

ASSEMBLY BILL**No. 383****Introduced by Assembly Member Wagner**

February 14, 2013

An act to amend Sections 1202, 4836.1, 4999.32, 5096.10, 21609.1, 23958.4, 25502.2, and 25600.2 of the Business and Professions Code, to amend Sections 55.56, 56.16, 1195, 1950.5, 2877, 2923.55, 2924.8, 2924.19, 2950, and 3509 of the Civil Code, to amend Sections 116.940, 425.50, 684.115, and 1282.4 of the Code of Civil Procedure, to amend Section 7237 of, and to amend and renumber the heading of Chapter 5.5 (commencing with Section 15900) of Title 2 of, the Corporations Code, to amend Sections 15282, 17193.5, 17250.25, 18720, 22138.5, 33195, 35583, 38000, 41320.1, 41326, 47660, 48853, 48853.5, 48900, 48902, 48911, 49076, 49548, 52052, 60200.8, 60209, 60605.87, 60852.1, 66407, 81378.1, and 88620 of the Education Code, to amend Sections 2162, 2224, 2225, 3111, 13115, and 21000 of the Elections Code, to amend Sections 3047, 3200.5, and 4055 of the Family Code, to amend Sections 1587 and 15100 of the Fish and Game Code, to amend Sections 4101.3, 4106, 14611, 19447, 55527.6, and 64101 of the Food and Agricultural Code, to amend Sections 3513, 3527, 7522.20, 7522.56, 7522.57, 7522.72, 8164.1, 11019, 11020, 11435.15, 11552, 12460, 12838.14, 12926, 14837, 15820.922, 19815, 20391, 20410, 20516, 20677.7, 25060, 25062, 65040.7, 65302.5, and 65915 of, to amend the heading of Chapter 3.1 (commencing with Section 8240) of Division 1 of Title 2 of, to amend and renumber Sections 15606.5, 15814.25, and 15819.30 of, to repeal Section 7480 of, and to repeal the heading of Chapter 3 (commencing with Section 15570) of Part 8.5 of Division 3 of Title 2 of, the Government Code, to amend Sections 80.2 and 82 of, and to amend the heading of Chapter 3 (commencing with Section 80) of Division 1 of, the Harbors and Navigation Code, to amend

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

LEGISLATIVE COUNSEL'S DIGEST

AB 383, as introduced, 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 ~~Health Services~~. *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 ~~provision of~~ law, a
8 registered veterinary technician or a veterinary assistant may
9 administer a drug, including, but not limited to, a drug that is a
10 controlled substance, under the direct or indirect supervision of a
11 licensed veterinarian when done pursuant to the order, control,
12 and full professional responsibility of a licensed veterinarian.
13 However, no person, other than a licensed veterinarian, may induce
14 anesthesia 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~~ *drug- or*
19 *alcohol-related* felony 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.

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

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

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

3 4999.32. (a) This section shall apply to applicants for
4 examination eligibility or registration who begin graduate study
5 before August 1, 2012, and complete that study on or before
6 December 31, 2018. Those applicants may alternatively qualify
7 under paragraph (2) of subdivision (a) of Section 4999.33.

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

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

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

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

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

38 (C) Career development theories and techniques, including
39 career development decisionmaking models and interrelationships

1 among and between work, family, and other life roles and factors,
2 including the role of multicultural issues in career development.

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

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

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

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

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

36 (I) Professional orientation, ethics, and law in counseling,
37 including professional ethical standards and legal considerations,
38 licensing law and process, regulatory laws that delineate the
39 profession's scope of practice, counselor-client privilege,
40 confidentiality, the client dangerous to self or others, treatment of

1 minors with or without parental consent, relationship between
2 practitioner's sense of self and human values, functions and
3 relationships with other human service providers, strategies for
4 collaboration, and advocacy processes needed to address
5 institutional and social barriers that impede access, equity, and
6 success for clients.

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

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

17 (A) Applied psychotherapeutic techniques.

18 (B) Assessment.

19 (C) Diagnosis.

20 (D) Prognosis.

21 (E) Treatment.

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

23 (G) Health and wellness promotion.

24 (H) Other recognized counseling interventions.

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

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

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

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

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

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

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

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

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

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

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

34 (7) A minimum of 10 contact hours of instruction in aging and
35 long-term care, which may include, but is not limited to, the
36 biological, social, and psychological aspects of aging. On and after
37 January 1, 2012, this coursework shall include instruction on the
38 assessment and reporting of, as well as treatment related to, elder
39 and dependent adult abuse and neglect.

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

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

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

11 5096.10. (a) The provisions of this article shall only be
12 operative if there is an appropriation from the Accountancy Fund
13 in the annual Budget Act to fund the activities in the article and
14 sufficient hiring authority is granted pursuant to a budget change
15 proposal to the board to provide staffing to implement this article.

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

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

23 21609.1. (a) No junk dealer or recycler shall possess any
24 reasonably recognizable, disassembled, or inoperative fire hydrant
25 or fire department connection, including, but not limited to,
26 reasonably recognizable brass fittings and parts, or any manhole
27 cover or lid or reasonably recognizable part of a manhole cover
28 or lid, or any backflow device or connection to that device or
29 reasonably recognizable part of that device, that was owned or
30 previously owned by an agency, in the absence of a written
31 certification on the letterhead of the agency owning or previously
32 owning the material described in the certification that the agency
33 has either sold the material described or is offering the material
34 for sale, salvage, or recycling, and that the person possessing the
35 certification and identified in the certification is authorized to
36 negotiate the sale of that material.

37 (b) A junk dealer or recycler who unknowingly takes possession
38 of one or more of the items listed in subdivision (a) as part of a
39 load of otherwise nonprohibited materials without a written
40 certification has a duty to notify the appropriate law enforcement

1 agency by the end of the next business day upon discovery of the
2 prohibited material. ~~Written confirmation~~ *certification* shall relieve
3 the junk dealer or recycler from any civil or criminal penalty for
4 possession of the prohibited material. The prohibited material shall
5 be set aside and not sold pending a determination made by a law
6 enforcement agency pursuant to Section 21609.

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

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

11 (2) “Appropriate law enforcement agency” means either of the
12 following:

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

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

19 (3) ~~“Written confirmation”~~ *“certification”* means a ~~confirmation~~
20 *certification* in written form by the junk dealer or recycler to a law
21 enforcement agency, including electronic mail, facsimile, or a
22 letter delivered in person or by certified mail.

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

25 23958.4. (a) For purposes of Section 23958, “undue
26 concentration” means the case in which the applicant premises for
27 an original or premises-to-premises transfer of any retail license
28 are located in an area where any of the following conditions exist:

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

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

39 (3) As to off-sale retail license applications, the ratio of off-sale
40 retail licenses to population in the census tract or census division

1 in which the applicant premises are located exceeds the ratio of
2 off-sale retail licenses to population in the county in which the
3 applicant premises are located.

