
28 process described in subdivision (d) of Section 4646. Necessary  
29 additional staffing that is not specifically included in the rates paid  
30 to the service provider may be purchased by the regional center if  
31 the additional staff are in excess of the amount required by  
32 regulation and the individual's planning team determines the  
33 additional services are consistent with the provisions of the  
34 individual program plan. Additional staff should be periodically  
35 reviewed by the planning team for consistency with the individual  
36 program plan objectives in order to determine if continued use of  
37 the additional staff is necessary and appropriate and if the service  
38 is producing outcomes consistent with the individual program plan.  
39 Regional centers shall monitor programs to ensure that the  
40 additional staff is being provided and utilized appropriately.



1 (10) Emergency and crisis intervention services, including, but  
2 not limited to, mental health services and behavior modification  
3 services, may be provided, as needed, to maintain persons with  
4 developmental disabilities in the living arrangement of their own  
5 choice. Crisis services shall first be provided without disrupting a  
6 person's living arrangement. If crisis intervention services are  
7 unsuccessful, emergency housing shall be available in the person's  
8 home community. If dislocation cannot be avoided, every effort  
9 shall be made to return the person to his or her living arrangement  
10 of choice, with all necessary supports, as soon as possible.

11 (11) Among other service and support options, planning teams  
12 shall consider the use of paid roommates or neighbors, personal  
13 assistance, technical and financial assistance, and all other service  
14 and support options which would result in greater self-sufficiency  
15 for the consumer and cost-effectiveness to the state.

16 (12) When facilitation as specified in an individual program  
17 plan requires the services of an individual, the facilitator shall be  
18 of the consumer's choosing.

19 (13) The community support may be provided to assist  
20 individuals with developmental disabilities to fully participate in  
21 community and civic life, including, but not limited to, programs,  
22 services, work opportunities, business, and activities available to  
23 persons without disabilities. This facilitation shall include, but not  
24 be limited to, any of the following:

25 (A) Outreach and education to programs and services within  
26 the community.

27 (B) Direct support to individuals which would enable them to  
28 more fully participate in their community.

29 (C) Developing unpaid natural supports when possible.

30 (14) When feasible and recommended by the individual program  
31 planning team, for purposes of facilitating better and cost-effective  
32 services for consumers or family members, technology, including  
33 telecommunication technology, may be used in conjunction with  
34 other services and supports. Technology in lieu of a consumer's  
35 in-person appearances at judicial proceedings or administrative  
36 due process hearings may be used only if the consumer or, when  
37 appropriate, the consumer's parent, legal guardian, conservator,  
38 or authorized representative, gives informed consent. Technology  
39 may be used in lieu of, or in conjunction with, in-person training  
40 for providers, as appropriate.

1 (15) Other services and supports may be provided as set forth  
2 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

3 (16) Notwithstanding any other provision of law or regulation  
4 to the contrary, effective July 1, 2009, regional centers shall not  
5 purchase experimental treatments, therapeutic services, or devices  
6 that have not been clinically determined or scientifically proven  
7 to be effective or safe or for which risks and complications are  
8 unknown. Experimental treatments or therapeutic services include  
9 experimental medical or nutritional therapy when the use of the  
10 product for that purpose is not a general physician practice. For  
11 regional center consumers receiving these services as part of their  
12 individual program plan (IPP) or individualized family service  
13 plan (IFSP) on July 1, 2009, this prohibition shall apply on August  
14 1, 2009.

15 (b) (1) Advocacy for, and protection of, the civil, legal, and  
16 service rights of persons with developmental disabilities as  
17 established in this division.

18 (2) Whenever the advocacy efforts of a regional center to secure  
19 or protect the civil, legal, or service rights of any of its consumers  
20 prove ineffective, the regional center or the person with  
21 developmental disabilities or his or her parents, legal guardian, or  
22 other representative may request the area board to initiate action  
23 under the provisions defining area board advocacy functions  
24 established in this division.

25 (c) The regional center may assist consumers and families  
26 directly, or through a provider, in identifying and building circles  
27 of support within the community.

28 (d) In order to increase the quality of community services and  
29 protect consumers, the regional center shall, when appropriate,  
30 take either of the following actions:

31 (1) Identify services and supports that are ineffective or of poor  
32 quality and provide or secure consultation, training, or technical  
33 assistance services for any agency or individual provider to assist  
34 that agency or individual provider in upgrading the quality of  
35 services or supports.

36 (2) Identify providers of services or supports that may not be  
37 in compliance with local, state, and federal statutes and regulations  
38 and notify the appropriate licensing or regulatory authority, or  
39 request the area board to investigate the possible noncompliance.

1 (e) When necessary to expand the availability of needed services  
2 of good quality, a regional center may take actions that include,  
3 but are not limited to, the following:

4 (1) Soliciting an individual or agency by requests for proposals  
5 or other means, to provide needed services or supports not presently  
6 available.

7 (2) Requesting funds from the Program Development Fund,  
8 pursuant to Section 4677, or community placement plan funds  
9 designated from that fund, to reimburse the startup costs needed  
10 to initiate a new program of services and supports.

11 (3) Using creative and innovative service delivery models,  
12 including, but not limited to, natural supports.

13 (f) Except in emergency situations, a regional center shall not  
14 provide direct treatment and therapeutic services, but shall utilize  
15 appropriate public and private community agencies and service  
16 providers to obtain those services for its consumers.

17 (g) Where there are identified gaps in the system of services  
18 and supports or where there are identified consumers for whom  
19 no provider will provide services and supports contained in his or  
20 her individual program plan, the department may provide the  
21 services and supports directly.

22 (h) At least annually, regional centers shall provide the  
23 consumer, his or her parents, legal guardian, conservator, or  
24 authorized representative a statement of services and supports the  
25 regional center purchased for the purpose of ensuring that they are  
26 delivered. The statement shall include the type, unit, month, and  
27 cost of services and supports purchased.

28 SEC. 206. Section 4684.53 of the Welfare and Institutions  
29 Code is amended to read:

30 4684.53. (a) The State Department of Developmental Services  
31 and the State Department of Social Services shall jointly implement  
32 a licensing program to provide special health care and intensive  
33 support services to adults in homelike community settings.

34 (b) The program shall be implemented through approved  
35 community placement plans, as follows:

36 (1) For closure of Agnews Developmental Center, through the  
37 following regional centers:

38 (A) The San Andreas Regional Center.

39 (B) The Regional Center of the East Bay.

40 (C) The Golden Gate Regional Center.

1 (2) All regional centers involved in the closure of the Lanterman  
2 Developmental Center, as determined by the State Department of  
3 Developmental Services.

4 (3) All regional centers transitioning developmental center  
5 residents to placements in the community.

6 (c) Each ARFPSHN shall possess a community care facility  
7 license issued pursuant to Article 9 (commencing with Section  
8 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code,  
9 and shall be subject to the requirements of Chapter 1 (commencing  
10 with Section 80000) of Division 6 of Title 22 of the California  
11 Code of Regulations, except for Article 8 (commencing with  
12 Section 80090).

13 (d) For purposes of this article, a health facility licensed pursuant  
14 to subdivision (e) or (h) of Section 1250 of the Health and Safety  
15 Code may place its licensed bed capacity in voluntary suspension  
16 for the purpose of licensing the facility to operate an ARFPSHN  
17 if the facility is selected to participate pursuant to Section 4684.58.  
18 Consistent with subdivision (a) of Section 4684.50, any facility  
19 licensed pursuant to this section shall serve up to five adults. A  
20 facility's bed capacity shall not be placed in voluntary suspension  
21 until all consumers residing in the facility under the license to be  
22 suspended have been relocated. A consumer shall not be relocated  
23 unless it is reflected in the consumer's individual program plan  
24 developed pursuant to Sections 4646 and 4646.5.

25 (e) Each ARFPSHN is subject to the requirements of  
26 Subchapters 5 to 9, inclusive, of Chapter 1 of, and Subchapters 2  
27 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code  
28 of Regulations.

29 (f) Each ARFPSHN shall ensure that an operable automatic fire  
30 sprinkler system is installed and maintained.

31 (g) Each ARFPSHN shall have an operable automatic fire  
32 sprinkler system that is approved by the State Fire Marshal and  
33 that meets the National Fire Protection Association (NFPA) 13D  
34 standard for the installation of sprinkler systems in single- and  
35 two-family dwellings and manufactured homes. A local jurisdiction  
36 shall not require a sprinkler system exceeding this standard by  
37 amending the standard or by applying standards other than NFPA  
38 13D. A public water agency shall not interpret this section as  
39 changing the status of a facility from a residence entitled to

1 residential water rates, nor shall a new meter or larger connection  
2 pipe be required of the facility.

3 (h) Each ARFPSHN shall provide an alternative power source  
4 to operate all functions of the facility for a minimum of six hours  
5 in the event the primary power source is interrupted. The alternative  
6 power source shall comply with the manufacturer's  
7 recommendations for installation and operation. The alternative  
8 power source shall be maintained in safe operating condition, and  
9 shall be tested every 14 days under the full load condition for a  
10 minimum of 10 minutes. Written records of inspection,  
11 performance, exercising period, and repair of the alternative power  
12 source shall be regularly maintained on the premises and available  
13 for inspection by the State Department of Developmental Services.

14 SEC. 207. Section 4792.1 of the Welfare and Institutions Code  
15 is repealed.

16 SEC. 208. Section 5008 of the Welfare and Institutions Code  
17 is amended to read:

18 5008. Unless the context otherwise requires, the following  
19 definitions shall govern the construction of this part:

20 (a) "Evaluation" consists of multidisciplinary professional  
21 analyses of a person's medical, psychological, educational, social,  
22 financial, and legal conditions as may appear to constitute a  
23 problem. Persons providing evaluation services shall be properly  
24 qualified professionals and may be full-time employees of an  
25 agency providing evaluation services or may be part-time  
26 employees or may be employed on a contractual basis.

27 (b) "Court-ordered evaluation" means an evaluation ordered by  
28 a superior court pursuant to Article 2 (commencing with Section  
29 5200) or by a court pursuant to Article 3 (commencing with Section  
30 5225) of Chapter 2.

31 (c) "Intensive treatment" consists of such hospital and other  
32 services as may be indicated. Intensive treatment shall be provided  
33 by properly qualified professionals and carried out in facilities  
34 qualifying for reimbursement under the California Medical  
35 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing  
36 with Section 14000) of Part 3 of Division 9, or under Title XVIII  
37 of the federal Social Security Act and regulations thereunder.  
38 Intensive treatment may be provided in hospitals of the United  
39 States government by properly qualified professionals. Nothing

1 in this part shall be construed to prohibit an intensive treatment  
2 facility from also providing 72-hour treatment and evaluation.

3 (d) “Referral” is referral of persons by each agency or facility  
4 providing intensive treatment or evaluation services to other  
5 agencies or individuals. The purpose of referral shall be to provide  
6 for continuity of care, and may include, but need not be limited  
7 to, informing the person of available services, making appointments  
8 on the person’s behalf, discussing the person’s problem with the  
9 agency or individual to which the person has been referred,  
10 appraising the outcome of referrals, and arranging for personal  
11 escort and transportation when necessary. Referral shall be  
12 considered complete when the agency or individual to whom the  
13 person has been referred accepts responsibility for providing the  
14 necessary services. All persons shall be advised of available precare  
15 services which prevent initial recourse to hospital treatment or  
16 aftercare services which support adjustment to community living  
17 following hospital treatment. These services may be provided  
18 through county welfare departments, the State Department of State  
19 Hospitals, Short-Doyle programs, or other local agencies.

20 Each agency or facility providing evaluation services shall  
21 maintain a current and comprehensive file of all community  
22 services, both public and private. These files shall contain current  
23 agreements with agencies or individuals accepting referrals, as  
24 well as appraisals of the results of past referrals.

25 (e) “Crisis intervention” consists of an interview or series of  
26 interviews within a brief period of time, conducted by qualified  
27 professionals, and designed to alleviate personal or family  
28 situations which present a serious and imminent threat to the health  
29 or stability of the person or the family. The interview or interviews  
30 may be conducted in the home of the person or family, or on an  
31 inpatient or outpatient basis with such therapy, or other services,  
32 as may be appropriate. Crisis intervention may, as appropriate,  
33 include suicide prevention, psychiatric, welfare, psychological,  
34 legal, or other social services.

35 (f) “Prepetition screening” is a screening of all petitions for  
36 court-ordered evaluation as provided in Article 2 (commencing  
37 with Section 5200) of Chapter 2, consisting of a professional  
38 review of all petitions; an interview with the petitioner and,  
39 whenever possible, the person alleged, as a result of mental  
40 disorder, to be a danger to others, or to himself or herself, or to be

1 gravely disabled, to assess the problem and explain the petition;  
2 when indicated, efforts to persuade the person to receive, on a  
3 voluntary basis, comprehensive evaluation, crisis intervention,  
4 referral, and other services specified in this part.

5 (g) “Conservatorship investigation” means investigation by an  
6 agency appointed or designated by the governing body of cases in  
7 which conservatorship is recommended pursuant to Chapter 3  
8 (commencing with Section 5350).

9 (h) (1) For purposes of Article 1 (commencing with Section  
10 5150), Article 2 (commencing with Section 5200), and Article 4  
11 (commencing with Section 5250) of Chapter 2, and for the purposes  
12 of Chapter 3 (commencing with Section 5350), “gravely disabled”  
13 means either of the following:

14 (A) A condition in which a person, as a result of a mental  
15 disorder, is unable to provide for his or her basic personal needs  
16 for food, clothing, or shelter.

17 (B) A condition in which a person has been found mentally  
18 incompetent under Section 1370 of the Penal Code and all of the  
19 following facts exist:

20 (i) The indictment or information pending against the defendant  
21 at the time of commitment charges a felony involving death, great  
22 bodily harm, or a serious threat to the physical well-being of  
23 another person.

24 (ii) The indictment or information has not been dismissed.

25 (iii) As a result of a mental disorder, the person is unable to  
26 understand the nature and purpose of the proceedings taken against  
27 him or her and to assist counsel in the conduct of his or her defense  
28 in a rational manner.

29 (2) For purposes of Article 3 (commencing with Section 5225)  
30 and Article 4 (commencing with Section 5250), of Chapter 2, and  
31 for the purposes of Chapter 3 (commencing with Section 5350),  
32 “gravely disabled” means a condition in which a person, as a result  
33 of impairment by chronic alcoholism, is unable to provide for his  
34 or her basic personal needs for food, clothing, or shelter.

35 (3) The term “gravely disabled” does not include intellectually  
36 disabled persons by reason of being intellectually disabled alone.

37 (i) “Peace officer” means a duly sworn peace officer as that  
38 term is defined in Chapter 4.5 (commencing with Section 830) of  
39 Title 3 of Part 2 of the Penal Code who has completed the basic  
40 training course established by the Commission on Peace Officer

1 Standards and Training, or any parole officer or probation officer  
 2 specified in Section 830.5 of the Penal Code when acting in relation  
 3 to cases for which he or she has a legally mandated responsibility.

4 (j) “Postcertification treatment” means an additional period of  
 5 treatment pursuant to Article 6 (commencing with Section 5300)  
 6 of Chapter 2.

7 (k) “Court,” unless otherwise specified, means a court of record.

8 (l) “Antipsychotic medication” means any medication  
 9 customarily prescribed for the treatment of symptoms of psychoses  
 10 and other severe mental and emotional disorders.

11 (m) “Emergency” means a situation in which action to impose  
 12 treatment over the person’s objection is immediately necessary  
 13 for the preservation of life or the prevention of serious bodily harm  
 14 to the patient or others, and it is impracticable to first gain consent.  
 15 It is not necessary for harm to take place or become unavoidable  
 16 prior to treatment.

17 SEC. 209. Section 5328.03 of the Welfare and Institutions  
 18 Code is amended to read:

19 5328.03. (a) (1) Notwithstanding Section 5328 of this code,  
 20 Section 3025 of the Family Code, or paragraph (2) of subdivision  
 21 (c) of Section 56.11 of the Civil Code, a psychotherapist who  
 22 knows that a minor has been removed from the physical custody  
 23 of his or her parent or guardian pursuant to Article 6 (commencing  
 24 with Section 300) to Article 10 (commencing with Section 360),  
 25 inclusive, of Chapter 2 of Part 1 of Division 2 shall not release  
 26 mental health records of the minor patient and shall not disclose  
 27 mental health information about that minor patient based upon an  
 28 authorization to release those records or the information signed  
 29 by the minor’s parent or guardian. This restriction shall not apply  
 30 if the juvenile court has issued an order authorizing the parent or  
 31 guardian to sign an authorization for the release of the records or  
 32 information after finding that such an order would not be  
 33 detrimental to the minor patient.

34 (2) Notwithstanding Section 5328 of this code or Section 3025  
 35 of the Family Code, a psychotherapist who knows that a minor  
 36 has been removed from the physical custody of his or her parent  
 37 or guardian pursuant to Article 6 (commencing with Section 300)  
 38 to Article 10 (commencing with Section 360), inclusive, of Chapter  
 39 2 of Part 1 of Division 2 shall not allow the parent or guardian to  
 40 inspect or obtain copies of mental health records of the minor



1 patient. This restriction shall not apply if the juvenile court has  
2 issued an order authorizing the parent or guardian to inspect or  
3 obtain copies of the mental health records of the minor patient  
4 after finding that such an order would not be detrimental to the  
5 minor patient.

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

7 (1) “Mental health records” means mental health records as  
8 defined by subdivision (b) of Section 123105 of the Health and  
9 Safety Code.

10 (2) “Psychotherapist” means a provider of health care as defined  
11 in Section 1010 of the Evidence Code.

12 (c) (1) When the juvenile court has issued an order described  
13 in paragraph (1) of subdivision (a), the parent or guardian seeking  
14 the release of the minor’s mental health records or information  
15 about the minor shall present a copy of the court order to the  
16 psychotherapist before any records or information may be released  
17 pursuant to the signed authorization.

18 (2) When the juvenile court has issued an order described in  
19 paragraph (2) of subdivision (a), the parent or guardian seeking to  
20 inspect or obtain copies of the mental health records of the minor  
21 patient shall present a copy of the court order to the psychotherapist  
22 and shall comply with subdivisions (a) and (b) of Section 123110  
23 of the Health and Safety Code before the parent or guardian is  
24 allowed to inspect or obtain copies of the mental health records of  
25 the minor patient.

26 (d) Nothing in this section shall be construed to prevent or limit  
27 a psychotherapist’s authority under subdivision (a) of Section  
28 123115 of the Health and Safety Code to deny a parent’s or  
29 guardian’s written request to inspect or obtain copies of the minor  
30 patient’s mental health records, notwithstanding the fact that the  
31 juvenile court has issued an order authorizing the parent or guardian  
32 to sign an authorization for the release of the mental health records  
33 or information about that minor patient, or to inspect or obtain  
34 copies of the minor patient’s health records. Liability for a  
35 psychotherapist’s decision not to release records, not to disclose  
36 information about the minor patient, or not to allow the parent or  
37 guardian to inspect or obtain copies of the mental health records  
38 pursuant to the authority of subdivision (a) of Section 123115 of  
39 the Health and Safety Code shall be governed by that section.

1 (e) Nothing in this section shall be construed to impose upon a  
 2 psychotherapist a duty to inquire or investigate whether a child  
 3 has been removed from the physical custody of his or her parent  
 4 or guardian pursuant to Article 6 (commencing with Section 300)  
 5 to Article 10 (commencing with Section 360), inclusive, of Chapter  
 6 2 of Part 1 of Division 2 when a parent or guardian presents the  
 7 minor’s psychotherapist with an order authorizing the parent or  
 8 guardian to sign an authorization for the release of information or  
 9 the mental health records regarding the minor patient or authorizing  
 10 the parent or guardian to inspect or obtain copies of the mental  
 11 health records of the minor patient.