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

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

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

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

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

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

38 (2) "Reported crimes" means the most recent yearly compilation
39 by the local law enforcement agency of reported offenses of
40 criminal homicide, forcible rape, robbery, aggravated assault,

1 burglary, larceny theft, and motor vehicle theft, combined with all
2 arrests for other crimes, both felonies and misdemeanors, except
3 traffic citations.

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

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

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

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

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

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

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

32 (e) The enactment of this section shall not affect any existing
33 rights of any holder of a retail license issued ~~prior to~~ *before* April
34 29, 1992, whose premises were destroyed or rendered unusable as
35 a result of the civil disturbances occurring in Los Angeles from
36 April 29 to May 2, 1992, to reopen and operate those licensed
37 premises.

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

1 SEC. 7. Section 25502.2 of the Business and Professions Code
2 is amended to read:
3 25502.2. (a) A person employed or engaged by an authorized
4 licensee may appear at a promotional event at the premises of an
5 off-sale retail licensee for the purposes of providing autographs
6 to consumers at the promotional event only under the following
7 conditions:
8 (1) A purchase from the off-sale retail licensee is not required.
9 (2) A fee is not charged to attend the promotional event.
10 (3) Autographing may only be provided on consumer advertising
11 specialities given by the authorized licensee to a consumer or on
12 any item provided by the consumer.
13 (4) The promotional event does not exceed four hours in
14 duration.
15 (5) There are no more than two promotional events per calendar
16 year involving the same authorized licensee at a single premises
17 of an off-sale retail licensee.
18 (6) The off-sale retail licensee may advertise the promotional
19 event to be held at its licensed premises.
20 (7) An authorized licensee may advertise in advance of the
21 promotional event only in publications of the authorized licensee,
22 subject to the following conditions:
23 (A) The advertising only lists the name and address of the
24 off-sale retail licensee, the name of the alcoholic beverage product
25 being featured at the promotional event, and the time, date, and
26 location of the off-sale retail licensee location where the
27 promotional event is being held.
28 (B) The listing of the off-sale retail licensee's name and address
29 is the only reference to the off-sale retail licensee in the
30 advertisement and is relatively inconspicuous in relation to the
31 advertisement as a whole, and the advertisement does not contain
32 any pictures or illustrations of the off-sale retail licensee's premises
33 or laudatory references to the off-sale retail licensee.
34 (8) A wholesaler does not directly or indirectly underwrite,
35 share in, or contribute to any costs related to the promotional event,
36 except that a beer and wine wholesaler that holds at least six
37 distilled spirits wholesaler licenses may directly or indirectly
38 underwrite, share in, or contribute to any costs related to a
39 promotional event for which the wholesaler employs or engages

1 the person providing autographs to consumers at the promotional
2 event.

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

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

8 (b) For purposes of this section, “authorized licensee” means a
9 manufacturer, winegrower, manufacturer’s agent, California
10 winegrower’s agent, rectifier, importer, brandy manufacturer,
11 brandy importer, or wholesaler.

12 ~~(e) This section shall remain in effect only until January 1, 2016.~~

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

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

18 25600.2. (a) An authorized licensee may conduct or sponsor
19 consumer sweepstakes, subject to the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (F) An agreement, whether written or oral, entered into, by, and
36 between a retail licensee and an authorized licensee that precludes
37 the advertisement or promotion of a sweepstakes on the premises
38 of the retail licensee by another authorized licensee or its agent is
39 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 ~~any~~ *an* additional license not included
20 in 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 ~~prior to~~ *before* the particular occasion on which the plaintiff was
18 allegedly denied full and equal access, or the defendant was in the
19 process of correcting the alleged violation within a reasonable time
20 and manner ~~prior to~~ *before* the particular occasion on which the
21 plaintiff was 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 ~~any~~ *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 ~~(e)~~ (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
38 for the state, personally appeared ____ (name of subscribing witness), proved
39 to me to be the person whose name is subscribed to the within instrument, as a
40 witness thereto, on the oath of ____ (name of credible witness), a credible

1 witness who is known to me and provided a satisfactory identifying document.
 2 ____ (name of subscribing witness), being by me duly sworn, said that he/she
 3 was present and saw/heard ____ (name[s] of principal[s]), the same person(s)
 4 described in and whose name(s) is/are subscribed to the within or attached
 5 instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto,
 6 execute or acknowledge executing the same, and that said affiant subscribed
 7 his/her name to the within or attached instrument as a witness at the request of
 8 ____ (name[s] 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 ~~any~~ *an* action
29 under this section, the landlord or the landlord's successors in
30 interest shall have the burden of proof as to the reasonableness of
31 the amounts claimed or the authority pursuant to this section to
32 demand additional security deposits.

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

35 (n) ~~Any~~ *An* action under this section may be maintained in small
36 claims court if the damages claimed, whether ~~actual~~ *or actual*,
37 statutory, or both, are within the jurisdictional amount allowed by
38 Section 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 *respondentia* are subject to all of the provisions of this ~~Chapter~~.
16 *chapter*.

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

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

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

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

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

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

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

40 (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 advisor 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~~ *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) ~~Any~~*An* injunction shall remain in place and any trustee's
30 sale 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 ~~2917.18~~ 2924.18
15 by a person licensed by the Department of Corporations, the
16 Department of Financial Institutions, or the Department of Real
17 Estate shall be deemed to be a violation of that person's licensing
18 law.

19 (e) ~~No~~A violation of this article shall *not* affect the validity of
20 a sale in favor of a bona fide purchaser and any of its
21 encumbrancers for value without notice.

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

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

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

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

38 (j) This section shall remain in effect only until January 1, 2018,
39 and as of that date is repealed, unless a later enacted statute, that
40 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) ~~Any~~An injunction shall remain in place and any trustee's
8 sale 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 ~~2917.18~~ 2924.18
33 by a person licensed by the Department of Corporations, the
34 Department of Financial Institutions, or the Department of Real
35 Estate shall be deemed to be a violation of that person's licensing
36 law.

37 (e) ~~No~~A violation of this article shall *not* affect the validity of
38 a sale in favor of a bona fide purchaser and any of its
39 encumbrancers for value without notice.

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

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

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

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

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

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

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

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

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

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

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

1 where the small claims advisory service is administered by the
2 court, in accordance with local needs and conditions.

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

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

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

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

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

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

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

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

1 (e) Advisers may be volunteers, and shall be members of the
 2 State Bar, law students, paralegals, or persons experienced in
 3 resolving minor disputes, and shall be familiar with small claims
 4 court rules and procedures. Advisers may not appear in court as
 5 an advocate for any party.

6 (f) Advisers, including independent contractors, other
 7 employees, and volunteers, have the immunity conferred by Section
 8 818.9 of the Government Code with respect to advice provided as
 9 a public service on behalf of a court or county to small claims
 10 litigants and potential litigants under this chapter.

11 (g) ~~Nothing in this~~*This section precludes does not preclude* a
 12 court or county from contracting with a third party to provide small
 13 claims advisory services as described in this section.

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

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

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

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

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

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

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

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

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

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

14 (1) The physical address of the central location.