12 SEC. 210. Section 6254 of the Welfare and Institutions Code  
 13 is amended to read:

14 6254. Wherever provision is made in this code for an order of  
 15 commitment by a superior court, the order of commitment shall  
 16 be in substantially the following form:

17  
 18 In the Superior Court of the State of California  
 19 For the County of \_\_\_\_  
 20  
 21 \_\_\_\_\_  
 22 The People  
 23 For the Best Interest and Protection of  
 24 \_\_\_\_\_  
 25 as a \_\_\_\_\_,  
 26  
 27 and Concerning  
 28 \_\_\_\_\_ and  
 29 \_\_\_\_\_, Respondents  
 30 \_\_\_\_\_

} Order for Care,  
Hospitalization,  
or Commitment

31  
 32 The petition dated \_\_\_\_\_, alleging that \_\_\_\_\_, having been presented  
 33 to this court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and an order of detention  
 34 issued thereon by a judge of the superior court of this county, and a return of  
 35 the said order:

36 And it further appearing that the provisions of Sections 6250 to 6254,  
 37 inclusive, of the Welfare and Institutions Code have been complied with;

38 And it further appearing that Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_, two regularly  
 39 appointed and qualified medical examiners of this county, have made a  
 40 personal examination of the alleged \_\_\_\_\_, and have made and signed the

1 certificate of the medical examiners, which certificate is attached hereto and  
2 made a part hereof;

3 Now therefore, after examination and certificate made as aforesaid, the court  
4 is satisfied and believes that \_\_\_\_\_ is a \_\_\_\_\_ and is so \_\_\_\_\_.

5 It is ordered, adjudged, and decreed:

6 That \_\_\_\_\_ is a \_\_\_\_\_ and that \_he

7 \* (a) Be cared for and detained in \_\_\_\_\_, a county psychiatric hospital,  
8 a community mental health service, or a licensed sanitarium or hospital for  
9 the care of the mentally disordered until the further order of the court, or

10 \* (b) Be cared for at \_\_\_\_\_, until the further order of the court, or

11 \* (c) Be committed to the State Department of State Hospitals for placement  
12 in a state hospital, or

13 \* (d) Be committed to a facility of the Department of Veterans Affairs or  
14 other agency of the United States, to wit: \_\_\_\_\_ at \_\_\_\_\_.

15 It is further ordered and directed that \_\_\_\_\_ of this county, take, convey,  
16 and deliver \_\_\_\_\_ to the proper authorities of the hospital or establishment  
17 designated herein to be cared for as provided by law.

18 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

19 \_\_\_\_\_  
20 Judge of the Superior Court

21 \* Strike out when not applicable.

22  
23 SEC. 211. Section 7295 of the Welfare and Institutions Code  
24 is amended to read:

25 7295. (a) To ensure its safety and security, a state hospital that  
26 is under the jurisdiction of the State Department of State Hospitals,  
27 as listed in Section 4100, may develop a list of items that are  
28 deemed contraband and prohibited on hospital grounds and control  
29 and eliminate contraband on hospital grounds.

30 (b) The State Department of State Hospitals shall develop a list  
31 of items that shall be deemed contraband at every state hospital.

32 (c) A state hospital shall form a contraband committee,  
33 comprised of hospital management and employees designated by  
34 the hospital’s director, to develop the list of contraband items. The  
35 committee shall develop the list with the participation of patient  
36 representatives, or the patient government of the hospital, if one  
37 is available, and the Office of Patients’ Rights.

38 (d) Each hospital’s list of contraband items developed pursuant  
39 to subdivision (a), and the statewide list of contraband items

1 developed pursuant to subdivision (b), are subject to review and  
2 approval by the Director of State Hospitals or his or her designee.

3 (e) A list of contraband items developed pursuant to subdivision  
4 (a) shall be updated and subject to review and approval by the  
5 director of the department, or his or her designee, no less often  
6 than every six months.

7 (f) If an item presents an emergent danger to the safety and  
8 security of a facility, the item may be placed immediately on a  
9 contraband list by the Director of State Hospitals or the executive  
10 director of the state hospital, but this placement shall be reviewed  
11 by the contraband committee, if applicable, and approved by the  
12 Director of State Hospitals or his or her designee within six weeks.

13 (g) The lists of contraband items developed pursuant to this  
14 section shall be posted prominently in every unit of the hospital  
15 and throughout the hospital, and provided to a patient upon request.

16 (h) The lists of contraband items developed pursuant to this  
17 section shall be posted on the hospital's Internet Web site.

18 (i) For the purposes of this section, "contraband" means  
19 materials, articles, or goods that a patient is prohibited from having  
20 in his or her possession because the materials, articles, or goods  
21 present a risk to the safety and security of the facility.

22 (j) Notwithstanding Chapter 3.5 (commencing with Section  
23 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
24 the hospital and the department may implement, interpret, or make  
25 specific this section without taking regulatory action.

26 SEC. 212. Section 12306 of the Welfare and Institutions Code,  
27 as amended by Section 36 of Chapter 439 of the Statutes of 2012,  
28 is amended to read:

29 12306. (a) The state and counties shall share the annual cost  
30 of providing services under this article as specified in this section.

31 (b) Except as provided in subdivisions (c) and (d), the state shall  
32 pay to each county, from the General Fund and any federal funds  
33 received under Title XX of the federal Social Security Act available  
34 for that purpose, 65 percent of the cost of providing services under  
35 this article, and each county shall pay 35 percent of the cost of  
36 providing those services.

37 (c) For services eligible for federal funding pursuant to Title  
38 XIX of the federal Social Security Act under the Medi-Cal program  
39 and, except as provided in subdivisions (b) and (d), the state shall  
40 pay to each county, from the General Fund and any funds available

1 for that purpose, 65 percent of the nonfederal cost of providing  
2 services under this article, and each county shall pay 35 percent  
3 of the nonfederal cost of providing those services.

4 (d) (1) For the period of July 1, 1992, to June 30, 1994,  
5 inclusive, the state's share of the cost of providing services under  
6 this article shall be limited to the amount appropriated for that  
7 purpose in the annual Budget Act.

8 (2) The department shall restore the funding reductions required  
9 by subdivision (c) of Section 12301, fully or in part, as soon as  
10 administratively practicable, if the amount appropriated from the  
11 General Fund for the 1992–93 fiscal year under this article is  
12 projected to exceed the sum of the General Fund expenditures  
13 under Section 14132.95 and the actual General Fund expenditures  
14 under this article for the 1992–93 fiscal year. The entire amount  
15 of the excess shall be applied to the restoration. Services shall not  
16 be restored under this paragraph until the Department of Finance  
17 has determined that the restoration of services would result in no  
18 additional costs to the state or to the counties relative to the  
19 combined state appropriation and county matching funds for  
20 in-home supportive services under this article in the 1992–93 fiscal  
21 year.

22 (e) This section shall become operative only if Chapter 45 of  
23 the Statutes of 2012 is deemed inoperative pursuant to Section 15  
24 of that chapter.

25 SEC. 213. Section 12306 of the Welfare and Institutions Code,  
26 as amended by Section 37 of Chapter 439 of the Statutes of 2012,  
27 is amended to read:

28 12306. (a) The state and counties shall share the annual cost  
29 of providing services under this article as specified in this section.

30 (b) Except as provided in subdivisions (c) and (d), the state shall  
31 pay to each county, from the General Fund and any federal funds  
32 received under Title XX of the federal Social Security Act available  
33 for that purpose, 65 percent of the cost of providing services under  
34 this article, and each county shall pay 35 percent of the cost of  
35 providing those services.

36 (c) For services eligible for federal funding pursuant to Title  
37 XIX of the federal Social Security Act under the Medi-Cal program  
38 and, except as provided in subdivisions (b) and (d), the state shall  
39 pay to each county, from the General Fund and any funds available  
40 for that purpose, 65 percent of the nonfederal cost of providing

1 services under this article, and each county shall pay 35 percent  
 2 of the nonfederal cost of providing those services.

3 (d) (1) For the period of July 1, 1992, to June 30, 1994,  
 4 inclusive, the state’s share of the cost of providing services under  
 5 this article shall be limited to the amount appropriated for that  
 6 purpose in the annual Budget Act.

7 (2) The department shall restore the funding reductions required  
 8 by subdivision (c) of Section 12301, fully or in part, as soon as  
 9 administratively practicable, if the amount appropriated from the  
 10 General Fund for the 1992–93 fiscal year under this article is  
 11 projected to exceed the sum of the General Fund expenditures  
 12 under Section 14132.95 and the actual General Fund expenditures  
 13 under this article for the 1992–93 fiscal year. The entire amount  
 14 of the excess shall be applied to the restoration. Services shall not  
 15 be restored under this paragraph until the Department of Finance  
 16 has determined that the restoration of services would result in no  
 17 additional costs to the state or to the counties relative to the  
 18 combined state appropriation and county matching funds for  
 19 in-home supportive services under this article in the 1992–93 fiscal  
 20 year.

21 (e) For the period during which Section 12306.15 is operative,  
 22 each county’s share of the costs of providing services pursuant to  
 23 this article specified in subdivisions (b) and (c) shall remain, but  
 24 the County IHSS Maintenance of Effort pursuant to Section  
 25 12306.15 shall be in lieu of that share.

26 (f) This section shall become inoperative only if Chapter 45 of  
 27 the Statutes of 2012 is deemed inoperative pursuant to Section 15  
 28 of that chapter.

29 SEC. 214. Section 14005.27 of the Welfare and Institutions  
 30 Code is amended to read:

31 14005.27. (a) Individuals enrolled in the Healthy Families  
 32 Program pursuant to Part 6.2 (commencing with Section 12693)  
 33 of Division 2 of the Insurance Code on June 27, 2012, and who  
 34 are determined eligible to receive benefits pursuant to subdivisions  
 35 (a) and (b) of Section 14005.26, shall be transitioned into Medi-Cal,  
 36 pursuant to this section.

37 (b) To the extent necessary and for the purposes of carrying out  
 38 the provisions of this section, in performing initial eligibility  
 39 determinations for children enrolled in the Healthy Families  
 40 Program pursuant to Part 6.2 (commencing with Section 12693)

1 of Division 2 of the Insurance Code, the department shall adopt  
2 the option pursuant to Section 1902(e)(13) of the federal Social  
3 Security Act (42 U.S.C. Sec. 1396a(e)(13)) to allow the department  
4 or county human services departments to rely upon findings made  
5 by the Managed Risk Medical Insurance Board (MRMIB)  
6 regarding one or more components of eligibility. The department  
7 shall seek federal approval of a state plan amendment to implement  
8 this subdivision.

9 (c) To the extent necessary, the department shall seek federal  
10 approval of a state plan amendment or a waiver to provide  
11 presumptive eligibility for the optional targeted low-income  
12 category of eligibility pursuant to Section 14005.26 for individuals  
13 presumptively eligible for or enrolled in the Healthy Families  
14 Program pursuant to Part 6.2 (commencing with Section 12693)  
15 of Division 2 of the Insurance Code. The presumptive eligibility  
16 shall be based upon the most recent information contained in the  
17 individual's Healthy Families Program file. The timeframe for the  
18 presumptive eligibility shall begin no sooner than January 1, 2013,  
19 and shall continue until a determination of Medi-Cal eligibility is  
20 made, which determination shall be performed within one year of  
21 the individual's Healthy Families Program annual review date.

22 (d) (1) The California Health and Human Services Agency, in  
23 consultation with the Managed Risk Medical Insurance Board, the  
24 State Department of Health Care Services, the Department of  
25 Managed Health Care, and diverse stakeholders groups, shall  
26 provide the fiscal and policy committees of the Legislature with  
27 a strategic plan for the transition of the Healthy Families Program  
28 pursuant to this section by no later than October 1, 2012. This  
29 strategic plan shall, at a minimum, address all of the following:

30 (A) State, county, and local administrative components which  
31 facilitate a successful subscriber transition such as communication  
32 and outreach to subscribers and applicants, eligibility processing,  
33 enrollment, communication, and linkage with health plan providers,  
34 payments of applicable premiums, and overall systems operation  
35 functions.

36 (B) Methods and processes for diverse stakeholder engagement  
37 throughout the entire transition, including all phases of the  
38 transition.

1 (C) State monitoring of managed care health plans' performance  
2 and accountability for provision of services, and initial quality  
3 indicators for children and adolescents transitioning to Medi-Cal.

4 (D) Health care and dental delivery system components such  
5 as standards for informing and enrollment materials, network  
6 adequacy, performance measures and metrics, fiscal solvency, and  
7 related factors that ensure timely access to quality health and dental  
8 care for children and adolescents transitioning to Medi-Cal.

9 (E) Inclusion of applicable operational steps, timelines, and key  
10 milestones.

11 (F) A time certain for the transfer of the Healthy Families  
12 Advisory Board, as described in Part 6.2 (commencing with Section  
13 12693) of Division 2 of the Insurance Code, to the State  
14 Department of Health Care Services.

15 (2) The intent of this strategic plan is to serve as an overall guide  
16 for the development of each plan for each phase of this transition,  
17 pursuant to paragraphs (1) to (8), inclusive, of subdivision (e), to  
18 ensure clarity and consistency in approach and subscriber  
19 continuity of care. This strategic plan may also be updated by the  
20 California Health and Human Services Agency as applicable and  
21 provided to the Legislature upon completion.

22 (e) (1) The department shall transition individuals from the  
23 Healthy Families Program to the Medi-Cal program in four phases,  
24 as follows:

25 (A) Phase 1. Individuals enrolled in a Healthy Families Program  
26 health plan that is a Medi-Cal managed care health plan shall be  
27 enrolled in the same plan no earlier than January 1, 2013, pursuant  
28 to the requirements of this section and Section 14011.6, and to the  
29 extent the individual is otherwise eligible under this chapter and  
30 Chapter 8 (commencing with Section 14200).

31 (B) Phase 2. Individuals enrolled in a Healthy Families Program  
32 managed care health plan that is a subcontractor of a Medi-Cal  
33 managed health care plan, to the extent possible, shall be enrolled  
34 into a Medi-Cal managed health care plan that includes the  
35 individuals' current plan pursuant to the requirements of this  
36 section and Section 14011.6, and to the extent the individuals are  
37 otherwise eligible under this chapter and Chapter 8 (commencing  
38 with Section 14200). The transition of individuals described in  
39 this subparagraph shall begin no earlier than April 1, 2013.



1 (C) Phase 3. Individuals enrolled in a Healthy Families Program  
2 plan that is not a Medi-Cal managed care plan and does not contract  
3 or subcontract with a Medi-Cal managed care plan shall be enrolled  
4 in a Medi-Cal managed care plan in that county. Enrollment shall  
5 include consideration of the individuals' primary care providers  
6 pursuant to the requirements of this section and Section 14011.6,  
7 and to the extent the individuals are otherwise eligible under this  
8 chapter and Chapter 8 (commencing with Section 14200). The  
9 transition of individuals described in this subparagraph shall begin  
10 no earlier than August 1, 2013.

11 (D) Phase 4.

12 (i) Individuals residing in a county that is not a Medi-Cal  
13 managed care county shall be provided services under the Medi-Cal  
14 fee-for-service delivery system, subject to clause (ii). The transition  
15 of individuals described in this subparagraph shall begin no earlier  
16 than September 1, 2013.

17 (ii) In the event the department creates a managed health care  
18 system in the counties described in clause (i), individuals residing  
19 in those counties shall be enrolled in managed health care plans  
20 pursuant to this chapter and Chapter 8 (commencing with Section  
21 14200).

22 (2) For the transition of individuals pursuant to subparagraphs  
23 (A), (B), (C), and (D) of paragraph (1), implementation plans shall  
24 be developed to ensure state and county systems readiness, health  
25 plan network adequacy, and continuity of care with the goal of  
26 ensuring there is no disruption of service and there is continued  
27 access to coverage for all transitioning individuals. If an individual  
28 is not retained with his or her current primary care provider, the  
29 implementation plan shall require the managed care plan to report  
30 to the department as to how continuity of care is being provided.  
31 Transition of individuals described in subparagraphs (A), (B), (C),  
32 and (D) of paragraph (1) shall not occur until 90 days after the  
33 department has submitted an implementation plan to the fiscal and  
34 policy committees of the Legislature. The implementation plans  
35 shall include, but not be limited to, information on health and  
36 dental plan network adequacy, continuity of care, eligibility and  
37 enrollment requirements, consumer protections, and family  
38 notifications.

1 (3) The following requirements shall be in place prior to  
2 implementation of Phase 1, and shall be required for all phases of  
3 the transition:

4 (A) Managed care plan performance measures shall be integrated  
5 and coordinated with the Healthy Families Program performance  
6 standards including, but not limited to, child-only Healthcare  
7 Effectiveness Data and Information Set (HEDIS) measures, and  
8 measures indicative of performance in serving children and  
9 adolescents. These performance measures shall also be in  
10 compliance with all performance requirements under the  
11 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
12 (commencing with Section 1340) of Division 2 of the Health and  
13 Safety Code) and existing Medi-Cal managed care performance  
14 measurements and standards as set forth in this chapter and Chapter  
15 8 (commencing with Section 14200) of Title 22 of the California  
16 Code of Regulations, and all-plan letters, including, but not limited  
17 to, network adequacy and linguistic services, and shall be met prior  
18 to the transition of individuals pursuant to Phase 1.

19 (B) Medi-Cal managed care health plans shall allow enrollees  
20 to remain with their current primary care provider. If an individual  
21 does not remain with the current primary care provider, the plan  
22 shall report to the department as to how continuity of care is being  
23 provided.

24 (4) (A) As individuals are transitioned pursuant to  
25 subparagraphs (A), (B), (C), and (D) of paragraph (1), for  
26 individuals residing in all counties except the Counties of  
27 Sacramento and Los Angeles, their dental coverage shall transition  
28 to fee-for-service dental coverage and may be provided by their  
29 current provider if the provider is a Medi-Cal fee-for-service dental  
30 provider.

31 (B) For individuals residing in the County of Sacramento, their  
32 dental coverage shall continue to be provided by their current  
33 dental managed care plan if their plan is a Medi-Cal dental  
34 managed care plan. If their plan is not a Medi-Cal dental managed  
35 care plan, they shall select a Medi-Cal dental managed care plan.  
36 If they do not choose a Medi-Cal dental managed care plan, they  
37 shall be assigned to a plan with preference to a plan with which  
38 their current provider is a contracted provider. Any children in the  
39 Healthy Families Program transitioned into Medi-Cal dental  
40 managed care plans shall also have access to the beneficiary dental

1 exception process, pursuant to Section 14089.09. Further, the  
2 Sacramento advisory committee, established pursuant to Section  
3 14089.08, shall be consulted regarding the transition of children  
4 in the Healthy Families Program into Medi-Cal dental managed  
5 care plans.

6 (C) (i) For individuals residing in the County of Los Angeles,  
7 for purposes of continuity of care, their dental coverage shall  
8 continue to be provided by their current dental managed care plan  
9 if that plan is a Medi-Cal dental managed care plan. If their plan  
10 is not a Medi-Cal dental managed care plan, they may select a  
11 Medi-Cal dental managed care plan or choose to move into  
12 Medi-Cal fee-for-service dental coverage.

13 (ii) It is the intent of the Legislature that children transitioning  
14 to Medi-Cal under this section have a choice in dental coverage,  
15 as provided under existing law.

16 (5) Dental health plan performance measures and benchmarks  
17 shall be in accordance with Section 14459.6.

18 (6) Medi-Cal managed care health and dental plans shall report  
19 to the department, as frequently as specified by the department,  
20 specified information pertaining to transition implementation,  
21 enrollees, and providers, including, but not limited to, grievances  
22 related to access to care, continuity of care requests and outcomes,  
23 and changes to provider networks, including provider enrollment  
24 and disenrollment changes. The plans shall report this information  
25 by county, and in the format requested by the department.

26 (7) The department may develop supplemental implementation  
27 plans to separately account for the transition of individuals from  
28 the Healthy Families Program to specific Medi-Cal delivery  
29 systems.

30 (8) The department shall consult with the Legislature and  
31 stakeholders, including, but not limited to, consumers, families,  
32 consumer advocates, counties, providers, and health and dental  
33 plans, in the development of implementation plans described in  
34 paragraph (3) for individuals who are transitioned to Medi-Cal in  
35 Phase 2, Phase 3, and Phase 4, as described in subparagraphs (B),  
36 (C), and (D) of paragraph (1).

37 (9) (A) The department shall consult and collaborate with the  
38 Department of Managed Health Care in assessing Medi-Cal  
39 managed care health plan network adequacy in accordance with  
40 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter

1 2.2 (commencing with Section 1340) of Division 2 of the Health  
2 and Safety Code) for purposes of the developed transition plans  
3 pursuant to paragraph (2) for each of the phases.

4 (B) For purposes of individuals transitioning in Phase 1, as  
5 described in subparagraph (A) of paragraph (1), network adequacy  
6 shall be assessed as described in this paragraph and findings from  
7 this assessment shall be provided to the fiscal and appropriate  
8 policy committees of the Legislature 60 days prior to the effective  
9 date of implementing this transition.

10 (10) The department shall provide monthly status reports to the  
11 fiscal and policy committees of the Legislature on the transition  
12 commencing no later than February 15, 2013. This monthly status  
13 transition report shall include, but not be limited to, information  
14 on health plan grievances related to access to care, continuity of  
15 care requests and outcomes, changes to provider networks,  
16 including provider enrollment and disenrollment changes, and  
17 eligibility performance standards pursuant to subdivision (n). A  
18 final comprehensive report shall be provided within 90 days after  
19 completion of the last phase of transition.