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

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

39 (b) Should a financial institution required to designate a central
40 location fail to do so, each branch of that institution located in this

1 state shall be deemed to be a central location at which service of
2 legal process may be made, and all of the institution's branches
3 or offices located within this state shall be deemed to be a branch
4 or office covered by central process.

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

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

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

39 (2) The Department of Financial Institutions shall provide any
40 person requesting it with a copy of each current filing made by a

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

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

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

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

1 institution described in this subdivision, the judgment creditor may
2 file with the financial institution a written request that the financial
3 institution identify the branch or office within this state at which
4 a specified account might be maintained by the financial institution.
5 The written request shall contain the following statements or
6 information:

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

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

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

22 (4) The address of the requesting party.

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

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

38
39 (i) The affidavit contemplated by subdivision (h) shall be signed
40 by the judgment creditor or the judgment creditor's counsel and

1 filed at the financial institution's head office located within this
2 state or, if the financial institution's head office is in another state,
3 at one of its branches or offices within this state. Failure to comply
4 with the requirements of subdivision (h) and this subdivision shall
5 be sufficient basis for the financial institution to refuse to produce
6 the information that would otherwise be required by subdivision
7 (j).

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

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

38 (l) A financial institution shall not notify the person in whose
39 name the specified deposit account stands or any other person
40 related to the specified account of the receipt of any request made

1 pursuant to subdivision (h) and affecting that person's or persons'
2 accounts at the financial institution, provided that the financial
3 institution shall have no liability for its failure to comply with the
4 provisions of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (f) An attorney who fails to file or serve the certificate required
37 by this section or files or serves a certificate containing false
38 information or who otherwise fails to comply with the standards
39 of professional conduct required of members of the State Bar of
40 California shall be subject to the disciplinary jurisdiction of the

1 State Bar with respect to that certificate or any of his or her acts
2 occurring in the course of the arbitration.

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

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

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

18 (j) (1) In enacting the amendments to this section made by
19 Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent
20 of the Legislature to respond to the holding in *Birbrower v.*
21 *Superior Court* (1998) 17 Cal.4th ~~447~~, 119, as modified at 17
22 Cal.4th 643a (hereafter *Birbrower*), to provide a procedure for
23 nonresident attorneys who are not licensed in this state to appear
24 in California arbitration proceedings.

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

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

1 (4) In enacting subdivision (i), it is the intent of the Legislature
2 to make clear that nothing in this section shall affect those
3 provisions of law governing the right of injured workers to elect
4 to be represented by any person, regardless of whether that person
5 is licensed to practice law in this state, as set forth in Division 4
6 (commencing with Section 3200) of the Labor Code.

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

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

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

1 that the person did not act in good faith and in a manner which the
2 person reasonably believed to be in the best interests of the
3 corporation or that the person had reasonable cause to believe that
4 the person's conduct was unlawful.

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

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

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

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

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

1 (e) Except as provided in subdivision (d), any indemnification
2 under this section shall be made by the corporation only if
3 authorized in the specific case, upon a determination that
4 indemnification of the agent is proper in the circumstances because
5 the agent has met the applicable standard of conduct set forth in
6 subdivision (b) or (c), by:

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

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

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

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

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

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

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

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

1 (i) A corporation shall have power to purchase and maintain
 2 insurance on behalf of ~~any~~ *an* agent of the corporation against any
 3 liability asserted against or incurred by the agent in that capacity
 4 or arising out of the agent's status as such whether or not the
 5 corporation would have the power to indemnify the agent against
 6 that liability under the provisions of this section.

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

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

21
 22 CHAPTER ~~5.5~~4.5. UNIFORM LIMITED PARTNERSHIP ACT OF
 23 2008
 24

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

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

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

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

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

39 (4) For a school district, one member shall be the parent or
 40 guardian of a child enrolled in the school district. For a community

1 college district, one member shall be a student who is both
2 currently enrolled in the community college district and active in
3 a community college group, such as student government. The
4 community college student member may, at the discretion of the
5 ~~board~~, *governing board of the community college district*, serve
6 up to six months after his or her graduation.

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

14 (b) ~~No~~An employee or official of the *school district or*
15 *community college* district shall *not* be appointed to the citizens'
16 oversight committee. ~~No~~A vendor, contractor, or consultant of the
17 *school district or community college* district shall *not* be appointed
18 to the citizens' oversight committee. Members of the citizens'
19 oversight committee shall, pursuant to Sections 35233 and 72533,
20 abide by the prohibitions contained in Article 4 (commencing with
21 Section 1090) and Article 4.7 (commencing with Section 1125)
22 of Chapter 1 of Division 4 of Title 1 of the Government Code.

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

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

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

1 (2) If, for any reason, a public credit provider is required to
 2 make principal or interest payments, or both, pursuant to a credit
 3 enhancement agreement, the public credit provider shall
 4 immediately notify the Controller of that fact and of the amount
 5 paid out by the public credit provider.

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

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

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

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

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

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

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

35 17250.25. Design-build projects shall progress as follows:

36 (a) (1) The school district governing board shall prepare a
 37 request for proposal setting forth the scope of the project that may
 38 include, but is not limited to, the size, type, and desired design
 39 character of the buildings and site, performance specifications
 40 covering the quality of materials, equipment, and workmanship,

1 preliminary plans or building layouts, or any other information
2 deemed necessary to describe adequately the school district's
3 needs. The performance specifications and any plans shall be
4 prepared by a design professional duly licensed or registered in
5 this state. The request for proposal shall not include a
6 design-build-operate contract for educational facilities pursuant
7 to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) Notwithstanding Section 4-315 of Title 24 of the California
40 Code of Regulations, an architect or structural engineer who is

1 party to a design-build entity may perform the services set forth
2 in Section 17302.

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

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

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

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

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

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

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

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

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

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

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

17 (K) Information concerning all settled adverse claims, disputes,
18 or lawsuits between the owner of a public works project and a
19 member of the design-build entity during the five-year period
20 preceding submission of the bid pursuant to this section, in which
21 the claim, settlement, or judgment exceeds fifty thousand dollars
22 (\$50,000). Information shall also be provided concerning any work
23 completed by a surety during this period.

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

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

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

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

1 (2) Notwithstanding any other provision of this code or of
2 Section 20110 of the Public Contract Code, a school district may
3 use a design-build competition based upon performance and other
4 criteria set forth by the governing board of the school district in
5 the solicitation of proposals. Criteria used in this evaluation of
6 proposals may include, but need not be limited to, the proposed
7 design approach, life cycle costs, project features, and project
8 functions. However, competitive proposals shall be evaluated by
9 using the criteria and source selection procedures specifically
10 identified in the request for proposal. Once the evaluation is
11 complete, all responsive bidders shall be ranked from the most
12 advantageous to least advantageous to the school district.

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

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

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

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

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

1 (F) For~~the~~ purposes of this chapter, “skilled labor force
2 availability” means that an agreement exists with a registered
3 apprenticeship program, approved by the California Apprenticeship
4 Council, which has graduated apprentices in the preceding five
5 years. This graduation requirement shall not apply to programs
6 providing apprenticeship training for any craft that has not been
7 deemed by the *United States* Department of Labor and the
8 Department of Industrial Relations to be an apprenticable craft in
9 the two years before enactment of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (B) Two hundred fifteen days per year or 1,720 hours per year
39 including school and legal holidays pursuant to the policy adopted

1 by the employer’s governing board for administrators at a county
2 office of education.

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

5 ~~(4) Notwithstanding any other provision of this subdivision, if
6 a school district, county office of education, or charter school
7 reduces the number of days of instruction pursuant to Section
8 46201.4 for the 2012–13 or 2013–14 fiscal years, the minimum
9 standard for full time specified in paragraph (1) shall be reduced
10 to the number of days of instruction provided by that school district,
11 county office of education, or charter school and the number of
12 hours of instruction equal to the number of days of instruction
13 times six. The minimum standard for full time specified in
14 paragraphs (2) and (3) for that school district, county office of
15 education, or charter school shall be reduced by the same
16 percentage of days and hours the standard specified in paragraph
17 (1) was reduced pursuant to this paragraph.~~

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

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

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

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

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

34 (5) Five hundred twenty-five instructional hours per school year
35 for all instructors employed on a part-time basis, except instructors
36 specified in paragraph (6). If an instructor receives compensation
37 for office hours pursuant to Article 10 (commencing with Section
38 87880) of Chapter 3 of Part 51 of Division 7 of Title 3, the
39 minimum standard shall be increased appropriately by the number
40 of office hours required annually for the class of employees.

1 (6) Eight hundred seventy-five instructional hours per school
2 year for all instructors employed in adult education programs. If
3 an instructor receives compensation for office hours pursuant to
4 Article 10 (commencing with Section 87880) of Chapter 3 of Part
5 51 of Division 7 of Title 3, the minimum standard shall be
6 increased appropriately by the number of office hours required
7 annually for the class of employees.

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

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

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

14 33195. (a) Every person, firm, association, partnership, or
15 corporation operating a heritage school as defined in Section
16 33195.4 shall, between the 1st and 31st day of January of each
17 year, commencing on January 1, 2011, file with the Superintendent
18 an electronic registration form, under penalty of perjury, by the
19 owner or other head setting forth the following information for the
20 current year:

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

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

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

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

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

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

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

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

39 (7) The heritage school telephone number.

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

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

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

12 (C) Employees have been notified by the employer of their
13 reporting obligations and confidentiality rights, pursuant to Section
14 11165.9 of the Penal Code.

15 (b) If two or more heritage schools are under the effective
16 control or supervision of a single administrative unit, the
17 administrative unit shall comply with the provisions of this section
18 by submitting an electronic registration form on behalf of every
19 heritage school under its effective control or supervision.

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

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

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

31 35583. For purposes of paragraph (1) of subdivision (a) of
32 Section 35735.1, the blended revenue limit per unit of average
33 daily attendance for the Wiseburn Unified School District shall be
34 calculated as follows:

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

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

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

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

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

9 38000. (a) The governing board of a school district may
10 establish a security department under the supervision of a chief of
11 security as designated by, and under the direction of, the
12 superintendent of the school district. In accordance with Chapter
13 5 (commencing with Section 45100) of Part 25, the governing
14 board of a school district may employ personnel to ensure the
15 safety of school district personnel and pupils and the security of
16 the real and personal property of the school district. It is the intent
17 of the Legislature in enacting this section that a school district
18 security department is supplementary to city and county law
19 enforcement agencies and is not vested with general police powers.

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

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

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

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

7 41320.1. Acceptance by the school district of the
8 apportionments made pursuant to Section 41320 constitutes the
9 agreement by the school district to all of the following conditions:

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

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

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

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

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

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

39 (6) To facilitate the appointment of the trustee and the
40 employment of necessary staff, for purposes of this section, the

1 Superintendent is exempt from the requirements of Article 6
2 (commencing with Section 999) of Chapter 6 of Division 4 of the
3 Military and Veterans Code and Part 2 (commencing with Section
4 10100) of Division 2 of the Public Contract Code.

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

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

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

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

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

39 (3) If the Superintendent is notified by the county superintendent
40 of schools pursuant to paragraph (2), the Superintendent shall

1 report to the Legislature, on or before December 30 of every year,
2 whether the school district is complying with the fiscal plan
3 approved for the school district.

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

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

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

39 (e) For purposes of errors and omissions liability insurance
40 policies, the trustee appointed pursuant to this section is an

1 employee of the local educational agency to which he or she is
 2 assigned. For purposes of workers' compensation benefits, the
 3 trustee is an employee of the local educational agency to which
 4 he or she is assigned, except that a trustee appointed pursuant to
 5 paragraph (7) of subdivision (a) is an employee of the department
 6 for ~~that purpose~~. *those purposes*.

7 (f) Except for an individual appointed by the Superintendent as
 8 trustee pursuant to paragraph (7) of subdivision (a), the
 9 state-appointed trustee is a member of the State Teachers'
 10 Retirement System, if qualified, for the period of service as trustee,
 11 unless the trustee elects in writing not to become a member. A
 12 person who is a member or retirant of the State Teachers'
 13 Retirement System at the time of appointment shall continue to
 14 be a member or retirant of the system for the duration of the
 15 appointment. If the trustee chooses to become a member or is
 16 already a member, the trustee shall be placed on the payroll of the
 17 school district for ~~purposes~~ *the purpose* of providing appropriate
 18 contributions to the system. The Superintendent may also require
 19 that an individual appointed as trustee pursuant to paragraph (7)
 20 of subdivision (a) be placed on the payroll of the school district
 21 for purposes of remuneration, other benefits, and payroll
 22 deductions. For purposes of workers' compensation benefits, the
 23 state-appointed trustee is deemed an employee of the local
 24 educational agency to which he or she is assigned, except that a
 25 trustee who is appointed pursuant to paragraph (7) of subdivision
 26 (a) is an employee of the department for ~~that purpose~~. *those*
 27 *purposes*.

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

30 41326. (a) Notwithstanding any other provision of this code,
 31 the acceptance by a school district of an apportionment made
 32 pursuant to Section 41320 that exceeds an amount equal to 200
 33 percent of the amount of the reserve recommended for that school
 34 district under the standards and criteria adopted pursuant to Section
 35 33127 constitutes the agreement by the school district to the
 36 conditions set forth in this article. Before applying for an
 37 emergency apportionment in the amount identified in this
 38 subdivision, the governing board of a school district shall discuss
 39 the need for that apportionment at a regular or special meeting of
 40 the governing board of the school district and, at that meeting,

1 shall receive testimony regarding the apportionment from parents,
2 exclusive representatives of employees of the school district, and
3 other members of the community. For purposes of this article,
4 “qualifying school district” means a school district that accepts a
5 loan as described in this subdivision.