20 (f) (1) The department and MRMIB shall work collaboratively  
21 in the development of notices for individuals transitioned pursuant  
22 to paragraph (1) of subdivision (e).

23 (2) The state shall provide written notice to individuals enrolled  
24 in the Healthy Families Program of their transition to the Medi-Cal  
25 program at least 60 days prior to the transition of individuals in  
26 Phase 1, as described in subparagraph (A) of paragraph (1) of  
27 subdivision (e), and at least 90 days prior to transition of  
28 individuals in Phases 2, 3, and 4, as described in subparagraphs  
29 (B), (C), and (D) of paragraph (1) of subdivision (e).

30 (3) Notices developed pursuant to this subdivision shall ensure  
31 individuals are informed regarding the transition, including, but  
32 not limited to, how individuals' systems of care may change, when  
33 the changes will occur, and whom they can contact for assistance  
34 when choosing a Medi-Cal managed care plan, if applicable,  
35 including a toll-free telephone number, and with problems they  
36 may encounter. The department shall consult with stakeholders  
37 regarding notices developed pursuant to this subdivision. These  
38 notices shall be developed using plain language, and written  
39 translation of the notices shall be available for those who are

1 limited English proficient or non-English speaking in all Medi-Cal  
2 threshold languages.

3 (4) The department shall designate department liaisons  
4 responsible for the coordination of the Healthy Families Program  
5 and may establish a children's-focused section for this purpose  
6 and to facilitate the provision of health care services for children  
7 enrolled in Medi-Cal.

8 (5) The department shall provide a process for ongoing  
9 stakeholder consultation and make information publicly available,  
10 including the achievement of benchmarks, enrollment data,  
11 utilization data, and quality measures.

12 (g) (1) In order to aid the transition of Healthy Families Program  
13 enrollees, MRMIB, on the effective date of the act that added this  
14 section and continuing through the completion of the transition of  
15 Healthy Families Program enrollees to the Medi-Cal program,  
16 shall begin requesting and collecting from health plans contracting  
17 with MRMIB pursuant to Part 6.2 (commencing with Section  
18 12693) of Division 2 of the Insurance Code, information about  
19 each health plan's provider network, including, but not limited to,  
20 the primary care and all specialty care providers assigned to  
21 individuals enrolled in the health plan. MRMIB shall obtain this  
22 information in a manner that coincides with the transition activities  
23 described in subdivision (d), and shall provide all of the collected  
24 information to the department within 60 days of the department's  
25 request for this information to ensure timely transitions of Healthy  
26 Family Program enrollees.

27 (2) The department shall analyze the existing Healthy Families  
28 Program delivery system network and the Medi-Cal fee-for-service  
29 provider networks, including, but not limited to, Medi-Cal dental  
30 providers, to determine overlaps of the provider networks in each  
31 county for which there are no Medi-Cal managed care plans or  
32 dental managed care plans. To the extent there is a lack of existing  
33 Medi-Cal fee-for-service providers available to serve the Healthy  
34 Families Program enrollees, the department shall work with the  
35 Healthy Families Program provider community to encourage  
36 participation of those providers in the Medi-Cal program, and  
37 develop a streamlined process to enroll them as Medi-Cal  
38 providers.

39 (3) (A) MRMIB, within 60 days of a request by the department,  
40 shall provide the department any data, information, or record

1 concerning the Healthy Families Program as is necessary to  
2 implement the transition of enrollment required pursuant to this  
3 section.

4 (B) Notwithstanding any other provision of law, all of the  
5 following shall apply:

6 (i) The term “data, information, or record” shall include, but is  
7 not limited to, personal information as defined in Section 1798.3  
8 of the Civil Code.

9 (ii) Any data, information, or record shall be exempt from  
10 disclosure under the California Public Records Act (Chapter 3.5  
11 (commencing with Section 6250) of Division 7 of Title 1 of the  
12 Government Code) and any other law, to the same extent that it  
13 was exempt from disclosure or privileged prior to the provision  
14 of the data, information, or record to the department.

15 (iii) The provision of any such data, information, or record to  
16 the department shall not constitute a waiver of any evidentiary  
17 privilege or exemption from disclosure.

18 (iv) The department shall keep all data, information, or records  
19 provided by MRMIB confidential to the full extent permitted by  
20 law, including, but not limited to, the California Public Records  
21 Act (Chapter 3.5 (commencing with Section 6250) of Division 7  
22 of Title 1 of the Government Code), and consistent with MRMIB’s  
23 contractual obligations to keep the data, information, or records  
24 confidential.

25 (h) This section shall be implemented only to the extent that all  
26 necessary federal approvals and waivers have been obtained and  
27 the enhanced rate of federal financial participation under Title XXI  
28 of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.)  
29 is available for targeted low-income children pursuant to that act.

30 (i) (1) The department shall exercise the option pursuant to  
31 Section 1916A of the federal Social Security Act (42 U.S.C. Sec.  
32 1396o-1) to impose premiums for individuals described in  
33 subdivision (a) of Section 14005.26 whose family income has been  
34 determined to be above 150 percent and up to and including 200  
35 percent of the federal poverty level, after application of the income  
36 disregard pursuant to subdivision (b) of Section 14005.26. The  
37 department shall not impose premiums under this subdivision for  
38 individuals described in subdivision (a) of Section 14005.26 whose  
39 family income has been determined to be at or below 150 percent  
40 of the federal poverty level, after application of the income

1 disregard pursuant to subdivision (b) of Section 14005.26. The  
2 department shall obtain federal approval for the implementation  
3 of this subdivision.

4 (2) All premiums imposed under this section shall equal the  
5 family contributions described in paragraph (2) of subdivision (d)  
6 of Section 12693.43 of the Insurance Code and shall be reduced  
7 in conformity with subdivisions (e) and (f) of Section 12693.43  
8 of the Insurance Code.

9 (j) The department shall not enroll targeted low-income children  
10 described in this section in the Medi-Cal program until all  
11 necessary federal approvals and waivers have been obtained, or  
12 no sooner than January 1, 2013.

13 (k) (1) To the extent the new budget methodology pursuant to  
14 paragraph (6) of subdivision (a) of Section 14154 is not fully  
15 operational, for the purposes of implementing this section, for  
16 individuals described in subdivision (a) whose family income has  
17 been determined to be at or below 150 percent of the federal  
18 poverty level, as determined pursuant to subdivision (b), the  
19 department shall utilize the budgeting methodology for this  
20 population as contained in the November 2011 Medi-Cal Local  
21 Assistance Estimate for Medi-Cal county administration costs for  
22 eligibility operations.

23 (2) For purposes of implementing this section, the department  
24 shall include in the Medi-Cal Local Assistance Estimate an amount  
25 for Medi-Cal eligibility operations associated with the transfer of  
26 Healthy Families Program enrollees eligible pursuant to subdivision  
27 (a) of Section 14005.26 and whose family income is determined  
28 to be above 150 percent and up to and including 200 percent of  
29 the federal poverty level, after application of the income disregard  
30 pursuant to subdivision (b) of Section 14005.26. In developing an  
31 estimate for this activity, the department shall consider the  
32 projected number of final eligibility determinations each county  
33 will process and projected county costs. Within 60 days of the  
34 passage of the annual Budget Act, the department shall notify each  
35 county of their allocation for this activity based upon the amount  
36 allotted in the annual Budget Act for this purpose.

37 (l) When the new budget methodology pursuant to paragraph  
38 (6) of subdivision (a) of Section 14154 is fully operational, the  
39 new budget methodology shall be utilized to reimburse counties

1 for eligibility determinations made for individuals pursuant to this  
2 section.

3 (m) Except as provided in subdivision (b), eligibility  
4 determinations and annual redeterminations made pursuant to this  
5 section shall be performed by county eligibility workers.

6 (n) In conducting the eligibility determinations for individuals  
7 pursuant to this section and Section 14005.26, the following  
8 reporting and performance standards shall apply to all counties:

9 (1) Counties shall report to the department, in a manner and for  
10 a time period determined by the department, in consultation with  
11 the County Welfare Directors Association, the number of  
12 applications processed on a monthly basis, a breakout of the  
13 applications based on income using the federal percentage of  
14 poverty levels, the final disposition of each application, including  
15 information on the approved Medi-Cal program, if applicable, and  
16 the average number of days it took to make the final eligibility  
17 determination for applications submitted directly to the county and  
18 from the single point of entry (SPE).

19 (2) Notwithstanding any other law, the following performance  
20 standards shall be applied to counties for eligibility determinations  
21 for individuals eligible pursuant to this section:

22 (A) For children whose applications are received by the county  
23 human services department from the SPE, the following standards  
24 shall apply:

25 (i) Applications for children who are granted accelerated  
26 enrollment by the SPE shall be processed according to the  
27 timeframes specified in subdivision (d) of Section 14154.

28 (ii) Applications for children who are not granted accelerated  
29 enrollment by the SPE due to the existence of an already active  
30 Medi-Cal case shall be processed according to the timeframes  
31 specified in subdivision (d) of Section 14154.

32 (iii) For applications for children who are not described in clause  
33 (i) or (ii), 90 percent shall be processed within 10 working days  
34 of being received, complete and without client errors.

35 (iv) If an application described in this section also contains  
36 adults, and the adult applicants are required to submit additional  
37 information beyond the information provided for the children, the  
38 county shall process the eligibility for the child or children without  
39 delay, consistent with this section while gathering the necessary  
40 information to process eligibility for the adults.



1 (B) The department, in consultation with the County Welfare  
2 Directors Association, shall develop reporting requirements for  
3 the counties to provide regular data to the state regarding the  
4 timeliness and outcomes of applications processed by the counties  
5 that are received from the SPE.

6 (C) Performance thresholds and corrective action standards as  
7 set forth in Section 14154 shall apply.

8 (D) For applications received directly by the county, these  
9 applications shall be processed by the counties in accordance with  
10 the performance standards established under subdivision (d) of  
11 Section 14154.

12 (3) This subdivision shall be implemented no sooner than  
13 January 1, 2013.

14 (4) Twelve months after implementation of this section pursuant  
15 to subdivision (e), the department shall provide enrollment  
16 information regarding individuals determined eligible pursuant to  
17 subdivision (a) to the fiscal and appropriate policy committees of  
18 the Legislature.

19 (o) (1) Notwithstanding Chapter 3.5 (commencing with Section  
20 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
21 for purposes of this transition, the department, without taking any  
22 further regulatory action, shall implement, interpret, or make  
23 specific this section by means of all-county letters, plan letters,  
24 plan or provider bulletins, or similar instructions until the time  
25 regulations are adopted. It is the intent of the Legislature that the  
26 department be allowed temporary authority as necessary to  
27 implement program changes until completion of the regulatory  
28 process.

29 (2) To the extent otherwise required by Chapter 3.5  
30 (commencing with Section 11340) of Part 1 of Division 3 of Title  
31 2 of the Government Code, the department shall adopt emergency  
32 regulations implementing this section no later than July 1, 2014.  
33 The department may thereafter readopt the emergency regulations  
34 pursuant to that chapter. The adoption and readoption, by the  
35 department, of regulations implementing this section shall be  
36 deemed to be an emergency and necessary to avoid serious harm  
37 to the public peace, health, safety, or general welfare for purposes  
38 of Sections 11346.1 and 11349.6 of the Government Code, and  
39 the department is hereby exempted from the requirement that it

1 describe facts showing the need for immediate action and from  
2 review by the Office of Administrative Law.

3 (p) To implement this section, the department may enter into  
4 and continue contracts with the Healthy Families Program  
5 administrative vendor, for the purposes of implementing and  
6 maintaining the necessary systems and activities for providing  
7 health care coverage to optional targeted low-income children in  
8 the Medi-Cal program for purposes of accelerated enrollment  
9 application processing by single point of entry,  
10 noneligibility-related case maintenance and premium collection,  
11 maintenance of the Health-E-App Web portal, call center staffing  
12 and operations, certified application assistant services, and  
13 reporting capabilities. To further implement this section, the  
14 department may also enter into a contract with the Health Care  
15 Options Broker of the department for purposes of managed care  
16 enrollment activities. The contracts entered into or amended under  
17 this section may initially be completed on a noncompetitive bid  
18 basis and are exempt from the Public Contract Code. Contracts  
19 thereafter shall be entered into or amended on a competitive bid  
20 basis and shall be subject to the Public Contract Code.

21 (q) (1) If at any time the director determines that this section  
22 or any part of this section may jeopardize the state's ability to  
23 receive federal financial participation under the federal Patient  
24 Protection and Affordable Care Act (Public Law 111-148), or any  
25 amendment or extension of that act, or any additional federal funds  
26 that the director, in consultation with the Department of Finance,  
27 determines would be advantageous to the state, the director shall  
28 give notice to the fiscal and policy committees of the Legislature  
29 and to the Department of Finance. After giving notice, this section  
30 or any part of this section shall become inoperative on the date  
31 that the director executes a declaration stating that the department  
32 has determined, in consultation with the Department of Finance,  
33 that it is necessary to cease to implement this section or a part or  
34 parts thereof in order to receive federal financial participation, any  
35 increase in the federal medical assistance percentage available on  
36 or after October 1, 2008, or any additional federal funds that the  
37 director, in consultation with the Department of Finance, has  
38 determined would be advantageous to the state.

39 (2) The director shall retain the declaration described in  
40 paragraph (1), shall provide a copy of the declaration to the

1 Secretary of the State, the Secretary of the Senate, the Chief Clerk  
2 of the Assembly, and the Legislative Counsel, and shall post the  
3 declaration on the department's Internet Web site.

4 (3) In the event that the director makes a determination under  
5 paragraph (1) and this section ceases to be implemented, the  
6 children shall be enrolled back into the Healthy Families Program.

7 SEC. 215. Section 14043.25 of the Welfare and Institutions  
8 Code, as added by Section 8 of Chapter 797 of the Statutes of  
9 2012, is amended to read:

10 14043.25. (a) The application form for enrollment, the provider  
11 agreement, and all attachments or changes to either, shall be signed  
12 under penalty of perjury.

13 (b) The department may require that the application form for  
14 enrollment, the provider agreement, and all attachments or changes  
15 to either, submitted by an applicant or provider licensed pursuant  
16 to Division 2 (commencing with Section 500) of the Business and  
17 Professions Code, the Osteopathic Initiative Act, or the  
18 Chiropractic Initiative Act, be notarized.

19 (c) Application forms for enrollment, provider agreements, and  
20 all attachments or changes to either, submitted by an applicant or  
21 provider not subject to subdivision (b) shall be notarized. This  
22 subdivision shall not apply with respect to providers under the  
23 In-Home Supportive Services program.

24 (d) The department shall collect an application fee for  
25 enrollment, including enrollment at a new location or a change in  
26 location. The application fee shall not be collected from individual  
27 physicians or nonphysician practitioners, from providers that are  
28 enrolled in Medicare or another state's Medicaid program or  
29 Children's Health Insurance Program, from providers that submit  
30 proof that they have paid the applicable fee to a Medicare  
31 contractor or to another state's Medicaid program, or pursuant to  
32 an exemption or waiver pursuant to federal law. The application  
33 fee collected shall be in the amount calculated by the federal  
34 Centers for Medicare and Medicaid Services in effect for the  
35 calendar year during which the application for enrollment is  
36 received by the department.

37 (e) (1) This section shall become operative on the effective date  
38 of the state plan amendment necessary to implement this section,  
39 as stated in the declaration executed by the director pursuant to  
40 paragraph (2).

1 (2) Upon approval of the state plan amendment necessary to  
2 implement this section, the director shall execute a declaration, to  
3 be retained by the director and posted on the department's Internet  
4 Web site, that states this approval has been obtained and the  
5 effective date of the state plan amendment. The department shall  
6 transmit a copy of the declaration to the Legislature.

7 SEC. 216. Section 14043.7 of the Welfare and Institutions  
8 Code, as amended by Section 21 of Chapter 797 of the Statutes of  
9 2012, is amended to read:

10 14043.7. (a) The department may make unannounced visits  
11 to an applicant or to a provider for the purpose of determining  
12 whether enrollment, continued enrollment, or certification is  
13 warranted, or as necessary for the administration of the Medi-Cal  
14 program. At the time of the visit, the applicant or provider shall  
15 be required to demonstrate an established place of business  
16 appropriate and adequate for the services billed or claimed to the  
17 Medi-Cal program, as relevant to his or her scope of practice, as  
18 indicated by, but not limited to, the following:

- 19 (1) Being open and available to the general public.
- 20 (2) Having regularly established and posted business hours.
- 21 (3) Having adequate supplies in stock on the premises.
- 22 (4) Meeting all local laws and ordinances regarding business  
23 licensing and operations.
- 24 (5) Having the necessary equipment and facilities to carry out  
25 day-to-day business for his or her practice.

26 (b) An unannounced visit pursuant to subdivision (a) shall be  
27 prohibited with respect to clinics licensed under Section 1204 of  
28 the Health and Safety Code, clinics exempt from licensure under  
29 Section 1206 of the Health and Safety Code, health facilities  
30 licensed under Chapter 2 (commencing with Section 1250) of  
31 Division 2 of the Health and Safety Code, and natural persons  
32 licensed or certified under Division 2 (commencing with Section  
33 500) of the Business and Professions Code, the Osteopathic  
34 Initiative Act, or the Chiropractic Initiative Act, unless the  
35 department has reason to believe that the provider will defraud or  
36 abuse the Medi-Cal program or lacks the organizational or  
37 administrative capacity to provide services under the program.

38 (c) Failure to remediate significant discrepancies in information  
39 provided to the department by the provider or significant  
40 discrepancies that are discovered as a result of an announced or

1 unannounced visit to a provider, for purposes of enrollment,  
2 continued enrollment, or certification pursuant to subdivision (a)  
3 shall make the provider subject to temporary suspension from the  
4 Medi-Cal program, which shall include temporary deactivation of  
5 the provider's number, including all business addresses used by  
6 the provider to obtain reimbursement from the Medi-Cal program.  
7 The director shall notify in writing the provider of the temporary  
8 suspension and deactivation of provider numbers, which shall take  
9 effect 15 days from the date of the notification. Notwithstanding  
10 Section 100171 of the Health and Safety Code, proceedings after  
11 the imposition of sanctions in this subdivision shall be in  
12 accordance with Section 14043.65.

13 (d) This section shall become inoperative on the effective date  
14 of the necessary state plan amendment, as stated in the declaration  
15 executed by the director pursuant to Section 14043.7 as added by  
16 Section 22 of the act that added this subdivision, and is repealed  
17 on the January 1 of the following year. The department shall post  
18 the declaration on its Internet Web site and transmit a copy of the  
19 declaration to the Legislature.

20 SEC. 217. Section 14043.7 of the Welfare and Institutions  
21 Code, as added by Section 22 of Chapter 797 of the Statutes of  
22 2012, is amended to read:

23 14043.7. (a) The department may make unannounced visits  
24 to an applicant or to a provider for the purpose of determining  
25 whether enrollment, continued enrollment, or certification is  
26 warranted, or as necessary for the administration of the Medi-Cal  
27 program. If an unannounced site visit is conducted by the  
28 department for any enrolled provider, the provider shall permit  
29 access to any and all of their provider locations. If a provider fails  
30 to permit access for any site visit, the application shall be denied  
31 and the provider shall be subject to deactivation. At the time of  
32 the visit, the applicant or provider shall be required to demonstrate  
33 an established place of business appropriate and adequate for the  
34 services billed or claimed to the Medi-Cal program, as relevant to  
35 his or her scope of practice, as indicated by, but not limited to, the  
36 following:

- 37 (1) Being open and available to the general public.
- 38 (2) Having regularly established and posted business hours.
- 39 (3) Having adequate supplies in stock on the premises.

1 (4) Meeting all local laws and ordinances regarding business  
2 licensing and operations.

3 (5) Having the necessary equipment and facilities to carry out  
4 day-to-day business for his or her practice.

5 (b) An unannounced visit pursuant to subdivision (a) shall be  
6 prohibited with respect to clinics licensed under Section 1204 of  
7 the Health and Safety Code, clinics exempt from licensure under  
8 Section 1206 of the Health and Safety Code, health facilities  
9 licensed under Chapter 2 (commencing with Section 1250) of  
10 Division 2 of the Health and Safety Code, and natural persons  
11 licensed or certified under Division 2 (commencing with Section  
12 500) of the Business and Professions Code, the Osteopathic  
13 Initiative Act, or the Chiropractic Initiative Act, unless the  
14 department has reason to believe that the provider will defraud or  
15 abuse the Medi-Cal program or lacks the organizational or  
16 administrative capacity to provide services under the program.