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

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

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

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

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

1 that time in his or her former position with the state or the office
2 of the county superintendent of schools.

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

18 (6) For purposes of workers' compensation benefits, the
19 administrator is an employee of the qualifying school district,
20 except that an administrator appointed pursuant to paragraph (4)
21 may be deemed an employee of the state or office of the county
22 superintendent of schools, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Goals and standards consistent with Section 41327.1.
 2 (ii) Commendations in the areas of the administrator’s strengths
 3 and achievements.

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

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

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

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

16 (d) Notwithstanding Section 35031 or any other law, the
 17 administrator, after according the affected employee reasonable
 18 notice and the opportunity for a hearing, may terminate the
 19 employment of a deputy, associate, assistant superintendent, or
 20 other school district level administrator who is employed by a
 21 qualifying school district under a contract of employment signed
 22 or renewed after January 1, 1992, if the employee fails to
 23 document, to the satisfaction of the administrator, that before the
 24 date of the acceptance of the emergency apportionment he or she
 25 either advised the governing board of the qualifying school district,
 26 or his or her superior, that actions contemplated or taken by the
 27 governing board of the qualifying school district could result in
 28 the fiscal insolvency of the qualifying school district, or took other
 29 appropriate action to avert that fiscal insolvency.

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

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

39 (B) The Superintendent may return power to the governing
 40 board of the qualifying school district for an area listed in

1 subdivision (a) of Section 41327.1 if performance under the
2 recovery plan for that area has been demonstrated to the satisfaction
3 of the Superintendent.

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

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

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

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

18 (f) When the conditions stated in subdivision (e) have been met,
19 and at least 60 days after the Superintendent has notified the
20 Legislature, the Department of Finance, the Controller, and the
21 county superintendent of schools that he or she expects the
22 conditions prescribed pursuant to this section to be met, the
23 governing board of the qualifying school district shall regain all
24 of its legal rights, duties, and powers, except for the powers held
25 by the trustee provided for pursuant to Article 2 (commencing with
26 Section 41320). The Superintendent shall appoint a trustee under
27 Section 41320.1 to monitor and review the operations of the
28 qualifying school district until the conditions of subdivision (b)
29 of that section have been met.

30 (g) Notwithstanding subdivision (f), if the qualifying school
31 district violates a provision of the recovery plans approved by the
32 Superintendent pursuant to this article within five years after the
33 trustee appointed pursuant to Section 41320.1 is removed or after
34 the emergency apportionment is repaid, whichever occurs later,
35 or the improvement plans specified in Section 41327.1 during the
36 period of the trustee's appointment, the Superintendent may
37 reassume, either directly or through an administrator appointed in
38 accordance with this section, all of the legal rights, duties, and
39 powers of the governing board of the qualifying school district.
40 The Superintendent shall return to the governing board of the

1 qualifying school district all of its legal rights, duties, and powers
2 reassumed under this subdivision when he or she determines that
3 future compliance with the approved recovery plans is probable,
4 or after a period of one year, whichever occurs later.

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

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

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

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

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

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

39 (3) If, after performing the duties described in paragraphs (1)
40 and (2), the Superintendent determines that the county

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

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

20 47660. (a) For purposes of computing eligibility for, and
21 entitlements to, general purpose funding and operational funding
22 for categorical programs, the enrollment and average daily
23 attendance of a sponsoring local educational agency shall exclude
24 the enrollment and attendance of pupils in its charter schools
25 funded pursuant to this chapter.

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

1 (2) Notwithstanding subdivision (a), for the 2005–06 fiscal year
2 only, for purposes of computing eligibility for, and entitlements
3 to, revenue limit funding, the average daily attendance of a unified
4 school district, other than a unified school district that has
5 converted all of its schools to charter status pursuant to Section
6 47606 and is operating them as charter schools, shall include all
7 attendance of pupils who reside in the unified school district and
8 who would otherwise have been eligible to attend a noncharter
9 school of the unified school district if the pupils attended a charter
10 school operating in the unified school district prior to July 1, 2005.
11 Only the attendance of pupils described by this paragraph shall be
12 included in the calculation made pursuant to Section 42241.3. The
13 attendance of the pupils described by this paragraph shall be
14 included in the calculation made pursuant to paragraph (7) of
15 subdivision (h) of Section 42238.

16 (c) (1) For the attendance of pupils specified in subdivision (b),
17 the general-purpose entitlement for a charter school that is
18 established through the conversion of an existing public school
19 within a unified school district on or after July 1, 2005, but before
20 January 1, 2010, shall be determined using the following amount
21 of general-purpose funding per unit of average daily attendance,
22 in lieu of the amount calculated pursuant to subdivision (a) of
23 Section 47633:

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

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

1 (2) This subdivision shall not apply to a charter school that is
2 established through the conversion of an existing public school
3 within a unified school district on or after January 1, 2010, which
4 instead shall receive general-purpose funding *pursuant to Section*
5 *47633. This paragraph does not preclude a charter school or*
6 *unified school district from agreeing to an alternative funding*
7 *formula.*

8 ~~pursuant to Section 47633. This paragraph does not preclude a~~
9 ~~charter school or unified school district from agreeing to an~~
10 ~~alternative funding formula.~~

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

18 (e) A unified school district that is the sponsoring local
19 educational agency, as defined in subdivision (j) of Section 47632,
20 of a charter school that is subject to paragraphs (1) and (2) of
21 subdivision (c) shall certify to the Superintendent the amount
22 specified in paragraph (1) of subdivision (c) prior to the approval
23 of the charter petition by the governing board of the school district.
24 This amount may be based on estimates of the unrestricted revenues
25 expended in the fiscal year prior to the school’s conversion to
26 charter status and the school’s operation as a charter school,
27 provided that the amount is recertified when the actual data
28 becomes available.

29 (f) For the purposes of this section, “basic aid school district”
30 means a school district that does not receive from the state an
31 apportionment of state funds pursuant to subdivision (h) of Section
32 42238.

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

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

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

3 48853. (a) A pupil described in subdivision (a) of Section
4 48853.5 who is placed in a licensed children's institution or foster
5 family home shall attend programs operated by the local
6 educational agency, unless one of the following applies:

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

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

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

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

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

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

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

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

1 (c) Before any decision is made to place a pupil in a juvenile
2 court school as defined by Section 48645.1, a community school
3 as described in Sections 1981 and 48660, or other alternative
4 educational setting, the parent or guardian, or person holding the
5 right to make educational decisions for the pupil pursuant to
6 Section 361 or 726 of the Welfare and Institutions Code or Section
7 56055, shall first consider placement in the regular public school.

8 (d) If any dispute arises as to the school placement of a pupil
9 subject to this section, the pupil has the right to remain in his or
10 her school of origin, as defined in subdivision (e) of Section
11 48853.5, pending resolution of the dispute. The dispute shall be
12 resolved in accordance with the existing dispute resolution process
13 available to any pupil served by the local educational agency.

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

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

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

26 (1) For health and safety emergencies.

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

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

36 (h) All educational and school placement decisions shall be
37 made to ensure that the child is placed in the least restrictive
38 educational programs and has access to academic resources,
39 services, and extracurricular and enrichment activities that are
40 available to all pupils. In all instances, educational and school

1 placement decisions shall be based on the best interests of the
2 child.

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

5 48853.5. (a) This section applies to a foster child. “Foster
6 child” means a child who has been removed from his or her home
7 pursuant to Section 309 of the Welfare and Institutions Code, is
8 the subject of a petition filed under Section 300 or 602 of the
9 Welfare and Institutions Code, or has been removed from his or
10 her home and is the subject of a petition filed under Section 300
11 or 602 of the Welfare and Institutions Code.

12 (b) Each local educational agency shall designate a staff person
13 as the educational liaison for foster children. In a school district
14 that operates a foster children services program pursuant to Chapter
15 11.3 (commencing with Section 42920) of Part 24 of Division 3,
16 the educational liaison shall be affiliated with the local foster
17 children services program. The educational liaison shall do all of
18 the following:

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

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

24 (c) If so designated by the superintendent of the local educational
25 agency, the educational liaison shall notify a foster child’s attorney
26 and the appropriate representative of the county child welfare
27 agency of pending expulsion proceedings if the decision to
28 recommend expulsion is a discretionary act, pending proceedings
29 to extend a suspension until an expulsion decision is rendered if
30 the decision to recommend expulsion is a discretionary act, and,
31 if the foster child is an individual with exceptional needs, pending
32 manifestation determinations pursuant to Section 1415(k) of Title
33 20 of the United States Code if the local educational agency has
34 proposed a change in placement due to an act for which the
35 decision to recommend expulsion is at the discretion of the
36 principal or the district superintendent of schools.

37 (d) This section does not grant authority to the educational
38 liaison that supersedes the authority granted under state and federal
39 law to a parent or legal guardian retaining educational rights, a
40 responsible adult appointed by the court to represent the child

1 pursuant to Section 361 or 726 of the Welfare and Institutions
2 Code, a surrogate parent, or a foster parent exercising the authority
3 granted under Section 56055. The role of the educational liaison
4 is advisory with respect to placement decisions and determination
5 of *the* school of origin.

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

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

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

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

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

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

1 discretion, providing transportation services to allow a foster child
2 to attend a school or school district.

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

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

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

23 (B) The new school shall immediately enroll the foster child
24 even if the foster child has outstanding fees, fines, textbooks, or
25 other items or moneys due to the school last attended or is unable
26 to produce clothing or records normally required for enrollment,
27 such as previous academic records, medical records, including,
28 but not limited to, records or other proof of immunization history
29 pursuant to Chapter 1 (commencing with Section 120325) of Part
30 2 of Division 105 of the Health and Safety Code, proof of
31 residency, other documentation, or school uniforms.

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

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

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

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

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

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

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

33 48900. A pupil shall not be suspended from school or
34 recommended for expulsion, unless the superintendent of the school
35 district or the principal of the school in which the pupil is enrolled
36 determines that the pupil has committed an act as defined pursuant
37 to any of subdivisions (a) to (r), inclusive:

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

- 1 (2) Willfully used force or violence upon the person of another,
2 except in self-defense.
- 3 (b) Possessed, sold, or otherwise furnished a firearm, knife,
4 explosive, or other dangerous object, unless, in the case of
5 possession of an object of this type, the pupil had obtained written
6 permission to possess the item from a certificated school employee,
7 which is concurred in by the principal or the designee of the
8 principal.
- 9 (c) Unlawfully possessed, used, sold, or otherwise furnished,
10 or been under the influence of, a controlled substance listed in
11 Chapter 2 (commencing with Section 11053) of Division 10 of the
12 Health and Safety Code, an alcoholic beverage, or an intoxicant
13 of any kind.
- 14 (d) Unlawfully offered, arranged, or negotiated to sell a
15 controlled substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code, an alcoholic
17 beverage, or an intoxicant of any kind, and either sold, delivered,
18 or otherwise furnished to a person another liquid, substance, or
19 material and represented the liquid, substance, or material as a
20 controlled substance, alcoholic beverage, or intoxicant.
- 21 (e) Committed or attempted to commit robbery or extortion.
- 22 (f) Caused or attempted to cause damage to school property or
23 private property.
- 24 (g) Stole or attempted to steal school property or private
25 property.
- 26 (h) Possessed or used tobacco, or products containing tobacco
27 or nicotine products, including, but not limited to, cigarettes, cigars,
28 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
29 packets, and betel. However, this section does not prohibit use or
30 possession by a pupil of his or her own prescription products.
- 31 (i) Committed an obscene act or engaged in habitual profanity
32 or vulgarity.
- 33 (j) Unlawfully possessed or unlawfully offered, arranged, or
34 negotiated to sell drug paraphernalia, as defined in Section 11014.5
35 of the Health and Safety Code.
- 36 (k) Disrupted school activities or otherwise willfully defied the
37 valid authority of supervisors, teachers, administrators, school
38 officials, or other school personnel engaged in the performance of
39 their duties.

1 (l) Knowingly received stolen school property or private
2 property.

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

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

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

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

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

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

30 (1) “Bullying” means any severe or pervasive physical or verbal
31 act or conduct, including communications made in writing or by
32 means of an electronic act, and including one or more acts
33 committed by a pupil or group of pupils as defined in Section
34 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
35 that ~~has~~ *have* or can be reasonably predicted to have the effect of
36 one or more of the following:

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

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

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

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

6 (2) (A) “Electronic act” means the transmission, by means of
7 an electronic device, including, but not limited to, a telephone,
8 wireless telephone, or other wireless communication device,
9 computer, or pager, of a communication, including, but not limited
10 to, any of the following:

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

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

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

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

24 (III) Creating a false profile for the purpose of having one or
25 more of the effects listed in paragraph (1). “False profile” means
26 a profile of a fictitious pupil or a profile using the likeness or
27 attributes of an actual pupil other than the pupil who created the
28 false profile.

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

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

37 (s) A pupil shall not be suspended or expelled for any of the
38 acts enumerated in this section unless the act is related to a school
39 activity or school attendance occurring within a school under the
40 jurisdiction of the superintendent of the school district or principal

1 or occurring within any other school district. A pupil may be
2 suspended or expelled for acts that are enumerated in this section
3 and related to a school activity or school attendance that occur at
4 any time, including, but not limited to, any of the following:

- 5 (1) While on school grounds.
- 6 (2) While going to or coming from school.
- 7 (3) During the lunch period whether on or off the campus.
- 8 (4) During, or while going to or coming from, a
9 school-sponsored activity.

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

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

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

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

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

30 48902. (a) The principal of a school or the principal’s designee
31 shall, before the suspension or expulsion of any pupil, notify the
32 appropriate law enforcement authorities of the county or city in
33 which the school is situated, of any acts of the pupil that may
34 violate Section 245 of the Penal Code.