17 (c) Failure to remediate significant discrepancies in information  
18 provided to the department by the provider or significant  
19 discrepancies that are discovered as a result of an announced or  
20 unannounced visit to a provider, for purposes of enrollment,  
21 continued enrollment, or certification pursuant to subdivision (a)  
22 shall make the provider subject to temporary suspension from the  
23 Medi-Cal program, which shall include temporary deactivation of  
24 the provider's number, including all business addresses used by  
25 the provider to obtain reimbursement from the Medi-Cal program.  
26 The director shall notify in writing the provider of the temporary  
27 suspension and deactivation of provider numbers, which shall take  
28 effect 15 days from the date of the notification. Notwithstanding  
29 Section 100171 of the Health and Safety Code, proceedings after  
30 the imposition of sanctions in this subdivision shall be in  
31 accordance with Section 14043.65.

32 (d) (1) This section shall become operative on the effective  
33 date of the state plan amendment necessary to implement this  
34 section, as stated in the declaration executed by the director  
35 pursuant to paragraph (2).

36 (2) Upon approval of the state plan amendment necessary to  
37 implement this section under Section 455.416 of Title 42 of the  
38 Code of Federal Regulations, the director shall execute a  
39 declaration, to be retained by the director and posted on the  
40 department's Internet Web site, that states that this approval has

1 been obtained and the effective date of the state plan amendment.  
2 The department shall transmit a copy of the declaration to the  
3 Legislature.

4 SEC. 218. Section 14132.275 of the Welfare and Institutions  
5 Code is amended to read:

6 14132.275. (a) The department shall seek federal approval to  
7 establish the demonstration project described in this section  
8 pursuant to a Medicare or a Medicaid demonstration project or  
9 waiver, or a combination thereof. Under a Medicare demonstration,  
10 the department may contract with the federal Centers for Medicare  
11 and Medicaid Services (CMS) and demonstration sites to operate  
12 the Medicare and Medicaid benefits in a demonstration project  
13 that is overseen by the state as a delegated Medicare benefit  
14 administrator, and may enter into financing arrangements with  
15 CMS to share in any Medicare program savings generated by the  
16 demonstration project.

17 (b) After federal approval is obtained, the department shall  
18 establish the demonstration project that enables dual eligible  
19 beneficiaries to receive a continuum of services that maximizes  
20 access to, and coordination of, benefits between the Medi-Cal and  
21 Medicare programs and access to the continuum of long-term  
22 services and supports and behavioral health services, including  
23 mental health and substance use disorder treatment services. The  
24 purpose of the demonstration project is to integrate services  
25 authorized under the federal Medicaid Program (Title XIX of the  
26 federal Social Security Act (42 U.S.C. Sec. 1396 et seq.)) and the  
27 federal Medicare Program (Title XVIII of the federal Social  
28 Security Act (42 U.S.C. Sec. 1395 et seq.)). The demonstration  
29 project may also include additional services as approved through  
30 a demonstration project or waiver, or a combination thereof.

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

33 (1) “Behavioral health” means Medi-Cal services provided  
34 pursuant to Section 51341 of Title 22 of the California Code of  
35 Regulations and Drug Medi-Cal substance abuse services provided  
36 pursuant to Section 51341.1 of Title 22 of the California Code of  
37 Regulations, and any mental health benefits available under the  
38 Medicare Program.

39 (2) “Capitated payment model” means an agreement entered  
40 into between CMS, the state, and a managed care health plan, in

1 which the managed care health plan receives a capitation payment  
2 for the comprehensive, coordinated provision of Medi-Cal services  
3 and benefits under Medicare Part C (42 U.S.C. Sec. 1395w-21 et  
4 seq.) and Medicare Part D (42 U.S.C. Sec. 1395w-101 et seq.),  
5 and CMS shares the savings with the state from the improved  
6 provision of Medi-Cal and Medicare services that reduces the cost  
7 of those services. Medi-Cal services include long-term services  
8 and supports as defined in Section 14186.1, behavioral health  
9 services, and any additional services offered by the demonstration  
10 site.

11 (3) “Demonstration site” means a managed care health plan that  
12 is selected to participate in the demonstration project under the  
13 capitated payment model.

14 (4) “Dual eligible beneficiary” means an individual 21 years of  
15 age or older who is enrolled for benefits under Medicare Part A  
16 (42 U.S.C. Sec. 1395c et seq.) and Medicare Part B (42 U.S.C.  
17 Sec. 1395j et seq.) and is eligible for medical assistance under the  
18 Medi-Cal State Plan.

19 (d) No sooner than March 1, 2011, the department shall identify  
20 health care models that may be included in the demonstration  
21 project, shall develop a timeline and process for selecting,  
22 financing, monitoring, and evaluating the demonstration sites, and  
23 shall provide this timeline and process to the appropriate fiscal  
24 and policy committees of the Legislature. The department may  
25 implement these demonstration sites in phases.

26 (e) The department shall provide the fiscal and appropriate  
27 policy committees of the Legislature with a copy of any report  
28 submitted to CMS to meet the requirements under the  
29 demonstration project.

30 (f) Goals for the demonstration project shall include all of the  
31 following:

32 (1) Coordinate Medi-Cal and Medicare benefits across health  
33 care settings and improve the continuity of care across acute care,  
34 long-term care, behavioral health, including mental health and  
35 substance use disorder services, and home- and community-based  
36 services settings using a person-centered approach.

37 (2) Coordinate access to acute and long-term care services for  
38 dual eligible beneficiaries.



1 (3) Maximize the ability of dual eligible beneficiaries to remain  
2 in their homes and communities with appropriate services and  
3 supports in lieu of institutional care.

4 (4) Increase the availability of and access to home- and  
5 community-based services.

6 (5) Coordinate access to necessary and appropriate behavioral  
7 health services, including mental health and substance use disorder  
8 services.

9 (6) Improve the quality of care for dual eligible beneficiaries.

10 (7) Promote a system that is both sustainable and person and  
11 family centered by providing dual eligible beneficiaries with timely  
12 access to appropriate, coordinated health care services and  
13 community resources that enable them to attain or maintain  
14 personal health goals.

15 (g) No sooner than March 1, 2013, demonstration sites shall be  
16 established in up to eight counties, and shall include at least one  
17 county that provides Medi-Cal services via a two-plan model  
18 pursuant to Article 2.7 (commencing with Section 14087.3) and  
19 at least one county that provides Medi-Cal services under a  
20 county-organized health system pursuant to Article 2.8  
21 (commencing with Section 14087.5). The director shall consult  
22 with the Legislature, CMS, and stakeholders when determining  
23 the implementation date for this section. In determining the  
24 counties in which to establish a demonstration site, the director  
25 shall consider the following:

26 (1) Local support for integrating medical care, long-term care,  
27 and home- and community-based services networks.

28 (2) A local stakeholder process that includes health plans,  
29 providers, mental health representatives, community programs,  
30 consumers, designated representatives of in-home supportive  
31 services personnel, and other interested stakeholders in the  
32 development, implementation, and continued operation of the  
33 demonstration site.

34 (h) In developing the process for selecting, financing,  
35 monitoring, and evaluating the health care models for the  
36 demonstration project, the department shall enter into a  
37 memorandum of understanding with CMS. Upon completion, the  
38 memorandum of understanding shall be provided to the fiscal and  
39 appropriate policy committees of the Legislature and posted on  
40 the department's Internet Web site.

1 (i) The department shall negotiate the terms and conditions of  
2 the memorandum of understanding, which shall address, but are  
3 not limited to, the following:

4 (1) Reimbursement methods for a capitated payment model.  
5 Under the capitated payment model, the demonstration sites shall  
6 meet all of the following requirements:

7 (A) Have Medi-Cal managed care health plan and Medicare  
8 dual eligible-special needs plan contract experience, or evidence  
9 of the ability to meet these contracting requirements.

10 (B) Be in good financial standing and meet licensure  
11 requirements under the Knox-Keene Health Care Service Plan Act  
12 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division  
13 2 of the Health and Safety Code), except for county-organized  
14 health system plans that are exempt from licensure pursuant to  
15 Section 14087.95.

16 (C) Meet quality measures, which may include Medi-Cal and  
17 Medicare Healthcare Effectiveness Data and Information Set  
18 measures and other quality measures determined or developed by  
19 the department or CMS.

20 (D) Demonstrate a local stakeholder process that includes dual  
21 eligible beneficiaries, managed care health plans, providers, mental  
22 health representatives, county health and human services agencies,  
23 designated representatives of in-home supportive services  
24 personnel, and other interested stakeholders that advise and consult  
25 with the demonstration site in the development, implementation,  
26 and continued operation of the demonstration project.

27 (E) Pay providers reimbursement rates sufficient to maintain  
28 an adequate provider network and ensure access to care for  
29 beneficiaries.

30 (F) Follow final policy guidance determined by CMS and the  
31 department with regard to reimbursement rates for providers  
32 pursuant to paragraphs (4) to (7), inclusive, of subdivision (o).

33 (G) To the extent permitted under the demonstration, pay  
34 noncontracted hospitals prevailing Medicare fee-for-service rates  
35 for traditionally Medicare-covered benefits and prevailing  
36 Medi-Cal fee-for-service rates for traditionally Medi-Cal-covered  
37 benefits.

38 (2) Encounter data reporting requirements for both Medi-Cal  
39 and Medicare services provided to beneficiaries enrolling in the  
40 demonstration project.

1 (3) Quality assurance withholding from the demonstration site  
2 payment, to be paid only if quality measures developed as part of  
3 the memorandum of understanding and plan contracts are met.

4 (4) Provider network adequacy standards developed by the  
5 department and CMS, in consultation with the Department of  
6 Managed Health Care, the demonstration site, and stakeholders.

7 (5) Medicare and Medi-Cal appeals and hearing processes.

8 (6) Unified marketing requirements and combined review  
9 process by the department and CMS.

10 (7) Combined quality management and consolidated reporting  
11 process by the department and CMS.

12 (8) Procedures related to combined federal and state contract  
13 management to ensure access, quality, program integrity, and  
14 financial solvency of the demonstration site.

15 (9) To the extent permissible under federal requirements,  
16 implementation of the provisions of Sections 14182.16 and  
17 14182.17 that are applicable to beneficiaries simultaneously eligible  
18 for full-scope benefits under Medi-Cal and the Medicare Program.

19 (10) (A) In consultation with the hospital industry, CMS  
20 approval to ensure that Medicare supplemental payments for direct  
21 graduate medical education and Medicare add-on payments,  
22 including indirect medical education and disproportionate share  
23 hospital adjustments continue to be made available to hospitals  
24 for services provided under the demonstration.

25 (B) The department shall seek CMS approval for CMS to  
26 continue these payments either outside the capitation rates or, if  
27 contained within the capitation rates, and to the extent permitted  
28 under the demonstration project, shall require demonstration sites  
29 to provide this reimbursement to hospitals.

30 (11) To the extent permitted under the demonstration project,  
31 the default rate for noncontracting providers of physician services  
32 shall be the prevailing Medicare fee schedule for services covered  
33 by the Medicare Program and the prevailing Medi-Cal fee schedule  
34 for services covered by the Medi-Cal program.

35 (j) (1) The department shall comply with and enforce the terms  
36 and conditions of the memorandum of understanding with CMS,  
37 as specified in subdivision (i). To the extent that the terms and  
38 conditions do not address the specific selection, financing,  
39 monitoring, and evaluation criteria listed in subdivision (i), the  
40 department:

1 (A) Shall require the demonstration site to do all of the  
2 following:

3 (i) Comply with additional site readiness criteria specified by  
4 the department.

5 (ii) Comply with long-term services and support requirements  
6 in accordance with Article 5.7 (commencing with Section 14186).

7 (iii) To the extent permissible under federal requirements,  
8 comply with the provisions of Sections 14182.16 and 14182.17  
9 that are applicable to beneficiaries simultaneously eligible for  
10 full-scope benefits under both Medi-Cal and the Medicare Program.

11 (iv) Comply with all transition of care requirements for Medicare  
12 Part D benefits as described in Chapters 6 and 14 of the Medicare  
13 Managed Care Manual, published by CMS, including transition  
14 timeframes, notices, and emergency supplies.

15 (B) May require the demonstration site to forgo charging  
16 premiums, coinsurance, copayments, and deductibles for Medicare  
17 Part C and Medicare Part D services.

18 (2) The department shall notify the Legislature within 30 days  
19 of the implementation of each provision in paragraph (1).

20 (k) The director may enter into exclusive or nonexclusive  
21 contracts on a bid or negotiated basis and may amend existing  
22 managed care contracts to provide or arrange for services provided  
23 under this section. Contracts entered into or amended pursuant to  
24 this section shall be exempt from the provisions of Chapter 2  
25 (commencing with Section 10290) of Part 2 of Division 2 of the  
26 Public Contract Code and Chapter 6 (commencing with Section  
27 14825) of Part 5.5 of Division 3 of Title 2 of the Government  
28 Code.

29 (l) (1) (A) Except for the exemptions provided for in this  
30 section, the department shall enroll dual eligible beneficiaries into  
31 a demonstration site unless the beneficiary makes an affirmative  
32 choice to opt out of enrollment or is already enrolled on or before  
33 June 1, 2013, in a managed care organization licensed under the  
34 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
35 (commencing with Section 1340) of Division 2 of the Health and  
36 Safety Code) that has previously contracted with the department  
37 as a primary care case management plan pursuant to Article 2.9  
38 (commencing with Section 14088) to provide services to  
39 beneficiaries who are HIV positive or who have been diagnosed

1 with AIDS or in any entity with a contract with the department  
2 pursuant to Chapter 8.75 (commencing with Section 14591).

3 (B) Dual eligible beneficiaries who opt out of enrollment into  
4 a demonstration site may choose to remain enrolled in  
5 fee-for-service Medicare or a Medicare Advantage plan for their  
6 Medicare benefits, but shall be mandatorily enrolled into a  
7 Medi-Cal managed care health plan pursuant to Section 14182.16,  
8 except as exempted under subdivision (c) of Section 14182.16.

9 (C) (i) Persons meeting requirements for the Program of  
10 All-Inclusive Care for the Elderly (PACE) pursuant to Chapter  
11 8.75 (commencing with Section 14591) or a managed care  
12 organization licensed under the Knox-Keene Health Care Service  
13 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)  
14 of Division 2 of the Health and Safety Code) that has previously  
15 contracted with the department as a primary care case management  
16 plan pursuant to Article 2.9 (commencing with Section 14088) to  
17 provide services to beneficiaries who are HIV positive or who  
18 have been diagnosed with AIDS, may select either of these  
19 managed care health plans for their Medicare and Medi-Cal benefits  
20 if one is available in that county.

21 (ii) In areas where a PACE plan is available, the PACE plan  
22 shall be presented as an enrollment option, included in all  
23 enrollment materials, enrollment assistance programs, and outreach  
24 programs related to the demonstration project, and made available  
25 to beneficiaries whenever enrollment choices and options are  
26 presented. Persons meeting the age qualifications for PACE and  
27 who choose PACE shall remain in the fee-for-service Medi-Cal  
28 and Medicare programs, and shall not be assigned to a managed  
29 care health plan for the lesser of 60 days or until they are assessed  
30 for eligibility for PACE and determined not to be eligible for a  
31 PACE plan. Persons enrolled in a PACE plan shall receive all  
32 Medicare and Medi-Cal services from the PACE program pursuant  
33 to the three-way agreement between the PACE program, the  
34 department, and the federal Centers for Medicare and Medicaid  
35 Services.

36 (2) To the extent that federal approval is obtained, the  
37 department may require that any beneficiary, upon enrollment in  
38 a demonstration site, remain enrolled in the Medicare portion of  
39 the demonstration project on a mandatory basis for six months  
40 from the date of initial enrollment. After the sixth month, a dual

1 eligible beneficiary may elect to enroll in a different demonstration  
2 site, a different Medicare Advantage plan, fee-for-service Medicare,  
3 PACE, or a managed care organization licensed under the  
4 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
5 (commencing with Section 1340) of Division 2 of the Health and  
6 Safety Code) that has previously contracted with the department  
7 as a primary care case management plan pursuant to Article 2.9  
8 (commencing with Section 14088) to provide services to  
9 beneficiaries who are HIV positive or who have been diagnosed  
10 with AIDS, for his or her Medicare benefits.

11 (A) During the six-month mandatory enrollment in a  
12 demonstration site, a beneficiary may continue receiving services  
13 from an out-of-network Medicare provider for primary and  
14 specialty care services only if all of the following criteria are met:

15 (i) The dual eligible beneficiary demonstrates an existing  
16 relationship with the provider prior to enrollment in a  
17 demonstration site.

18 (ii) The provider is willing to accept payment from the  
19 demonstration site based on the current Medicare fee schedule.

20 (iii) The demonstration site would not otherwise exclude the  
21 provider from its provider network due to documented quality of  
22 care concerns.

23 (B) The department shall develop a process to inform providers  
24 and beneficiaries of the availability of continuity of services from  
25 an existing provider and ensure that the beneficiary continues to  
26 receive services without interruption.

27 (3) (A) Notwithstanding subparagraph (A) of paragraph (1), a  
28 dual eligible beneficiary shall be excluded from enrollment in the  
29 demonstration project if the beneficiary meets any of the following:

30 (i) The beneficiary has a prior diagnosis of end-stage renal  
31 disease. This clause shall not apply to beneficiaries diagnosed with  
32 end-stage renal disease subsequent to enrollment in the  
33 demonstration project. The director may, with stakeholder input  
34 and federal approval, authorize beneficiaries with a prior diagnosis  
35 of end-stage renal disease in specified counties to voluntarily enroll  
36 in the demonstration project.

37 (ii) The beneficiary has other health coverage, as defined in  
38 paragraph (4) of subdivision (b) of Section 14182.16.

39 (iii) The beneficiary is enrolled in a home- and community-based  
40 waiver that is a Medi-Cal benefit under Section 1915(c) of the

1 federal Social Security Act (42 U.S.C. Sec. 1396n(c)), except for  
2 persons enrolled in Multipurpose Senior Services Program services.

3 (iv) The beneficiary is receiving services through a regional  
4 center or state developmental center.

5 (v) The beneficiary resides in a geographic area or ZIP Code  
6 not included in managed care, as determined by the department  
7 and CMS.

8 (vi) The beneficiary resides in one of the Veterans' Homes of  
9 California, as described in Chapter 1 (commencing with Section  
10 1010) of Division 5 of the Military and Veterans Code.

11 (B) (i) Beneficiaries who have been diagnosed with HIV/AIDS  
12 may opt out of the demonstration project at the beginning of any  
13 month. The State Department of Public Health may share relevant  
14 data relating to a beneficiary's enrollment in the AIDS Drug  
15 Assistance Program with the department, and the department may  
16 share relevant data relating to HIV-positive beneficiaries with the  
17 State Department of Public Health.

18 (ii) The information provided by the State Department of Public  
19 Health pursuant to this subparagraph shall not be further disclosed  
20 by the State Department of Health Care Services, and shall be  
21 subject to the confidentiality protections of subdivisions (d) and  
22 (e) of Section 121025 of the Health and Safety Code, except this  
23 information may be further disclosed as follows:

24 (I) To the person to whom the information pertains or the  
25 designated representative of that person.

26 (II) To the Office of AIDS within the State Department of Public  
27 Health.

28 (C) Beneficiaries who are Indians receiving Medi-Cal services  
29 in accordance with Section 55110 of Title 22 of the California  
30 Code of Regulations may opt out of the demonstration project at  
31 the beginning of any month.

32 (D) The department, with stakeholder input, may exempt specific  
33 categories of dual eligible beneficiaries from enrollment  
34 requirements in this section based on extraordinary medical needs  
35 of specific patient groups or to meet federal requirements.

36 (4) For the 2013 calendar year, the department shall offer federal  
37 Medicare Improvements for Patients and Providers Act of 2008  
38 (Public Law 110-275) compliant contracts to existing Medicare  
39 Advantage Special Needs Plans (D-SNP plans) to continue to  
40 provide Medicare benefits to their enrollees in their service areas

1 as approved on January 1, 2012. In the 2013 calendar year,  
2 beneficiaries in Medicare Advantage and D-SNP plans shall be  
3 exempt from the enrollment provisions of subparagraph (A) of  
4 paragraph (1), but may voluntarily choose to enroll in the  
5 demonstration project. Enrollment into the demonstration project's  
6 managed care health plans shall be reassessed in 2014 depending  
7 on federal reauthorization of the D-SNP model and the  
8 department's assessment of the demonstration plans.

9 (5) For the 2013 calendar year, demonstration sites shall not  
10 offer to enroll dual eligible beneficiaries eligible for the  
11 demonstration project into the demonstration site's D-SNP.

12 (6) The department shall not terminate contracts in a  
13 demonstration site with a managed care organization licensed  
14 under the Knox-Keene Health Care Service Plan Act of 1975  
15 (Chapter 2.2 (commencing with Section 1340) of Division 2 of  
16 the Health and Safety Code) that has previously contracted with  
17 the department as a primary care case management plan pursuant  
18 to Article 2.9 (commencing with Section 14088) to provide services  
19 to beneficiaries who are HIV positive beneficiaries or who have  
20 been diagnosed with AIDS and with any entity with a contract  
21 pursuant to Chapter 8.75 (commencing with Section 14591), except  
22 as provided in the contract or pursuant to state or federal law.

23 (m) Notwithstanding Section 10231.5 of the Government Code,  
24 the department shall conduct an evaluation, in partnership with  
25 CMS, to assess outcomes and the experience of dual eligibles in  
26 these demonstration sites and shall provide a report to the  
27 Legislature after the first full year of demonstration operation, and  
28 annually thereafter. A report submitted to the Legislature pursuant  
29 to this subdivision shall be submitted in compliance with Section  
30 9795 of the Government Code. The department shall consult with  
31 stakeholders regarding the scope and structure of the evaluation.

32 (n) This section shall be implemented only if and to the extent  
33 that federal financial participation or funding is available.

34 (o) It is the intent of the Legislature that:

35 (1) In order to maintain adequate provider networks,  
36 demonstration sites shall reimburse providers at rates sufficient to  
37 ensure access to care for beneficiaries.

38 (2) Savings under the demonstration project are intended to be  
39 achieved through shifts in utilization, and not through reduced  
40 reimbursement rates to providers.



1 (3) Reimbursement policies shall not prevent demonstration  
2 sites and providers from entering into payment arrangements that  
3 allow for the alignment of financial incentives and provide  
4 opportunities for shared risk and shared savings in order to promote  
5 appropriate utilization shifts, which encourage the use of home-  
6 and community-based services and quality of care for dual eligible  
7 beneficiaries enrolled in the demonstration sites.

8 (4) To the extent permitted under the demonstration project,  
9 and to the extent that a public entity voluntarily provides an  
10 intergovernmental transfer for this purpose, both of the following  
11 shall apply:

12 (A) The department shall work with CMS in ensuring that the  
13 capitation rates under the demonstration project are inclusive of  
14 funding currently provided through certified public expenditures  
15 supplemental payment programs that would otherwise be impacted  
16 by the demonstration project.

17 (B) Demonstration sites shall pay to a public entity voluntarily  
18 providing intergovernmental transfers that previously received  
19 reimbursement under a certified public expenditures supplemental  
20 payment program, rates that include the additional funding under  
21 the capitation rates that are funded by the public entity's  
22 intergovernmental transfer.

23 (5) The department shall work with CMS in developing other  
24 reimbursement policies and shall inform demonstration sites,  
25 providers, and the Legislature of the final policy guidance.

26 (6) The department shall seek approval from CMS to permit  
27 the provider payment requirements contained in subparagraph (G)  
28 of paragraph (1) and paragraphs (10) and (11) of subdivision (i),  
29 and Section 14132.276.

30 (7) Demonstration sites that contract with hospitals for hospital  
31 services on a fee-for-service basis that otherwise would have been  
32 traditionally Medicare services will achieve savings through  
33 utilization changes and not by paying hospitals at rates lower than  
34 prevailing Medicare fee-for-service rates.

35 (p) The department shall enter into an interagency agreement  
36 with the Department of Managed Health Care to perform some or  
37 all of the department's oversight and readiness review activities  
38 specified in this section. These activities may include providing  
39 consumer assistance to beneficiaries affected by this section and  
40 conducting financial audits, medical surveys, and a review of the

1 adequacy of provider networks of the managed care health plans  
2 participating in this section. The interagency agreement shall be  
3 updated, as necessary, on an annual basis in order to maintain  
4 functional clarity regarding the roles and responsibilities of the  
5 Department of Managed Health Care and the department. The  
6 department shall not delegate its authority under this section as  
7 the single state Medicaid agency to the Department of Managed  
8 Health Care.

9 (q) (1) Beginning with the May Revision to the 2013–14  
10 Governor’s Budget, and annually thereafter, the department shall  
11 report to the Legislature on the enrollment status, quality measures,  
12 and state costs of the actions taken pursuant to this section.

13 (2) (A) By January 1, 2013, or as soon thereafter as practicable,  
14 the department shall develop, in consultation with CMS and  
15 stakeholders, quality and fiscal measures for health plans to reflect  
16 the short- and long-term results of the implementation of this  
17 section. The department shall also develop quality thresholds and  
18 milestones for these measures. The department shall update these  
19 measures periodically to reflect changes in this program due to  
20 implementation factors and the structure and design of the benefits  
21 and services being coordinated by managed care health plans.

22 (B) The department shall require health plans to submit  
23 Medicare and Medi-Cal data to determine the results of these  
24 measures. If the department finds that a health plan is not in  
25 compliance with one or more of the measures set forth in this  
26 section, the health plan shall, within 60 days, submit a corrective  
27 action plan to the department for approval. The corrective action  
28 plan shall, at a minimum, include steps that the health plan shall  
29 take to improve its performance based on the standard or standards  
30 with which the health plan is out of compliance. The plan shall  
31 establish interim benchmarks for improvement that shall be  
32 expected to be met by the health plan in order to avoid a sanction  
33 pursuant to Section 14304. Nothing in this subparagraph is intended  
34 to limit Section 14304.

35 (C) The department shall publish the results of these measures,  
36 including via posting on the department’s Internet Web site, on a  
37 quarterly basis.

38 (r) Notwithstanding Chapter 3.5 (commencing with Section  
39 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
40 the department may implement, interpret, or make specific this

1 section and any applicable federal waivers and state plan  
2 amendments by means of all-county letters, plan letters, plan or  
3 provider bulletins, or similar instructions, without taking regulatory  
4 action. Prior to issuing any letter or similar instrument authorized  
5 pursuant to this section, the department shall notify and consult  
6 with stakeholders, including advocates, providers, and  
7 beneficiaries. The department shall notify the appropriate policy  
8 and fiscal committees of the Legislature of its intent to issue  
9 instructions under this section at least five days in advance of the  
10 issuance.

11 SEC. 219. Section 14132.276 of the Welfare and Institutions  
12 Code is amended to read:

13 14132.276. For nursing facility services provided under the  
14 demonstration project as established in Section 14132.275, to the  
15 extent these provisions are authorized under the memorandum of  
16 understanding specified in subdivision (j) of Section 14132.275,  
17 the following shall apply:

18 (a) The demonstration site shall not combine the rates of  
19 payment for post-acute skilled and rehabilitation care provided by  
20 a nursing facility and long-term and chronic care provided by a  
21 nursing facility in order to establish a single payment rate for dual  
22 eligible beneficiaries requiring skilled nursing services.

23 (b) The demonstration site shall pay nursing facilities providing  
24 post-acute skilled and rehabilitation care or long-term and chronic  
25 care rates that reflect the different level of services and intensity  
26 required to provide these services.

27 (c) For the purposes of determining the appropriate rate for the  
28 type of care identified in subdivision (b), the demonstration site  
29 shall pay no less than the recognized rates under Medicare and  
30 Medi-Cal for these service types.

31 (d) With respect to services under this section, the demonstration  
32 site shall not offer, and the nursing facility shall not accept, any  
33 discounts, rebates, or refunds as compensation or inducements for  
34 the referral of patients or residents.

35 (e) It is the intent of the Legislature that savings under the  
36 demonstration project be achieved through shifts in utilization,  
37 and not through reduced reimbursement rates to providers.

38 (f) In order to encourage quality improvement and promote  
39 appropriate utilization incentives, including reduced  
40 rehospitization and shorter lengths of stay, for nursing facilities

1 providing the services under this section, the demonstration sites  
2 may do any of the following:

3 (1) Utilize incentive or bonus payment programs that are in  
4 addition to the rates identified in subdivisions (b) and (c).

5 (2) Opt to direct beneficiaries to facilities that demonstrate better  
6 performance on quality or appropriate utilization factors.

7 SEC. 220. Section 14169.32 of the Welfare and Institutions  
8 Code is amended to read:

9 14169.32. (a) There shall be imposed on each general acute  
10 care hospital that is not an exempt facility a quality assurance fee,  
11 provided that a quality assurance fee under this article shall not be  
12 imposed on a converted hospital.

13 (b) The quality assurance fee shall be computed starting on July  
14 1, 2011, and continue through and including December 31, 2013.

15 (c) Subject to Section 14169.34, upon receipt of federal  
16 approval, the following shall become operative:

17 (1) Within 10 business days following receipt of the notice of  
18 federal approval from the federal government, the department shall  
19 send notice to each hospital subject to the quality assurance fee,  
20 and publish on its Internet Web site, the following information:

21 (A) The date that the state received notice of federal approval.

22 (B) The fee percentage for each subject fiscal year.

23 (2) The notice to each hospital subject to the quality assurance  
24 fee shall also state the following:

25 (A) The aggregate quality assurance fee after the application of  
26 the fee percentage for each subject fiscal year.

27 (B) The aggregate quality assurance fee.

28 (C) The amount of each payment due from the hospital with  
29 respect to the aggregate quality assurance fee.

30 (D) The date on which each payment is due.

31 (3) The hospitals shall pay the aggregate quality assurance fee  
32 after application of the fee percentage for all subject fiscal years  
33 in 10 installments. The department shall establish the date that  
34 each installment is due, provided that the first installment shall be  
35 due no earlier than 20 days following the department sending the  
36 notice pursuant to paragraph (1), and the installments shall be paid  
37 at least one month apart, but if possible, the installments shall be  
38 paid on a quarterly basis.

39 (4) Notwithstanding any other provision of this section, the  
40 amount of each hospital's aggregate quality assurance fee after

1 the application of the fee percentage for each subject fiscal year  
2 that has not been paid by the hospital before December 15, 2013,  
3 pursuant to paragraphs (3) and (8), shall be paid by the hospital  
4 no later than December 15, 2013.

5 (5) (A) Notwithstanding subdivision (l) of Section 14169.31,  
6 for the purpose of determining the installments under paragraph  
7 (3), the department shall use an interim fee percentage as follows:

8 (i) One hundred percent for subject fiscal year 2011–12 until  
9 the federal government has approved or disapproved additional  
10 capitation payments described in Section 14169.5 for that subject  
11 fiscal year.

12 (ii) One hundred percent for subject fiscal year 2012–13 until  
13 the federal government has approved or disapproved additional  
14 capitation payments described in Section 14169.5 for that subject  
15 fiscal year.

16 (iii) Fifty percent for subject fiscal year 2013–14 until the federal  
17 government has approved or disapproved additional capitation  
18 payments described in Section 14169.5 for that subject fiscal year.

19 (B) The director may use a lower interim fee percentage for  
20 each subject fiscal year under this paragraph as the director, in his  
21 or her discretion, determines is reasonable in order to generate  
22 sufficient but not excessive installment payments to make the  
23 payments described in subdivision (b) of Section 14169.33.

24 (6) The director shall determine the final fee percentage for each  
25 subject fiscal year within 15 days of the approval or disapproval,  
26 in whole or in part, by the federal government of all changes to  
27 the capitation rates of managed health care plans requested by the  
28 department to implement Section 14169.5 for that subject fiscal  
29 year, but in no event later than December 1, 2013. At the time the  
30 director determines the final fee percentage for a subject fiscal  
31 year, the director shall also determine the amount of future  
32 installment payments of the quality assurance fee for each hospital  
33 subject to the fee, if any are due. The amount of each future  
34 installment payment shall be established by the director with the  
35 objective that the total of the installment payments of the quality  
36 assurance fee due from a hospital shall equal the director's estimate  
37 for each subject fiscal year for the hospital of the aggregate quality  
38 assurance fee after the application of the fee percentage.

39 (7) The director, within 15 days of determining the final fee  
40 percentage for a subject fiscal year pursuant to paragraph (6), shall

1 send notice to each hospital subject to the quality assurance fee of  
2 the following information:

3 (A) The final fee percentage for each subject fiscal year for  
4 which the final fee percentage has been determined.

5 (B) The fee percentage determined under paragraph (5) for each  
6 subject fiscal year for which the final fee percentage has not been  
7 determined.

8 (C) The aggregate quality assurance fee after application of the  
9 fee percentage for each subject fiscal year.

10 (D) The director’s estimate of total quality assurance fee  
11 payments due from the hospital under this article whether or not  
12 paid. This amount shall be the sum of the aggregate quality  
13 assurance fee after application of the fee percentage for each  
14 subject fiscal year using the fee percentages contained in the notice.

15 (E) The total quality assurance fee payments that the hospital  
16 has made under this article.

17 (F) The amount, if any, by which the total quality assurance fee  
18 payments due from the hospital under this article as described in  
19 subparagraph (C) exceed the total quality assurance fee payments  
20 that the hospital has made under this article.

21 (G) The amount of each remaining installment of the quality  
22 assurance fee, if any, due from the hospital and the date each  
23 installment is due. This amount shall be the amount described in  
24 subparagraph (F) divided by the number of installment payments  
25 remaining.

26 (8) Each hospital that is sent a notice under paragraph (7) shall  
27 pay the additional installments of the quality assurance fee that  
28 are due, if any, in the amounts and at the times set forth in the  
29 notice unless superseded by a subsequent notice from the  
30 department.

31 (9) The department shall refund to a hospital paying the quality  
32 assurance fee the amount, if any, by which the total quality  
33 assurance fee payments that the hospital has made under this article  
34 for all subject fiscal years exceed the total quality assurance fee  
35 payments due from the hospital under this article within 30 days  
36 of the date on which the notice is sent to the hospital under  
37 paragraph (7).

38 (d) The quality assurance fee, as paid pursuant to this section,  
39 shall be paid by each hospital subject to the fee to the department  
40 for deposit in the Hospital Quality Assurance Revenue Fund.

1 Deposits may be accepted at any time and will be credited toward  
2 the program period.

3 (e) This section shall become inoperative if the federal Centers  
4 for Medicare and Medicaid Services denies approval for, or does  
5 not approve before July 1, 2014, the implementation of the quality  
6 assurance fee pursuant to this article or the supplemental payments  
7 to private hospitals described in Sections 14169.2 and 14169.3,  
8 and either or both provisions cannot be modified by the department  
9 pursuant to subdivision (d) of Section 14169.33 in order to meet  
10 the requirements of federal law or to obtain federal approval.

11 (f) In no case shall the aggregate fees collected in a federal fiscal  
12 year pursuant to this section and Sections 14167.32 and 14168.32  
13 exceed the maximum percentage of the annual aggregate net patient  
14 revenue for hospitals subject to the fee that is prescribed pursuant  
15 to federal law and regulations as necessary to preclude a finding  
16 that an indirect guarantee has been created.

17 (g) (1) Interest shall be assessed on quality assurance fees not  
18 paid on the date due at the greater of 10 percent per annum or the  
19 rate at which the department assesses interest on Medi-Cal program  
20 overpayments to hospitals that are not repaid when due. Interest  
21 shall begin to accrue the day after the date the payment was due  
22 and shall be deposited in the Hospital Quality Assurance Revenue  
23 Fund.

24 (2) In the event that any fee payment is more than 60 days  
25 overdue, a penalty equal to the interest charge described in  
26 paragraph (1) shall be assessed and due for each month for which  
27 the payment is not received after 60 days.

28 (h) When a hospital fails to pay all or part of the quality  
29 assurance fee on or before the date that payment is due, the  
30 department may immediately begin to deduct the unpaid assessment  
31 and interest from any Medi-Cal payments owed to the hospital,  
32 or, in accordance with Section 12419.5 of the Government Code,  
33 from any other state payments owed to the hospital until the full  
34 amount is recovered. All amounts, except penalties, deducted by  
35 the department under this subdivision shall be deposited in the  
36 Hospital Quality Assurance Revenue Fund. The remedy provided  
37 to the department by this section is in addition to other remedies  
38 available under law.

1 (i) The payment of the quality assurance fee shall not be  
2 considered as an allowable cost for Medi-Cal cost reporting and  
3 reimbursement purposes.

4 (j) The department shall work in consultation with the hospital  
5 community to implement this article and Article 5.228  
6 (commencing with Section 14169.1).

7 (k) This subdivision creates a contractually enforceable promise  
8 on behalf of the state to use the proceeds of the quality assurance  
9 fee, including any federal matching funds, solely and exclusively  
10 for the purposes set forth in this article as they existed on  
11 September 16, 2011, to limit the amount of the proceeds of the  
12 quality assurance fee to be used to pay for the health care coverage  
13 of children to the amounts specified in this article, to limit any  
14 payments for the department's costs of administration to the  
15 amounts set forth in this article on September 16, 2011, to maintain  
16 and continue prior reimbursement levels as set forth in Section  
17 14169.12 on September 16, 2011, and to otherwise comply with  
18 all its obligations set forth in Article 5.228 (commencing with  
19 Section 14169.1) and this article provided that amendments that  
20 arise from, or have as a basis, a decision, advice, or determination  
21 by the federal Centers for Medicare and Medicaid Services relating  
22 to federal approval of the quality assurance fee or the payments  
23 set forth in this article or Article 5.228 (commencing with Section  
24 14169.1) shall control for the purposes of this subdivision.

25 (l) (1) Effective January 1, 2014, the rates payable to hospitals  
26 and managed health care plans under Medi-Cal shall be the rates  
27 then payable without the supplemental and increased capitation  
28 payments set forth in Article 5.228 (commencing with Section  
29 14169.1).

30 (2) The supplemental payments and other payments under  
31 Article 5.228 (commencing with Section 14169.1) shall be regarded  
32 as quality assurance payments, the implementation or suspension  
33 of which does not affect a determination of the adequacy of any  
34 rates under federal law.

35 (m) (1) Subject to paragraph (2), the director may waive any  
36 or all interest and penalties assessed under this article in the event  
37 that the director determines, in his or her sole discretion, that the  
38 hospital has demonstrated that imposition of the full quality  
39 assurance fee on the timelines applicable under this article has a  
40 high likelihood of creating a financial hardship for the hospital or



1 a significant danger of reducing the provision of needed health  
2 care services.

3 (2) Waiver of some or all of the interest or penalties under this  
4 subdivision shall be conditioned on the hospital's agreement to  
5 make fee payments, or to have the payments withheld from  
6 payments otherwise due from the Medi-Cal program to the hospital,  
7 on a schedule developed by the department that takes into account  
8 the financial situation of the hospital and the potential impact on  
9 services.

10 (3) A decision by the director under this subdivision is not  
11 subject to judicial review.

12 (4) If fee payments are remitted to the department after the date  
13 determined by the department to be the final date for calculating  
14 the final supplemental payments under this article and Article  
15 5.228 (commencing with Section 14169.1), the fee payments shall  
16 be retained in the fund for purposes of funding supplemental  
17 payments supported by a hospital quality assurance fee program  
18 implemented under subsequent legislation, provided, however,  
19 that if supplemental payments are not implemented under  
20 subsequent legislation, then those fee payments shall be deposited  
21 in the Distressed Hospital Fund.

22 (5) If during the implementation of this article, fee payments  
23 that were due under Article 5.21 (commencing with Section  
24 14167.1) and Article 5.22 (commencing with Section 14167.31),  
25 or Article 5.227 (commencing with Section 14168.31), are remitted  
26 to the department under a payment plan or for any other reason,  
27 and the final date for calculating the final supplemental payments  
28 under those articles has passed, those fee payments shall be  
29 deposited in the fund to support the uses established by this article.

30 SEC. 221. Section 14182 of the Welfare and Institutions Code  
31 is amended to read:

32 14182. (a) (1) In furtherance of the waiver or demonstration  
33 project developed pursuant to Section 14180, the department may  
34 require seniors and persons with disabilities who do not have other  
35 health coverage to be assigned as mandatory enrollees into new  
36 or existing managed care health plans. To the extent that enrollment  
37 is required by the department, an enrollee's access to  
38 fee-for-service Medi-Cal shall not be terminated until the enrollee  
39 has been assigned to a managed care health plan.