35 (b) The principal of a school or the principal’s designee shall,
36 within one schoolday after suspension or expulsion of any pupil,
37 notify, by telephone or any other appropriate method chosen by
38 the school, the appropriate law enforcement authorities of the
39 county or the school district in which the school is situated of any

1 acts of the pupil that may violate subdivision (c) or (d) of Section
2 48900.

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

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

21 (e) The principal of a school or the principal's designee reporting
22 a criminal act committed by a schoolage individual with
23 exceptional needs, as defined in Section 56026, shall ensure that
24 copies of the special education and disciplinary records of the pupil
25 are transmitted, as described in Section ~~1415(6)(k)~~ 1415(k)(6) of
26 Title 20 of the United States Code, for consideration by the
27 appropriate authorities to whom he or she reports the criminal act.
28 Any copies of the pupil's special education and disciplinary records
29 may be transmitted only to the extent permissible under the federal
30 Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
31 Sec. 1232g et seq.).

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

34 48911. (a) The principal of the school, the principal's designee,
35 or the district superintendent of schools may suspend a pupil from
36 the school for any of the reasons enumerated in Section 48900,
37 and pursuant to Section 48900.5, for no more than five consecutive
38 schooldays.

39 (b) Suspension by the principal, the principal's designee, or the
40 district superintendent of schools shall be preceded by an informal

1 conference conducted by the principal, the principal's designee,
2 or the district superintendent of schools between the pupil and,
3 whenever practicable, the teacher, supervisor, or school employee
4 who referred the pupil to the principal, the principal's designee,
5 or the district superintendent of schools. At the conference, the
6 pupil shall be informed of the reason for the disciplinary action
7 and the evidence against him or her, and shall be given the
8 opportunity to present his or her version and evidence in his or her
9 defense.

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

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

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

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

39 No penalties shall be imposed on a pupil for failure of the pupil's
40 parent or guardian to attend a conference with school officials.

1 Reinstatement of the suspended pupil shall not be contingent upon
2 attendance by the pupil's parent or guardian at the conference.

3 (g) In a case where expulsion from a school or suspension for
4 the balance of the semester from continuation school is being
5 processed by the governing board of the school district, the district
6 superintendent of ~~schools~~, *schools* or other person designated by
7 the district superintendent of schools in ~~writing~~, *writing* may extend
8 the suspension until the governing board of the school district has
9 rendered a decision in the action. However, an extension may be
10 granted only if the district superintendent of schools or the district
11 superintendent's designee has determined, following a meeting in
12 which the pupil and the pupil's parent or guardian are invited to
13 participate, that the presence of the pupil at the school or in an
14 alternative school placement would cause a danger to persons or
15 property or a threat of disrupting the instructional process. If the
16 pupil is a foster child, as defined in Section 48853.5, the district
17 superintendent of schools or the district superintendent's designee,
18 including, but not limited to, the educational liaison for the school
19 district, shall also invite the pupil's attorney and an appropriate
20 representative of the county child welfare agency to participate in
21 the meeting. If the pupil or the pupil's parent or guardian has
22 requested a meeting to challenge the original suspension pursuant
23 to Section 48914, the purpose of the meeting shall be to decide
24 upon the extension of the suspension order under this section and
25 may be held in conjunction with the initial meeting on the merits
26 of the suspension.

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

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

36 An additional person meeting the requirements of this
37 subdivision may be designated by the principal, in writing, to act
38 for purposes of this article when both the principal and the
39 principal's primary designee are absent from the schoolsite. The
40 name of the person, and the names of any person or persons

1 designated as “principal’s designee,” shall be on file in the
2 principal’s office.

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

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

7 49076. (a) A school district shall not permit access to pupil
8 records to a person without written parental consent or under
9 judicial order except as set forth in this section and as permitted
10 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
11 of Federal Regulations.

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

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

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

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

- 1 (D) Other state and local officials to the extent that information
2 is specifically required to be reported pursuant to state law adopted
3 before November 19, 1974.
- 4 (E) Parents of a pupil 18 years of age or older who is a
5 dependent as defined in Section 152 of Title 26 of the United States
6 Code.
- 7 (F) A pupil 16 years of age or older or having completed the
8 10th grade who requests access.
- 9 (G) A district attorney who is participating in or conducting a
10 truancy mediation program pursuant to Section 48263.5, or Section
11 601.3 of the Welfare and Institutions Code, or participating in the
12 presentation of evidence in a truancy petition pursuant to Section
13 681 of the Welfare and Institutions Code.
- 14 (H) A district attorney’s office for consideration against a parent
15 or guardian for failure to comply with the Compulsory Education
16 Law (Chapter 2 (commencing with Section 48200)) or with
17 Compulsory Continuation Education (Chapter 3 (commencing
18 with Section 48400)).
- 19 (I) (i) A probation officer, district attorney, or counsel of record
20 for a minor for purposes of conducting a criminal investigation or
21 an investigation in regards to declaring a person a ward of the court
22 or involving a violation of a condition of probation.
- 23 (ii) For purposes of this subparagraph, a probation officer,
24 district attorney, and counsel of record for a minor shall be deemed
25 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
26 34 of the Code of Federal Regulations.
- 27 (iii) Pupil records obtained pursuant to this subparagraph shall
28 be subject to the evidentiary rules described in Section 701 of the
29 Welfare and Institutions Code.
- 30 (J) A judge or probation officer for the purpose of conducting
31 a truancy mediation program for a pupil, or for purposes of
32 presenting evidence in a truancy petition pursuant to Section 681
33 of the Welfare and Institutions Code. The judge or probation officer
34 shall certify in writing to the school district that the information
35 will be used only for truancy purposes. A school district releasing
36 pupil information to a judge or probation officer pursuant to this
37 subparagraph shall inform, or provide written notification to, the
38 parent or guardian of the pupil within 24 hours of the release of
39 the information.

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

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

12 (A) Appropriate persons in connection with an emergency if
13 the knowledge of the information is necessary to protect the health
14 or safety of a pupil or other persons. Schools or school districts
15 releasing information pursuant to this ~~section~~ *subparagraph* shall
16 comply with the requirements set forth in Section ~~99.32(a)(5)~~
17 *99.31(a)(5)* of Title 34 of the Code of Federal Regulations.

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

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

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

34 (E) Organizations conducting studies for, or on behalf of,
35 educational agencies or institutions for the purpose of developing,
36 validating, or administering predictive tests, administering student
37 aid programs, and improving instruction, if the studies are
38 conducted in a manner that will not permit the personal
39 identification of pupils or their parents by persons other than
40 representatives of the organizations, the information will be

1 destroyed when no longer needed for the purpose for which it is
2 obtained, and the organization enters into a written agreement with
3 the educational agency or institution that complies with Section
4 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

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

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

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

19 (3) A person, persons, agency, or organization permitted access
20 to pupil records pursuant to this section shall not permit access to
21 any information obtained from those records by another person,
22 persons, agency, or organization, except for allowable exceptions
23 contained within the federal Family Educational Rights and Privacy
24 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
25 written consent of the pupil's parent. This paragraph does not
26 require prior parental consent when information obtained pursuant
27 to this section is shared with other persons within the educational
28 institution, agency, or organization obtaining access, so long as
29 those persons have a legitimate educational interest in the
30 information pursuant to Section ~~99.31(a)(1)(i)(A)~~ 99.31(a)(1) of
31 Title 34 of the Code of Federal Regulations.