40 (2) For purposes of this section:

1 (A) “Other health coverage” means health coverage providing  
2 the same full or partial benefits as the Medi-Cal program, health  
3 coverage under another state or federal medical care program, or  
4 health coverage under contractual or legal entitlement, including,  
5 but not limited to, a private group or indemnification insurance  
6 program.

7 (B) “Managed care health plan” means an individual,  
8 organization, or entity that enters into a contract with the  
9 department pursuant to Article 2.7 (commencing with Section  
10 14087.3), Article 2.81 (commencing with Section 14087.96),  
11 Article 2.91 (commencing with Section 14089), or Chapter 8  
12 (commencing with Section 14200).

13 (b) In exercising its authority pursuant to subdivision (a), the  
14 department shall do all of the following:

15 (1) Assess and ensure the readiness of the managed care health  
16 plans to address the unique needs of seniors or persons with  
17 disabilities pursuant to the applicable readiness evaluation criteria  
18 and requirements set forth in paragraphs (1) to (8), inclusive, of  
19 subdivision (b) of Section 14087.48.

20 (2) Ensure the managed care health plans provide access to  
21 providers that comply with applicable state and federal laws,  
22 including, but not limited to, physical accessibility and the  
23 provision of health plan information in alternative formats.

24 (3) Develop and implement an outreach and education program  
25 for seniors and persons with disabilities, not currently enrolled in  
26 Medi-Cal managed care, to inform them of their enrollment options  
27 and rights under the demonstration project. Contingent upon  
28 available private or public dollars other than moneys from the  
29 General Fund, the department or its designated agent for enrollment  
30 and outreach may partner or contract with community-based,  
31 nonprofit consumer or health insurance assistance organizations  
32 with expertise and experience in assisting seniors and persons with  
33 disabilities in understanding their health care coverage options.  
34 Contracts entered into or amended pursuant to this paragraph shall  
35 be exempt from Chapter 2 (commencing with Section 10290) of  
36 Part 2 of Division 2 of the Public Contract Code and any  
37 implementing regulations or policy directives.

38 (4) At least three months prior to enrollment, inform  
39 beneficiaries who are seniors or persons with disabilities, through  
40 a notice written at no more than a sixth grade reading level, about

1 the forthcoming changes to their delivery of care, including, at a  
2 minimum, how their system of care will change, when the changes  
3 will occur, and who they can contact for assistance with choosing  
4 a delivery system or with problems they encounter. In developing  
5 this notice, the department shall consult with consumer  
6 representatives and other stakeholders.

7 (5) Implement an appropriate cultural awareness and sensitivity  
8 training program regarding serving seniors and persons with  
9 disabilities for managed care health plans and plan providers and  
10 staff in the Medi-Cal Managed Care Division of the department.

11 (6) Establish a process for assigning enrollees into an organized  
12 delivery system for beneficiaries who do not make an affirmative  
13 selection of a managed care health plan. The department shall  
14 develop this process in consultation with stakeholders and in a  
15 manner consistent with the waiver or demonstration project  
16 developed pursuant to Section 14180. The department shall base  
17 plan assignment on an enrollee's existing or recent utilization of  
18 providers, to the extent possible. If the department is unable to  
19 make an assignment based on the enrollee's affirmative selection  
20 or utilization history, the department shall base plan assignment  
21 on factors, including, but not limited to, plan quality and the  
22 inclusion of local health care safety net system providers in the  
23 plan's provider network.

24 (7) Review and approve the mechanism or algorithm that has  
25 been developed by the managed care health plan, in consultation  
26 with their stakeholders and consumers, to identify, within the  
27 earliest possible timeframe, persons with higher risk and more  
28 complex health care needs pursuant to paragraph (11) of  
29 subdivision (c).

30 (8) Provide managed care health plans with historical utilization  
31 data for beneficiaries upon enrollment in a managed care health  
32 plan so that the plans participating in the demonstration project  
33 are better able to assist beneficiaries and prioritize assessment and  
34 care planning.

35 (9) Develop and provide managed care health plans participating  
36 in the demonstration project with a facility site review tool for use  
37 in assessing the physical accessibility of providers, including  
38 specialists and ancillary service providers that provide care to a  
39 high volume of seniors and persons with disabilities, at a clinic or  
40 provider site, to ensure that there are sufficient physically

1 accessible providers. Every managed care health plan participating  
2 in the demonstration project shall make the results of the facility  
3 site review tool publicly available on their Internet Web site and  
4 shall regularly update the results to the department's satisfaction.

5 (10) Develop a process to enforce legal sanctions, including,  
6 but not limited to, financial penalties, withholding of Medi-Cal  
7 payments, enrollment termination, and contract termination, in  
8 order to sanction any managed care health plan in the  
9 demonstration project that consistently or repeatedly fails to meet  
10 performance standards provided in statute or contract.

11 (11) Ensure that managed care health plans provide a mechanism  
12 for enrollees to request a specialist or clinic as a primary care  
13 provider. A specialist or clinic may serve as a primary care provider  
14 if the specialist or clinic agrees to serve in a primary care provider  
15 role and is qualified to treat the required range of conditions of the  
16 enrollee.

17 (12) Ensure that managed care health plans participating in the  
18 demonstration project are able to provide communication access  
19 to seniors and persons with disabilities in alternative formats or  
20 through other methods that ensure communication, including  
21 assistive listening systems, sign language interpreters, captioning,  
22 written communication, plain language, or written translations and  
23 oral interpreters, including for those who are limited  
24 English-proficient, or non-English speaking, and that all managed  
25 care health plans are in compliance with applicable cultural and  
26 linguistic requirements.

27 (13) Ensure that managed care health plans participating in the  
28 demonstration project provide access to out-of-network providers  
29 for new individual members enrolled under this section who have  
30 an ongoing relationship with a provider if the provider will accept  
31 the health plan's rate for the service offered, or the applicable  
32 Medi-Cal fee-for-service rate, whichever is higher, and the health  
33 plan determines that the provider meets applicable professional  
34 standards and has no disqualifying quality of care issues.

35 (14) Ensure that managed care health plans participating in the  
36 demonstration project comply with continuity of care requirements  
37 in Section 1373.96 of the Health and Safety Code.

38 (15) Ensure that the medical exemption criteria applied in  
39 counties operating under Chapter 4.1 (commencing with Section  
40 53800) or Chapter 4.5 (commencing with Section 53900) of

1 Subdivision 1 of Division 3 of Title 22 of the California Code of  
2 Regulations are applied to seniors and persons with disabilities  
3 served under this section.

4 (16) Ensure that managed care health plans participating in the  
5 demonstration project take into account the behavioral health needs  
6 of enrollees and include behavioral health services as part of the  
7 enrollee’s care management plan when appropriate.

8 (17) Develop performance measures that are required as part  
9 of the contract to provide quality indicators for the Medi-Cal  
10 population enrolled in a managed care health plan and for the  
11 subset of enrollees who are seniors and persons with disabilities.  
12 These performance measures may include measures from the  
13 Healthcare Effectiveness Data and Information Set (HEDIS) or  
14 measures indicative of performance in serving special needs  
15 populations, such as the National Committee for Quality Assurance  
16 (NCQA) Structure and Process measures, or both.

17 (18) Conduct medical audit reviews of participating managed  
18 care health plans that include elements specifically related to the  
19 care of seniors and persons with disabilities. These medical audits  
20 shall include, but not be limited to, evaluation of the delivery  
21 model’s policies and procedures, performance in utilization  
22 management, continuity of care, availability and accessibility,  
23 member rights, and quality management.

24 (19) Conduct financial audit reviews to ensure that a financial  
25 statement audit is performed on managed care health plans annually  
26 pursuant to the Generally Accepted Auditing Standards, and  
27 conduct other risk-based audits for the purpose of detecting fraud  
28 and irregular transactions.

29 (20) Ensure that managed care health plans maintain a dedicated  
30 liaison to coordinate with the department, affected providers, and  
31 new individual members for all of the following purposes:

32 (A) To ensure a mechanism for new members to obtain  
33 continuity of care as described in paragraph (13).

34 (B) To receive notice, including that a new member has been  
35 denied a medical exemption as described in paragraph (15), which  
36 is required to include the name or names of the requesting provider,  
37 and ensure that the provider’s ability to treat the member is  
38 continued as described in paragraphs (11) and (13), if applicable,  
39 or, if not applicable, ensure the member is immediately referred  
40 to a qualified provider or specialty care center.

1 (C) To assist new members in maintaining an ongoing  
2 relationship with a specialist or specialty care center when the  
3 specialist is contracting with the plan and the assigned primary  
4 care provider has approved a standing referral pursuant to Section  
5 1374.16 of the Health and Safety Code.

6 (21) Ensure that written notice is provided to the beneficiary  
7 and the requesting provider if a request for exemption from plan  
8 enrollment is denied. The notice shall set out with specificity the  
9 reasons for the denial or failure to unconditionally approve the  
10 request for exemption from plan enrollment. The notice shall  
11 inform the beneficiary and the provider of the right to appeal the  
12 decision, how to appeal the decision, and if the decision is not  
13 appealed, that the beneficiary shall enroll in a Medi-Cal plan and  
14 how that enrollment shall occur. The notice shall also include  
15 information of the possibility of continued access to an  
16 out-of-network provider pursuant to paragraph (13). A beneficiary  
17 who has not been enrolled in a plan shall remain in fee-for-service  
18 Medi-Cal if a request for an exemption from plan enrollment or  
19 appeal is submitted, until the final resolution. The department shall  
20 also require the plans to ensure that these beneficiaries receive  
21 continuity of care.

22 (22) Develop a process to track a beneficiary who has been  
23 denied a request for exemption from plan enrollment and to notify  
24 the plan, if applicable, of the denial, including information  
25 identifying the provider. Notwithstanding paragraph (12) of  
26 subdivision (c), the plan shall immediately refer the beneficiary  
27 for a risk assessment survey and an individual care plan shall be  
28 developed within 10 days, including authorization for 30 days of  
29 continuity of prescription drugs.

30 (c) Prior to exercising its authority under this section and Section  
31 14180, the department shall ensure that each managed care health  
32 plan participating in the demonstration project is able to do all of  
33 the following:

34 (1) Comply with the applicable readiness evaluation criteria  
35 and requirements set forth in paragraphs (1) to (8), inclusive, of  
36 subdivision (b) of Section 14087.48.

37 (2) Ensure and monitor an appropriate provider network,  
38 including primary care physicians, specialists, professional, allied,  
39 and medical supportive personnel, and an adequate number of  
40 accessible facilities within each service area. Managed care health

1 plans shall maintain an updated, accurate, and accessible listing  
2 of a provider's ability to accept new patients and shall make it  
3 available to enrollees, at a minimum, by phone, written material,  
4 and Internet Web site.

5 (3) Assess the health care needs of beneficiaries who are seniors  
6 or persons with disabilities and coordinate their care across all  
7 settings, including coordination of necessary services within and,  
8 where necessary, outside of the plan's provider network.

9 (4) Ensure that the provider network and informational materials  
10 meet the linguistic and other special needs of seniors and persons  
11 with disabilities, including providing information in an  
12 understandable manner in plain language, maintaining toll-free  
13 telephone lines, and offering member or ombudsperson services.

14 (5) Provide clear, timely, and fair processes for accepting and  
15 acting upon complaints, grievances, and disenrollment requests,  
16 including procedures for appealing decisions regarding coverage  
17 or benefits. Each managed care health plan participating in the  
18 demonstration project shall have a grievance process that complies  
19 with Section 14450, and Sections 1368 and 1368.01 of the Health  
20 and Safety Code.

21 (6) Solicit stakeholder and member participation in advisory  
22 groups for the planning and development activities related to the  
23 provision of services for seniors and persons with disabilities.

24 (7) Contract with safety net and traditional providers as defined  
25 in subdivisions (hh) and (jj) of Section 53810, of Title 22 of the  
26 California Code of Regulations, to ensure access to care and  
27 services. The managed care health plan shall establish participation  
28 standards to ensure participation and broad representation of  
29 traditional and safety net providers within a service area.

30 (8) Inform seniors and persons with disabilities of procedures  
31 for obtaining transportation services to service sites that are offered  
32 by the plan or are available through the Medi-Cal program.

33 (9) Monitor the quality and appropriateness of care for children  
34 with special health care needs, including children eligible for, or  
35 enrolled in, the California Children's Services Program, and seniors  
36 and persons with disabilities.

37 (10) Maintain a dedicated liaison to coordinate with each  
38 regional center operating within the plan's service area to assist  
39 members with developmental disabilities in understanding and

1 accessing services and act as a central point of contact for  
2 questions, access and care concerns, and problem resolution.

3 (11) At the time of enrollment apply the risk stratification  
4 mechanism or algorithm described in paragraph (7) of subdivision  
5 (b) approved by the department to determine the health risk level  
6 of beneficiaries.

7 (12) (A) Managed care health plans shall assess an enrollee's  
8 current health risk by administering a risk assessment survey tool  
9 approved by the department. This risk assessment survey shall be  
10 performed within the following timeframes:

11 (i) Within 45 days of plan enrollment for individuals determined  
12 to be at higher risk pursuant to paragraph (11).

13 (ii) Within 105 days of plan enrollment for individuals  
14 determined to be at lower risk pursuant to paragraph (11).

15 (B) Based on the results of the current health risk assessment,  
16 managed care health plans shall develop individual care plans for  
17 higher risk beneficiaries that shall include the following minimum  
18 components:

19 (i) Identification of medical care needs, including primary care,  
20 specialty care, durable medical equipment, medications, and other  
21 needs with a plan for care coordination as needed.

22 (ii) Identification of needs and referral to appropriate community  
23 resources and other agencies as needed for services outside the  
24 scope of responsibility of the managed care health plan.

25 (iii) Appropriate involvement of caregivers.

26 (iv) Determination of timeframes for reassessment and, if  
27 necessary, circumstances or conditions that require redetermination  
28 of risk level.

29 (13) (A) Establish medical homes to which enrollees are  
30 assigned that include, at a minimum, all of the following elements,  
31 which shall be considered in the provider contracting process:

32 (i) A primary care physician who is the primary clinician for  
33 the beneficiary and who provides core clinical management  
34 functions.

35 (ii) Care management and care coordination for the beneficiary  
36 across the health care system including transitions among levels  
37 of care.

38 (iii) Provision of referrals to qualified professionals, community  
39 resources, or other agencies for services or items outside the scope  
40 of responsibility of the managed care health plan.



1 (iv) Use of clinical data to identify beneficiaries at the care site  
2 with chronic illness or other significant health issues.

3 (v) Timely preventive, acute, and chronic illness treatment in  
4 the appropriate setting.

5 (vi) Use of clinical guidelines or other evidence-based medicine  
6 when applicable for treatment of beneficiaries' health care issues  
7 or timing of clinical preventive services.

8 (B) In implementing this section, and the Special Terms and  
9 Conditions of the demonstration project, the department may alter  
10 the medical home elements described in this paragraph as necessary  
11 to secure the increased federal financial participation associated  
12 with the provision of medical assistance in conjunction with a  
13 health home, as made available under the federal Patient Protection  
14 and Affordable Care Act (Public Law 111-148), as amended by  
15 the federal Health Care and Education Reconciliation Act of 2010  
16 (Public Law 111-152), and codified in Section 1945 of Title XIX  
17 of the federal Social Security Act. The department shall notify the  
18 appropriate policy and fiscal committees of the Legislature of its  
19 intent to alter medical home elements under this section at least  
20 five days in advance of taking this action.

21 (14) Perform, at a minimum, the following care management  
22 and care coordination functions and activities for enrollees who  
23 are seniors or persons with disabilities:

24 (A) Assessment of each new enrollee's risk level and health  
25 needs shall be conducted through a standardized risk assessment  
26 survey by means such as telephonic, Web-based, or in-person  
27 communication or by other means as determined by the department.

28 (B) Facilitation of timely access to primary care, specialty care,  
29 durable medical equipment, medications, and other health services  
30 needed by the enrollee, including referrals to address any physical  
31 or cognitive barriers to access.

32 (C) Active referral to community resources or other agencies  
33 for needed services or items outside the managed care health plans  
34 responsibilities.

35 (D) Facilitating communication among the beneficiaries' health  
36 care providers, including mental health and substance abuse  
37 providers when appropriate.

38 (E) Other activities or services needed to assist beneficiaries in  
39 optimizing their health status, including assisting with

1 self-management skills or techniques, health education, and other  
2 modalities to improve health status.

3 (d) Except in a county where Medi-Cal services are provided  
4 by a county-organized health system, and notwithstanding any  
5 other provision of law, in any county in which fewer than two  
6 existing managed care health plans contract with the department  
7 to provide Medi-Cal services under this chapter, the department  
8 may contract with additional managed care health plans to provide  
9 Medi-Cal services for seniors and persons with disabilities and  
10 other Medi-Cal beneficiaries.

11 (e) Beneficiaries enrolled in managed care health plans pursuant  
12 to this section shall have the choice to continue an established  
13 patient-provider relationship in a managed care health plan  
14 participating in the demonstration project if his or her treating  
15 provider is a primary care provider or clinic contracting with the  
16 managed care health plan and agrees to continue to treat that  
17 beneficiary.

18 (f) The department may contract with existing managed care  
19 health plans to operate under the demonstration project to provide  
20 or arrange for services under this section. Notwithstanding any  
21 other provision of law, the department may enter into the contract  
22 without the need for a competitive bid process or other contract  
23 proposal process, provided the managed care health plan provides  
24 written documentation that it meets all qualifications and  
25 requirements of this section.

26 (g) This section shall be implemented only to the extent that  
27 federal financial participation is available.

28 (h) (1) The development of capitation rates for managed care  
29 health plan contracts shall include the analysis of data specific to  
30 the seniors and persons with disabilities population. For the  
31 purposes of developing capitation rates for payments to managed  
32 care health plans, the director may require managed care health  
33 plans, including existing managed care health plans, to submit  
34 financial and utilization data in a form, time, and substance as  
35 deemed necessary by the department.

36 (2) (A) Notwithstanding Section 14301, the department may  
37 incorporate, on a one-time basis for a three-year period, a  
38 risk-sharing mechanism in a contract with the local initiative health  
39 plan in the county with the highest normalized fee-for-service risk  
40 score over the normalized managed care risk score listed in Table

1 1.0 of the Medi-Cal Acuity Study Seniors and Persons with  
2 Disabilities (SPD) report written by Mercer Government Human  
3 Services Consulting and dated September 28, 2010, if the local  
4 initiative health plan meets the requirements of subparagraph (B).  
5 The Legislature finds and declares that this risk-sharing mechanism  
6 will limit the risk of beneficial or adverse effects associated with  
7 a contract to furnish services pursuant to this section on an at-risk  
8 basis.

9 (B) The local initiative health plan shall pay the nonfederal  
10 share of all costs associated with the development, implementation,  
11 and monitoring of the risk-sharing mechanism established pursuant  
12 to subparagraph (A) by means of intergovernmental transfers. The  
13 nonfederal share includes the state costs of staffing, state  
14 contractors, or administrative costs directly attributable to  
15 implementing subparagraph (A).

16 (C) This subdivision shall be implemented only to the extent  
17 federal financial participation is not jeopardized.

18 (i) Persons meeting participation requirements for the Program  
19 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter  
20 8.75 (commencing with Section 14591), may select a PACE plan  
21 if one is available in that county.

22 (j) Persons meeting the participation requirements in effect on  
23 January 1, 2010, for a Medi-Cal primary care case management  
24 (PCCM) plan in operation on that date, may select that PCCM  
25 plan or a successor health care plan that is licensed pursuant to the  
26 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
27 (commencing with Section 1340) of Division 2 of the Health and  
28 Safety Code) to provide services within the same geographic area  
29 that the PCCM plan served on January 1, 2010.

30 (k) Notwithstanding Chapter 3.5 (commencing with Section  
31 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
32 the department may implement, interpret, or make specific this  
33 section and any applicable federal waivers and state plan  
34 amendments by means of all-county letters, plan letters, plan or  
35 provider bulletins, or similar instructions, without taking regulatory  
36 action. Prior to issuing any letter or similar instrument authorized  
37 pursuant to this section, the department shall notify and consult  
38 with stakeholders, including advocates, providers, and  
39 beneficiaries. The department shall notify the appropriate policy  
40 and fiscal committees of the Legislature of its intent to issue

1 instructions under this section at least five days in advance of the  
2 issuance.

3 (l) Consistent with state law that exempts Medi-Cal managed  
4 care contracts from Chapter 2 (commencing with Section 10290)  
5 of Part 2 of Division 2 of the Public Contract Code, and in order  
6 to achieve maximum cost savings, the Legislature hereby  
7 determines that an expedited contract process is necessary for  
8 contracts entered into or amended pursuant to this section. The  
9 contracts and amendments entered into or amended pursuant to  
10 this section shall be exempt from Chapter 2 (commencing with  
11 Section 10290) of Part 2 of Division 2 of the Public Contract Code  
12 and the requirements of State Administrative Management Manual  
13 Memo 03-10. The department shall make the terms of a contract  
14 available to the public within 30 days of the contract's effective  
15 date.

16 (m) In the event of a conflict between the Special Terms and  
17 Conditions of the approved demonstration project, including any  
18 attachment thereto, and any provision of this part, the Special  
19 Terms and Conditions shall control. If the department identifies a  
20 specific provision of this article that conflicts with a term or  
21 condition of the approved waiver or demonstration project, or an  
22 attachment thereto, the term or condition shall control, and the  
23 department shall so notify the appropriate fiscal and policy  
24 committees of the Legislature within 15 business days.

25 (n) In the event of a conflict between the provisions of this  
26 article and any other provision of this part, the provisions of this  
27 article shall control.

28 (o) Any otherwise applicable provisions of this chapter, Chapter  
29 8 (commencing with Section 14200), or Chapter 8.75 (commencing  
30 with Section 14591) not in conflict with this article or with the  
31 terms and conditions of the demonstration project shall apply to  
32 this section.

33 (p) To the extent that the director utilizes state plan amendments  
34 or waivers to accomplish the purposes of this article in addition  
35 to waivers granted under the demonstration project, the terms of  
36 the state plan amendments or waivers shall control in the event of  
37 a conflict with any provision of this part.

38 (q) (1) Enrollment of seniors and persons with disabilities into  
39 a managed care health plan under this section shall be accomplished  
40 using a phased-in process to be determined by the department and

1 shall not commence until necessary federal approvals have been  
2 acquired or until June 1, 2011, whichever is later.

3 (2) Notwithstanding paragraph (1), and at the director's  
4 discretion, enrollment in Los Angeles County of seniors and  
5 persons with disabilities may be phased-in over a 12-month period  
6 using a geographic region method that is proposed by Los Angeles  
7 County subject to approval by the department.

8 (r) A managed care health plan established pursuant to this  
9 section, or under the Special Terms and Conditions of the  
10 demonstration project pursuant to Section 14180, shall be subject  
11 to, and comply with, the requirement for submission of encounter  
12 data specified in Section 14182.1.

13 (s) (1) Commencing January 1, 2011, and until January 1, 2014,  
14 the department shall provide the fiscal and policy committees of  
15 the Legislature with semiannual updates regarding core activities  
16 for the enrollment of seniors and persons with disabilities into  
17 managed care health plans pursuant to the pilot program. The  
18 semiannual updates shall include key milestones, progress toward  
19 the objectives of the pilot program, relevant or necessary changes  
20 to the program, submittal of state plan amendments to the federal  
21 Centers for Medicare and Medicaid Services, submittal of any  
22 federal waiver documents, and other key activities related to the  
23 mandatory enrollment of seniors and persons with disabilities into  
24 managed care health plans. The department shall also include  
25 updates on the transition of individuals into managed care health  
26 plans, the health outcomes of enrollees, the care management and  
27 coordination process, and other information concerning the success  
28 or overall status of the pilot program.

29 (2) (A) The requirement for submitting a report imposed under  
30 paragraph (1) is inoperative on January 1, 2015, pursuant to Section  
31 10231.5 of the Government Code.

32 (B) A report to be submitted pursuant to paragraph (1) shall be  
33 submitted in compliance with Section 9795 of the Government  
34 Code.

35 (t) The department, in collaboration with the State Department  
36 of Social Services and county welfare departments, shall monitor  
37 the utilization and caseload of the In-Home Supportive Services  
38 (IHSS) program before and during the implementation of the pilot  
39 program. This information shall be monitored in order to identify

1 the impact of the pilot program on the IHSS program for the  
2 affected population.

3 (u) Services under Section 14132.95 or 14132.952, or Article  
4 7 (commencing with Section 12300) of Chapter 3 that are provided  
5 to individuals assigned to managed care health plans under this  
6 section shall be provided through direct hiring of personnel,  
7 contract, or establishment of a public authority or nonprofit  
8 consortium, in accordance with and subject to the requirements of  
9 Section 12302 or 12301.6, as applicable.

10 (v) The department shall, at a minimum, monitor on a quarterly  
11 basis the adequacy of provider networks of the managed care health  
12 plans.

13 (w) The department shall suspend new enrollment of seniors  
14 and persons with disabilities into a managed care health plan if it  
15 determines that the managed care health plan does not have  
16 sufficient primary or specialty providers to meet the needs of their  
17 enrollees.

18 SEC. 222. Section 14182.16 of the Welfare and Institutions  
19 Code is amended to read:

20 14182.16. (a) The department shall require Medi-Cal  
21 beneficiaries who have dual eligibility in Medi-Cal and the  
22 Medicare Program to be assigned as mandatory enrollees into new  
23 or existing Medi-Cal managed care health plans for their Medi-Cal  
24 benefits in counties participating in the demonstration project  
25 pursuant to Section 14132.275.

26 (b) For the purposes of this section and Section 14182.17, the  
27 following definitions shall apply:

28 (1) “Dual eligible beneficiary” means an individual 21 years of  
29 age or older who is enrolled for benefits under Medicare Part A  
30 (42 U.S.C. Sec. 1395c et seq.) or Medicare Part B (42 U.S.C. Sec.  
31 1395j et seq.), or both, and is eligible for medical assistance under  
32 the Medi-Cal State Plan.

33 (2) “Full-benefit dual eligible beneficiary” means an individual  
34 21 years of age or older who is eligible for benefits under Medicare  
35 Part A (42 U.S.C. Sec. 1395c et seq.), Medicare Part B (42 U.S.C.  
36 Sec. 1395j et seq.), and Medicare Part D (42 U.S.C. Sec.  
37 1395w-101), and is eligible for medical assistance under the  
38 Medi-Cal State Plan.

39 (3) “Managed care health plan” means an individual,  
40 organization, or entity that enters into a contract with the

1 department pursuant to Article 2.7 (commencing with Section  
2 14087.3), Article 2.81 (commencing with Section 14087.96), or  
3 Article 2.91 (commencing with Section 14089), of this chapter,  
4 or Chapter 8 (commencing with Section 14200).

5 (4) “Other health coverage” means health coverage providing  
6 the same full or partial benefits as the Medi-Cal program, health  
7 coverage under another state or federal medical care program  
8 except for the Medicare Program (Title XVIII of the federal Social  
9 Security Act (42 U.S.C. Sec. 1395 et seq.)), or health coverage  
10 under a contractual or legal entitlement, including, but not limited  
11 to, a private group or indemnification insurance program.

12 (5) “Out-of-network Medi-Cal provider” means a health care  
13 provider that does not have an existing contract with the  
14 beneficiary’s managed care health plan or its subcontractors.

15 (6) “Partial-benefit dual eligible beneficiary” means an  
16 individual 21 years of age or older who is enrolled for benefits  
17 under Medicare Part A (42 U.S.C. Sec. 1395c et seq.), but not  
18 Medicare Part B (42 U.S.C. Sec. 1395j et seq.), or who is eligible  
19 for Medicare Part B (42 U.S.C. Sec. 1395j et seq.), but not  
20 Medicare Part A (42 U.S.C. Sec. 1395c et seq.), and is eligible for  
21 medical assistance under the Medi-Cal State Plan.

22 (c) (1) Notwithstanding subdivision (a), a dual eligible  
23 beneficiary is exempt from mandatory enrollment in a managed  
24 care health plan if the dual eligible beneficiary meets any of the  
25 following:

26 (A) Except in counties with county-organized health systems  
27 operating pursuant to Article 2.8 (commencing with Section  
28 14087.5), the beneficiary has other health coverage.

29 (B) The beneficiary receives services through a foster care  
30 program, including the program described in Article 5  
31 (commencing with Section 11400) of Chapter 2.

32 (C) The beneficiary is under 21 years of age.

33 (D) The beneficiary is not eligible for enrollment in managed  
34 care health plans for medically necessary reasons determined by  
35 the department.

36 (E) The beneficiary resides in one of the Veterans’ Homes of  
37 California, as described in Chapter 1 (commencing with Section  
38 1010) of Division 5 of the Military and Veterans Code.

1 (F) The beneficiary is enrolled in any entity with a contract with  
2 the department pursuant to Chapter 8.75 (commencing with Section  
3 14591).

4 (G) The beneficiary is enrolled in a managed care organization  
5 licensed under the Knox-Keene Health Care Service Plan Act of  
6 1975 (Chapter 2.2 (commencing with Section 1340) of Division  
7 2 of the Health and Safety Code) that has previously contracted  
8 with the department as a primary care case management plan  
9 pursuant to Article 2.9 (commencing with Section 14088).

10 (2) A beneficiary who has been diagnosed with HIV/AIDS is  
11 not exempt from mandatory enrollment, but may opt out of  
12 managed care enrollment at the beginning of any month.

13 (d) Implementation of this section shall incorporate the  
14 provisions of Section 14182.17 that are applicable to beneficiaries  
15 eligible for benefits under Medi-Cal and the Medicare Program.

16 (e) At the director's sole discretion, in consultation with  
17 stakeholders, the department may determine and implement a  
18 phased-in enrollment approach that may include Medi-Cal  
19 beneficiary enrollment into managed care health plans immediately  
20 upon implementation of this section in a specific county, over a  
21 12-month period, or other phased approach. The phased-in  
22 enrollment shall commence no sooner than March 1, 2013, and  
23 not until all necessary federal approvals have been obtained.

24 (f) To the extent that mandatory enrollment is required by the  
25 department, an enrollee's access to fee-for-service Medi-Cal shall  
26 not be terminated until the enrollee has selected or been assigned  
27 to a managed care health plan.

28 (g) Except in a county where Medi-Cal services are provided  
29 by a county organized health system, and notwithstanding any  
30 other law, in any county in which fewer than two existing managed  
31 health care plans contract with the department to provide Medi-Cal  
32 services under this chapter that are available to dual eligible  
33 beneficiaries, including long-term services and supports, the  
34 department may contract with additional managed care health plans  
35 to provide Medi-Cal services.

36 (h) For partial-benefit dual eligible beneficiaries, the department  
37 shall inform these beneficiaries of their rights to continuity of care  
38 from out-of-network Medi-Cal providers pursuant to subparagraph  
39 (G) of paragraph (5) of subdivision (d) of Section 14182.17, and  
40 that the need for medical exemption criteria applied to counties



1 operating under Chapter 4.1 (commencing with Section 53800) of  
2 Subdivision 1 of Division 3 of Title 22 of the California Code of  
3 Regulations may not be necessary to continue receiving Medi-Cal  
4 services from an out-of-network provider.

5 (i) The department may contract with existing managed care  
6 health plans to provide or arrange for services under this section.  
7 Notwithstanding any other law, the department may enter into the  
8 contract without the need for a competitive bid process or other  
9 contract proposal process, provided that the managed care health  
10 plan provides written documentation that it meets all of the  
11 qualifications and requirements of this section and Section  
12 14182.17.

13 (j) The development of capitation rates for managed care health  
14 plan contracts shall include the analysis of data specific to the dual  
15 eligible population. For the purposes of developing capitation rates  
16 for payments to managed care health plans, the department shall  
17 require all managed care health plans, including existing managed  
18 care health plans, to submit financial, encounter, and utilization  
19 data in a form, at a time, and including substance as deemed  
20 necessary by the department. Failure to submit the required data  
21 shall result in the imposition of penalties pursuant to Section  
22 14182.1.

23 (k) Persons meeting participation requirements for the Program  
24 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter  
25 8.75 (commencing with Section 14591) may select a PACE plan  
26 if one is available in that county.

27 (l) Except for dual eligible beneficiaries participating in the  
28 demonstration project pursuant to Section 14132.275, persons  
29 meeting the participation requirements in effect on January 1,  
30 2010, for a Medi-Cal primary case management plan in operation  
31 on that date, may select that primary care case management plan  
32 or a successor health care plan that is licensed pursuant to the  
33 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
34 (commencing with Section 1340) of Division 2 of the Health and  
35 Safety Code) to provide services within the same geographic area  
36 that the primary care case management plan served on January 1,  
37 2010.

38 (m) The department may implement an intergovernmental  
39 transfer arrangement with a public entity that elects to transfer  
40 public funds to the state to be used solely as the nonfederal share

1 of Medi-Cal payments to managed care health plans for the  
2 provision of services to dual eligible beneficiaries pursuant to  
3 Section 14182.15.

4 (n) To implement this section, the department may contract with  
5 public or private entities. Contracts or amendments entered into  
6 under this section may be on an exclusive or nonexclusive basis  
7 and on a noncompetitive bid basis and shall be exempt from all of  
8 the following:

9 (1) Part 2 (commencing with Section 10100) of Division 2 of  
10 the Public Contract Code and any policies, procedures, or  
11 regulations authorized by that part.

12 (2) Article 4 (commencing with Section 19130) of Chapter 5  
13 of Part 2 of Division 5 of Title 2 of the Government Code.

14 (3) Review or approval of contracts by the Department of  
15 General Services.

16 (o) Any otherwise applicable provisions of this chapter, Chapter  
17 8 (commencing with Section 14200), or Chapter 8.75 (commencing  
18 with Section 14591) not in conflict with this section or with the  
19 Special Terms and Conditions of the waiver shall apply to this  
20 section.

21 (p) The department shall, in coordination with and consistent  
22 with an interagency agreement with the Department of Managed  
23 Health Care, at a minimum, monitor on a quarterly basis the  
24 adequacy of provider networks of the managed care health plans.

25 (q) The department shall suspend new enrollment of dual eligible  
26 beneficiaries into a managed care health plan if it determines that  
27 the managed care health plan does not have sufficient primary or  
28 specialty care providers and long-term services and supports to  
29 meet the needs of its enrollees.

30 (r) Managed care health plans shall pay providers in accordance  
31 with Medicare and Medi-Cal coordination of benefits.

32 (s) This section shall be implemented only to the extent that all  
33 federal approvals and waivers are obtained and only if and to the  
34 extent that federal financial participation is available.

35 (t) Notwithstanding Chapter 3.5 (commencing with Section  
36 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
37 the department may implement, interpret, or make specific this  
38 section and any applicable federal waivers and state plan  
39 amendments by means of all-county letters, plan letters, plan or  
40 provider bulletins, or similar instructions, without taking regulatory

1 action. Prior to issuing any letter or similar instrument authorized  
2 pursuant to this section, the department shall notify and consult  
3 with stakeholders, including advocates, providers, and  
4 beneficiaries. The department shall notify the appropriate policy  
5 and fiscal committees of the Legislature of its intent to issue  
6 instructions under this section at least five days in advance of the  
7 issuance.

8 (u) A managed care health plan that contracts with the  
9 department for the provision of services under this section shall  
10 ensure that beneficiaries have access to the same categories of  
11 licensed providers that are available under fee-for-service  
12 Medicare. Nothing in this section shall prevent a managed care  
13 health plan from contracting with selected providers within a  
14 category of licensure.

15 SEC. 223. Section 15630 of the Welfare and Institutions Code  
16 is amended to read:

17 15630. (a) Any person who has assumed full or intermittent  
18 responsibility for the care or custody of an elder or dependent  
19 adult, whether or not he or she receives compensation, including  
20 administrators, supervisors, and any licensed staff of a public or  
21 private facility that provides care or services for elder or dependent  
22 adults, or any elder or dependent adult care custodian, health  
23 practitioner, clergy member, or employee of a county adult  
24 protective services agency or a local law enforcement agency, is  
25 a mandated reporter.

26 (b) (1) Any mandated reporter who, in his or her professional  
27 capacity, or within the scope of his or her employment, has  
28 observed or has knowledge of an incident that reasonably appears  
29 to be physical abuse, as defined in Section 15610.63, abandonment,  
30 abduction, isolation, financial abuse, or neglect, or is told by an  
31 elder or dependent adult that he or she has experienced behavior,  
32 including an act or omission, constituting physical abuse, as defined  
33 in Section 15610.63, abandonment, abduction, isolation, financial  
34 abuse, or neglect, or reasonably suspects that abuse, shall report  
35 the known or suspected instance of abuse by telephone or through  
36 a confidential Internet reporting tool, as authorized by Section  
37 15658, immediately or as soon as practicably possible. If reported  
38 by telephone, a written report shall be sent, or an Internet report  
39 shall be made through the confidential Internet reporting tool  
40 established in Section 15658, within two working days:

1 (A) If the suspected or alleged abuse is physical abuse, as  
2 defined in Section 15610.63, and the abuse occurred in a long-term  
3 care facility, except a state mental health hospital or a state  
4 developmental center, the following shall occur:

5 (i) If the suspected abuse results in serious bodily injury, a  
6 telephone report shall be made to the local law enforcement agency  
7 immediately, and no later than within two hours of the mandated  
8 reporter observing, obtaining knowledge of, or suspecting the  
9 physical abuse, and a written report shall be made to the local  
10 ombudsman, the corresponding licensing agency, and the local  
11 law enforcement agency within two hours of the mandated reporter  
12 observing, obtaining knowledge of, or suspecting the physical  
13 abuse.

14 (ii) If the suspected abuse does not result in serious bodily injury,  
15 a telephone report shall be made to the local law enforcement  
16 agency within 24 hours of the mandated reporter observing,  
17 obtaining knowledge of, or suspecting the physical abuse, and a  
18 written report shall be made to the local ombudsman, the  
19 corresponding licensing agency, and the local law enforcement  
20 agency within 24 hours of the mandated reporter observing,  
21 obtaining knowledge of, or suspecting the physical abuse.

22 (iii) When the suspected abuse is allegedly caused by a resident  
23 with a physician's diagnosis of dementia, and there is no serious  
24 bodily injury, as reasonably determined by the mandated reporter,  
25 drawing upon his or her training or experience, the reporter shall  
26 report to the local ombudsman or law enforcement agency by  
27 telephone, immediately or as soon as practicably possible, and by  
28 written report, within 24 hours.

29 (iv) When applicable, reports made pursuant to clauses (i) and  
30 (ii) shall be deemed to satisfy the reporting requirements of the  
31 federal Elder Justice Act of 2009, as set out in Subtitle H of Title  
32 VI of the federal Patient Protection and Affordable Care Act  
33 (Public Law 111-148), Section 1418.91 of the Health and Safety  
34 Code, and Section 72541 of Title 22 of the California Code of  
35 Regulations. When a local law enforcement agency receives an  
36 initial report of suspected abuse in a long-term care facility  
37 pursuant to this subparagraph, the local law enforcement agency  
38 may coordinate efforts with the local ombudsman to provide the  
39 most immediate and appropriate response warranted to investigate  
40 the mandated report. The local ombudsman and local law

1 enforcement agencies may collaborate to develop protocols to  
2 implement this subparagraph.

3 (B) Notwithstanding the rulemaking provisions of Chapter 3.5  
4 (commencing with Section 11340) of Part 1 of Division 3 of Title  
5 2 of the Government Code, or any other law, the department may  
6 implement subparagraph (A), in whole or in part, by means of  
7 all-county letters, provider bulletins, or other similar instructions  
8 without taking regulatory action.

9 (C) If the suspected or alleged abuse is abuse other than physical  
10 abuse, and the abuse occurred in a long-term care facility, except  
11 a state mental health hospital or a state developmental center, a  
12 telephone report and a written report shall be made to the local  
13 ombudsman or the local law enforcement agency.

14 (D) With regard to abuse reported pursuant to subparagraphs  
15 (A) and (C), the local ombudsman and the local law enforcement  
16 agency shall, as soon as practicable, except in the case of an  
17 emergency or pursuant to a report required to be made pursuant  
18 to clause (v), in which case these actions shall be taken  
19 immediately, do all of the following:

20 (i) Report to the State Department of Public Health any case of  
21 known or suspected abuse occurring in a long-term health care  
22 facility, as defined in subdivision (a) of Section 1418 of the Health  
23 and Safety Code.

24 (ii) Report to the State Department of Social Services any case  
25 of known or suspected abuse occurring in a residential care facility  
26 for the elderly, as defined in Section 1569.2 of the Health and  
27 Safety Code, or in an adult day program, as defined in paragraph  
28 (2) of subdivision (a) of Section 1502 of the Health and Safety  
29 Code.

30 (iii) Report to the State Department of Public Health and the  
31 California Department of Aging any case of known or suspected  
32 abuse occurring in an adult day health care center, as defined in  
33 subdivision (b) of Section 1570.7 of the Health and Safety Code.

34 (iv) Report to the Bureau of Medi-Cal Fraud any case of known  
35 or suspected criminal activity.

36 (v) Report all cases of known or suspected physical abuse and  
37 financial abuse to the local district attorney's office in the county  
38 where the abuse occurred.

39 (E) If the suspected or alleged abuse occurred in a state mental  
40 hospital or a state developmental center, the report shall be made

1 to designated investigators of the State Department of State  
2 Hospitals or the State Department of Developmental Services, or  
3 to the local law enforcement agency.

4 (i) Except in an emergency, the local law enforcement agency  
5 shall, as soon as practicable, report any case of known or suspected  
6 criminal activity to the Bureau of Medi-Cal Fraud.

7 (ii) Mandated reporters of the State Department of  
8 Developmental Services shall immediately report suspected abuse  
9 to the Office of Protective Services or to the local law enforcement  
10 agency.

11 (F) If the abuse has occurred any place other than one described  
12 in subparagraph (A), the report shall be made to the adult protective  
13 services agency or the local law enforcement agency.

14 (2) (A) A mandated reporter who is a clergy member who  
15 acquires knowledge or reasonable suspicion of elder or dependent  
16 adult abuse during a penitential communication is not subject to  
17 paragraph (1). For purposes of this subdivision, “penitential  
18 communication” means a communication that is intended to be in  
19 confidence, including, but not limited to, a sacramental confession  
20 made to a clergy member who, in the course of the discipline or  
21 practice of his or her church, denomination, or organization is  
22 authorized or accustomed to hear those communications and under  
23 the discipline tenets, customs, or practices of his or her church,  
24 denomination, or organization, has a duty to keep those  
25 communications secret.

26 (B) This subdivision shall not be construed to modify or limit  
27 a clergy member’s duty to report known or suspected elder and  
28 dependent adult abuse if he or she is acting in the capacity of a  
29 care custodian, health practitioner, or employee of an adult  
30 protective services agency.

31 (C) Notwithstanding any other provision in this section, a clergy  
32 member who is not regularly employed on either a full-time or  
33 part-time basis in a long-term care facility or does not have care  
34 or custody of an elder or dependent adult shall not be responsible  
35 for reporting abuse or neglect that is not reasonably observable or  
36 discernible to a reasonably prudent person having no specialized  
37 training or experience in elder or dependent care.

38 (3) (A) A mandated reporter who is a physician and surgeon,  
39 a registered nurse, or a psychotherapist, as defined in Section 1010

1 of the Evidence Code, shall not be required to report, pursuant to  
2 paragraph (1), an incident if all of the following conditions exist:

3 (i) The mandated reporter has been told by an elder or dependent  
4 adult that he or she has experienced behavior constituting physical  
5 abuse, as defined in Section 15610.63, abandonment, abduction,  
6 isolation, financial abuse, or neglect.

7 (ii) The mandated reporter is not aware of any independent  
8 evidence that corroborates the statement that the abuse has  
9 occurred.

10 (iii) The elder or dependent adult has been diagnosed with a  
11 mental illness or dementia, or is the subject of a court-ordered  
12 conservatorship because of a mental illness or dementia.

13 (iv) In the exercise of clinical judgment, the physician and  
14 surgeon, the registered nurse, or the psychotherapist, as defined  
15 in Section 1010 of the Evidence Code, reasonably believes that  
16 the abuse did not occur.

17 (B) This paragraph shall not be construed to impose upon  
18 mandated reporters a duty to investigate a known or suspected  
19 incident of abuse and shall not be construed to lessen or restrict  
20 any existing duty of mandated reporters.

21 (4) (A) In a long-term care facility, a mandated reporter shall  
22 not be required to report as a suspected incident of abuse, as defined  
23 in Section 15610.07, an incident if all of the following conditions  
24 exist:

25 (i) The mandated reporter is aware that there is a proper plan  
26 of care.

27 (ii) The mandated reporter is aware that the plan of care was  
28 properly provided or executed.

29 (iii) A physical, mental, or medical injury occurred as a result  
30 of care provided pursuant to clause (i) or (ii).

31 (iv) The mandated reporter reasonably believes that the injury  
32 was not the result of abuse.

33 (B) This paragraph shall not be construed to require a mandated  
34 reporter to seek, nor to preclude a mandated reporter from seeking,  
35 information regarding a known or suspected incident of abuse prior  
36 to reporting. This paragraph shall apply only to those categories  
37 of mandated reporters that the State Department of Public Health  
38 determines, upon approval by the Bureau of Medi-Cal Fraud and  
39 the state long-term care ombudsman, have access to plans of care

1 and have the training and experience necessary to determine  
2 whether the conditions specified in this section have been met.

3 (c) (1) Any mandated reporter who has knowledge, or  
4 reasonably suspects, that types of elder or dependent adult abuse  
5 for which reports are not mandated have been inflicted upon an  
6 elder or dependent adult, or that his or her emotional well-being  
7 is endangered in any other way, may report the known or suspected  
8 instance of abuse.

9 (2) If the suspected or alleged abuse occurred in a long-term  
10 care facility other than a state mental health hospital or a state  
11 developmental center, the report may be made to the long-term  
12 care ombudsman program. Except in an emergency, the local  
13 ombudsman shall report any case of known or suspected abuse to  
14 the State Department of Public Health and any case of known or  
15 suspected criminal activity to the Bureau of Medi-Cal Fraud, as  
16 soon as is practicable.

17 (3) If the suspected or alleged abuse occurred in a state mental  
18 health hospital or a state developmental center, the report may be  
19 made to the designated investigator of the State Department of  
20 State Hospitals or the State Department of Developmental Services  
21 or to a local law enforcement agency. Except in an emergency,  
22 the local law enforcement agency shall report any case of known  
23 or suspected criminal activity to the Bureau of Medi-Cal Fraud,  
24 as soon as is practicable.

25 (4) If the suspected or alleged abuse occurred in a place other  
26 than a place described in paragraph (2) or (3), the report may be  
27 made to the county adult protective services agency.

28 (5) If the conduct involves criminal activity not covered in  
29 subdivision (b), it may be immediately reported to the appropriate  
30 law enforcement agency.

31 (d) If two or more mandated reporters are present and jointly  
32 have knowledge or reasonably suspect that types of abuse of an  
33 elder or a dependent adult for which a report is or is not mandated  
34 have occurred, and there is agreement among them, the telephone  
35 report or Internet report, as authorized by Section 15658, may be  
36 made by a member of the team selected by mutual agreement, and  
37 a single report may be made and signed by the selected member  
38 of the reporting team. Any member who has knowledge that the  
39 member designated to report has failed to do so shall thereafter  
40 make the report.



1 (e) A telephone report or Internet report, as authorized by  
2 Section 15658, of a known or suspected instance of elder or  
3 dependent adult abuse shall include, if known, the name of the  
4 person making the report, the name and age of the elder or  
5 dependent adult, the present location of the elder or dependent  
6 adult, the names and addresses of family members or any other  
7 adult responsible for the elder's or dependent adult's care, the  
8 nature and extent of the elder's or dependent adult's condition, the  
9 date of the incident, and any other information, including  
10 information that led that person to suspect elder or dependent adult  
11 abuse, as requested by the agency receiving the report.

12 (f) The reporting duties under this section are individual, and  
13 no supervisor or administrator shall impede or inhibit the reporting  
14 duties, and no person making the report shall be subject to any  
15 sanction for making the report. However, internal procedures to  
16 facilitate reporting, ensure confidentiality, and apprise supervisors  
17 and administrators of reports may be established, provided they  
18 are not inconsistent with this chapter.

19 (g) (1) Whenever this section requires a county adult protective  
20 services agency to report to a law enforcement agency, the law  
21 enforcement agency shall, immediately upon request, provide a  
22 copy of its investigative report concerning the reported matter to  
23 that county adult protective services agency.

24 (2) Whenever this section requires a law enforcement agency  
25 to report to a county adult protective services agency, the county  
26 adult protective services agency shall, immediately upon request,  
27 provide to that law enforcement agency a copy of its investigative  
28 report concerning the reported matter.

29 (3) The requirement to disclose investigative reports pursuant  
30 to this subdivision shall not include the disclosure of social services  
31 records or case files that are confidential, nor shall this subdivision  
32 be construed to allow disclosure of any reports or records if the  
33 disclosure would be prohibited by any other provision of state or  
34 federal law.

35 (h) Failure to report, or impeding or inhibiting a report of,  
36 physical abuse, as defined in Section 15610.63, abandonment,  
37 abduction, isolation, financial abuse, or neglect of an elder or  
38 dependent adult, in violation of this section, is a misdemeanor,  
39 punishable by not more than six months in a county jail, by a fine  
40 of not more than one thousand dollars (\$1,000), or by both that

1 fine and imprisonment. Any mandated reporter who willfully fails  
 2 to report, or impedes or inhibits a report of, physical abuse, as  
 3 defined in Section 15610.63, abandonment, abduction, isolation,  
 4 financial abuse, or neglect of an elder or dependent adult, in  
 5 violation of this section, if that abuse results in death or great bodily  
 6 injury, shall be punished by not more than one year in a county  
 7 jail, by a fine of not more than five thousand dollars (\$5,000), or  
 8 by both that fine and imprisonment. If a mandated reporter  
 9 intentionally conceals his or her failure to report an incident known  
 10 by the mandated reporter to be abuse or severe neglect under this  
 11 section, the failure to report is a continuing offense until a law  
 12 enforcement agency specified in paragraph (1) of subdivision (b)  
 13 discovers the offense.

14 (i) For purposes of this section, “dependent adult” shall have  
 15 the same meaning as in Section 15610.23.

16 SEC. 224. Section 15650 of the Welfare and Institutions Code  
 17 is amended to read:

18 15650. (a) Investigation of reports of known or suspected  
 19 instances of abuse in long-term care facilities shall be the  
 20 responsibility of the bureau, the local law enforcement agency,  
 21 and the long-term care ombudsman program.

22 (b) Investigations of known or suspected instances of abuse  
 23 outside of long-term care facilities shall be the responsibility of  
 24 the county adult protective services agency, unless another public  
 25 agency is given responsibility for investigation in that jurisdiction,  
 26 and the local law enforcement agency.

27 (c) The investigative responsibilities set forth in this section are  
 28 in addition to, and not in derogation of or substitution for, the  
 29 investigative and regulatory responsibilities of licensing agencies,  
 30 such as the State Department of Social Services Community Care  
 31 Licensing Division and the State Department of Public Health  
 32 Licensing and Certification Division and their authorized  
 33 representatives.

34 (d) Other public agencies involved in the investigation of abuse  
 35 or advocacy of respective client populations, or both, include, but  
 36 shall not be limited to, the State Department of State Hospitals and  
 37 the State Department of Developmental Services. Other public  
 38 agencies shall conduct or assist in, or both, the investigation of  
 39 reports of abuse of elder and dependent adults within their

1 jurisdiction in conjunction with county adult protective services,  
2 local ombudsman programs, and local law enforcement agencies.

3 (e) Each county adult protective services agency shall maintain  
4 an inventory of all public and private service agencies available  
5 to assist victims of abuse, as defined by Section 15610.07. This  
6 inventory shall be used to refer victims in the event that the county  
7 adult protective services agency cannot resolve the immediate  
8 needs of the victim, and to serve the victim on a long-term,  
9 followup basis. The intent of this section is to acknowledge that  
10 limited funds are available to resolve all suspected cases of abuse  
11 reported to a county adult protective services agency.

12 (f) Each local ombudsman program shall maintain an inventory  
13 of all public and private agencies available to assist long-term care  
14 residents who are victims of abuse, as defined by Section 15610.07.  
15 This inventory shall be used to refer cases of abuse in the event  
16 that another agency has jurisdiction over the resident, the abuse is  
17 verified and further investigation is needed by a law enforcement  
18 or licensing agency, or the program does not have sufficient  
19 resources to provide immediate assistance. The intent of this section  
20 is to acknowledge that ombudsman responsibility in abuse cases  
21 is to receive reports, determine the validity of reports, refer verified  
22 abuse cases to appropriate agencies for further action as necessary,  
23 and follow up to complete the required report information. Other  
24 ombudsman services shall be provided to the resident, as  
25 appropriate.

26 SEC. 225. Section 18969 of the Welfare and Institutions Code  
27 is amended to read:

28 18969. (a) There is hereby created in the State Treasury a fund  
29 which shall be known as the State Children's Trust Fund. The fund  
30 shall consist of funds received from a county pursuant to Section  
31 18968, funds collected by the state and transferred to the fund  
32 pursuant to subdivision (b) of Section 103625 of the Health and  
33 Safety Code and Article 2 (commencing with Section 18711) of  
34 Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation  
35 Code, grants, gifts, or bequests made to the state from private  
36 sources to be used for innovative and distinctive child abuse and  
37 neglect prevention and intervention projects, and money  
38 appropriated to the fund for this purpose by the Legislature. The  
39 State Registrar may retain a percentage of the fees collected

1 pursuant to Section 103625 of the Health and Safety Code, not to  
2 exceed 10 percent, in order to defray the costs of collection.

3 (b) Money in the State Children's Trust Fund, upon  
4 appropriation by the Legislature, shall be allocated to the State  
5 Department of Social Services for the purpose of funding child  
6 abuse and neglect prevention and intervention programs. The  
7 department may not supplant any federal, state, or county funds  
8 with any funds made available through the State Children's Trust  
9 Fund.

10 (c) The department may establish positions as needed for the  
11 purpose of implementing and administering child abuse and neglect  
12 prevention and intervention programs that are funded by the State  
13 Children's Trust Fund. However, the department shall use no more  
14 than 5 percent of the funds appropriated pursuant to this section  
15 for administrative costs.

16 (d) No State Children's Trust Fund money shall be used to  
17 supplant state General Fund money for any purpose.

18 (e) It is the intent of the Legislature that the State Children's  
19 Trust Fund provide for all of the following:

20 (1) The development of a public-private partnership by  
21 encouraging consistent outreach to the private foundation and  
22 corporate community.

23 (2) Funds for large-scale dissemination of information that will  
24 promote public awareness regarding the nature and incidence of  
25 child abuse and the availability of services for intervention. These  
26 public awareness activities shall include, but not be limited to, the  
27 production of public service announcements, well-designed posters,  
28 pamphlets, booklets, videos, and other media tools.

29 (3) Research and demonstration projects that explore the nature  
30 and incidence and the development of long-term solutions to the  
31 problem of child abuse.

32 (4) The development of a mechanism to provide ongoing public  
33 awareness through activities that will promote the charitable tax  
34 deduction for the trust fund and seek continued contributions.  
35 These activities may include convening a philanthropic roundtable,  
36 developing literature for use by the State Bar for dissemination,  
37 and whatever other activities are deemed necessary and appropriate  
38 to promote the trust fund.

39 SEC. 226. Section 1 of Chapter 357 of the Statutes of 2012 is  
40 amended to read:

1 SECTION 1. (a) The sum of six hundred twenty-four thousand  
 2 six hundred seventy-one dollars and eighty-six cents (\$624,671.86)  
 3 is hereby appropriated from the fund specified in subdivision (b)  
 4 to the Executive Officer of the California Victim Compensation  
 5 and Government Claims Board for the payment of claims accepted  
 6 by the board pursuant to the schedule set forth in subdivision (b).

7 (b) Pursuant to subdivision (a), claims accepted by the California  
 8 Victim Compensation and Government Claims Board shall be paid  
 9 pursuant to the following schedule:

10

11	Total for Fund: General Fund (0001) .....	
12		\$593,372.28
13	Total for Fund: Item 2660-001-0042 .....	\$9,330.35
14	Budget Act of 2012, Program 20.10	
15	Total for Fund: Item 2740-001-0044 .....	\$3,055.15
16	Budget Act of 2012, Program 11	
17	Total for Fund: Item 4260-001-0001 .....	\$6,131.34
18	Budget Act of 2012, Program 20	
19	Total for Fund: Item 5180-111-0001 .....	\$3,117.59
20	Budget Act of 2012, Program 25.15	
21	Total for Fund: Item 7100-001-0185 .....	\$9,665.15
22	Budget Act of 2012, Program 21	

23  
 24 SEC. 227. Section 1 of Chapter 513 of the Statutes of 2012 is  
 25 amended to read:

26 SECTION 1. This act shall be known and may be cited as  
 27 Kathy’s Law.

28 SEC. 228. Section 1 of Chapter 541 of the Statutes of 2012 is  
 29 amended to read:

30 SECTION 1. The Legislature finds and declares all of the  
 31 following:

32 (a) The coho salmon (*Oncorhynchus kisutch*) is a fish native to  
 33 many northern California coastal streams and consists of two  
 34 distinct Evolutionary Significant Units (ESU), the Southern  
 35 Oregon/Northern California Coast (SONCC) and the Central  
 36 California Coast (CCC) ESUs. The historical range of the SONCC  
 37 ESU includes coastal rivers and tributaries in Del Norte, Siskiyou,  
 38 Humboldt, Trinity, Mendocino, and Lake Counties. The historical  
 39 range for the CCC ESU includes coastal rivers and tributaries in  
 40 parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano,

1 Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara,  
2 and Santa Cruz Counties.

3 (b) All coho salmon runs in California have declined  
4 dramatically over the past 40 to 50 years. Population numbers,  
5 including hatchery stocks, were estimated at 6 to 15 percent of  
6 1940 levels in 2004. Since 2004, populations in all monitored  
7 streams have continued to decline with an estimated 1 percent  
8 remaining of the original population. While a few coastal rivers,  
9 such as the Russian River, did show an increase in population for  
10 2011, it is not yet known whether the increase is sustainable, and  
11 the species remains at critical risk of extinction.

12 (c) Both the SONCC and the CCC ESUs are listed pursuant to  
13 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531  
14 et seq.) and the California Endangered Species Act (Chapter 1.5  
15 (commencing with Section 2050) of Division 3 of the Fish and  
16 Game Code). The populations south of the San Francisco Bay are  
17 listed as endangered and considered to be virtually extinct. The  
18 populations between San Francisco Bay and Punta Gorda to the  
19 north are listed as endangered, and the populations from Punta  
20 Gorda to the Oregon border are listed as threatened.

21 (d) California's salmon populations need freshwater habitat that  
22 includes cold and clean water, appropriate water depth, quantity,  
23 and flow velocities, upland and riparian vegetation to stabilize soil  
24 and shade, clean gravel for spawning and egg rearing, large woody  
25 debris to provide resting and hiding places, adequate food, and  
26 varied channel forms.

27 (e) An urgency exists due to the extraordinarily small numbers  
28 of coho salmon remaining in California. In order to prevent their  
29 extinction from northern California waters, it is imperative that  
30 habitat restoration efforts be expedited and increased as soon as  
31 possible.

32 (f) Therefore, it is the intent of the Legislature in enacting this  
33 policy that the Department of Fish and Wildlife seek agreements  
34 and partnerships with state and federal agencies to efficiently and  
35 effectively permit habitat enhancement projects necessary to  
36 prevent the extinction of coho salmon populations in California  
37 coastal watersheds and that the Department of Fish and Wildlife  
38 expedite and streamline the permitting and approval of coho salmon  
39 habitat enhancement projects, including, in particular, large woody  
40 debris restoration projects, in northern California streams.

1 (g) By eliminating barriers to fish passage, stabilizing banks,  
2 increasing stream channel complexity, and otherwise restoring and  
3 enhancing habitat, these projects will result in a net benefit to coho  
4 salmon and other species.

5 SEC. 229. Section 2 of Chapter 719 of the Statutes of 2012 is  
6 amended to read:

7 SEC. 2. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety within  
9 the meaning of Article IV of the Constitution and shall go into  
10 immediate effect. The facts constituting the necessity are:

11 This authorization is required to begin construction on the  
12 memorial as quickly as possible to coincide with Portuguese  
13 Heritage Month, established by Resolution Chapter 24 of the  
14 Statutes of 2010.

15 SEC. 230. Any section of any act enacted by the Legislature  
16 during the 2013 calendar year that takes effect on or before January  
17 1, 2014, and that amends, amends and renumbers, adds, repeals  
18 and adds, or repeals a section that is amended, amended and  
19 renumbered, added, repealed and added, or repealed by this act,  
20 shall prevail over this act, whether that act is enacted prior to, or  
21 subsequent to, the enactment of this act. The repeal, or repeal and  
22 addition, of any article, chapter, part, title, or division of any code  
23 by this act shall not become operative if any section of any other  
24 act that is enacted by the Legislature during the 2013 calendar year  
25 and takes effect on or before January 1, 2014, amends, amends  
26 and renumbers, adds, repeals and adds, or repeals any section  
27 contained in that article, chapter, part, title, or division.