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

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

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

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

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

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

16 (b) The officials and authorities to whom pupil records are
17 disclosed pursuant to subdivision ~~(f)~~ (e) of Section 48902 and
18 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
19 in writing to the disclosing school district that the information
20 shall not be disclosed to another party, except as provided under
21 the federal Family Educational Rights and Privacy Act of 2001
22 (20 U.S.C. Sec. 1232g) and state law, without the prior written
23 consent of the parent of the pupil or the person identified as the
24 holder of the pupil's educational rights.

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

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

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

3 49548. (a) The state board, in order to effect compliance with
4 legislative findings expressed in Section 49547, shall restrict the
5 criteria for the issuance of waivers from the requirements of Section
6 49550 to feed children during a summer school session. A waiver
7 shall be granted for a period not to exceed one year if either of the
8 following conditions exists:

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

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

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

20 (iii) For purposes of this subdivision, “elementary school” means
21 a public school that maintains kindergarten or any of grades 1 to
22 8, inclusive.

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

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

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

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

1 to the operating costs of one month as averaged over the summer
2 school sessions.

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

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

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

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

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

21 (c) An application for a waiver shall be submitted no later than
22 60 days before the last regular meeting of the state board before
23 the commencement of the summer school session for which the
24 waiver is sought.

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

27 52052. (a) (1) The Superintendent, with approval of the state
28 board, shall develop an Academic Performance Index-~~(API)~~; *(API)*
29 to measure the performance of schools, especially the academic
30 performance of pupils.

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

- 34 (A) Ethnic subgroups.
- 35 (B) Socioeconomically disadvantaged pupils.
- 36 (C) English learners.
- 37 (D) Pupils with disabilities.

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

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

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

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

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

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

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

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

26 (i) Four-year graduation rates shall be calculated by taking the
27 number of pupils who graduated on time for the current school
28 year, which is considered to be three school years after the pupils
29 entered grade 9 for the first time, and dividing that number by the
30 total calculated in clause (ii).

31 (ii) The number of pupils entering grade 9 for the first time in
32 the school year three school years before the current school year,
33 plus the number of pupils who transferred into the class graduating
34 at the end of the current school year between the school year that
35 was three school years before the current school year and the date
36 of graduation, less the number of pupils who transferred out of the
37 school between the school year that was three school years before
38 the current school year and the date of graduation who were
39 members of the class that is graduating at the end of the current
40 school year.

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

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

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

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

29 (D) The inclusion of five- and six-year graduation rates for
30 pupils in secondary schools shall meet the following requirements:

31 (i) Schools shall be granted one-half the credit in their API
32 scores for graduating pupils in five years that they are granted for
33 graduating pupils in four years.

34 (ii) Schools shall be granted one-quarter the credit in their API
35 scores for graduating pupils in six years that they are granted for
36 graduating pupils in four years.

37 (iii) Notwithstanding clauses (i) and (ii), schools shall be granted
38 full credit in their API scores for graduating in five or six years a
39 pupil with disabilities who graduates in accordance with his or her
40 individualized education program.

1 (E) The pupil data collected for the API that comes from the
2 achievement test administered pursuant to Section 60640 and the
3 high school exit examination administered pursuant to Section
4 60851, when fully implemented, shall be disaggregated by special
5 education status, English learners, socioeconomic status, gender,
6 and ethnic group. Only the test scores of pupils who were counted
7 as part of the enrollment in the annual data collection of the
8 California Basic Educational Data System for the current fiscal
9 year and who were continuously enrolled during that year may be
10 included in the test result reports in the API score of the school.

11 (F) (i) Commencing with the baseline API calculation in 2016,
12 and for each year thereafter, results of the achievement test and
13 other tests specified in subdivision (b) shall constitute no more
14 than 60 percent of the value of the index for secondary schools.

15 (ii) In addition to the elements required by this paragraph, the
16 Superintendent, with approval of the state board, may incorporate
17 into the index for secondary schools valid, reliable, and stable
18 measures of pupil preparedness for postsecondary education and
19 career.

20 (G) Results of the achievement test and other tests specified in
21 subdivision (b) shall constitute at least 60 percent of the value of
22 the index for primary schools and middle schools.

23 (H) It is the intent of the Legislature that the state's system of
24 public school accountability be more closely aligned with both the
25 public's expectations for public education and the workforce needs
26 of the state's economy. It is therefore necessary that the
27 accountability system evolve beyond its narrow focus on pupil test
28 scores to encompass other valuable information about school
29 performance, including, but not limited to, pupil preparedness for
30 college and career, as well as the high school graduation rates
31 already required by law.

32 (I) The Superintendent shall annually determine the accuracy
33 of the graduation rate data. Notwithstanding any other law,
34 graduation rates for pupils in dropout recovery high schools shall
35 not be included in the API. For purposes of this subparagraph,
36 "dropout recovery high school" means a high school in which 50
37 percent or more of its pupils have been designated as dropouts
38 pursuant to the exit/withdrawal codes developed by the department
39 or left a school and were not otherwise enrolled in a school for a
40 period of at least 180 days.

1 (J) To complement the API, the Superintendent, with the
2 approval of the state board, may develop and implement a program
3 of school quality review that features locally convened panels to
4 visit schools, observe teachers, interview pupils, and examine pupil
5 work, if an appropriation for this purpose is made in the annual
6 Budget Act.

7 (K) The Superintendent shall annually provide to local
8 educational agencies and the public a transparent and
9 understandable explanation of the individual components of the
10 API and their relative values within the API.

11 (L) An additional element chosen by the Superintendent and
12 the state board for inclusion in the API pursuant to this paragraph
13 shall not be incorporated into the API until at least one full school
14 year after the state board's decision to include the element into the
15 API.

16 (b) Pupil scores from the following tests, when available and
17 when found to be valid and reliable for this purpose, shall be
18 incorporated into the API:

19 (1) The standards-based achievement tests provided for in
20 Section 60642.5.

21 (2) The high school exit examination.

22 (c) Based on the API, the Superintendent shall develop, and the
23 state board shall adopt, expected annual percentage growth targets
24 for all schools based on their API baseline score from the previous
25 year. Schools are expected to meet these growth targets through
26 effective allocation of available resources. For schools below the
27 statewide API performance target adopted by the state board
28 pursuant to subdivision (d), the minimum annual percentage growth
29 target shall be 5 percent of the difference between the actual API
30 score of a school and the statewide API performance target, or one
31 API point, whichever is greater. Schools at or above the statewide
32 API performance target shall have, as their growth target,
33 maintenance of their API score above the statewide API
34 performance target. However, the state board may set differential
35 growth targets based on grade level of instruction and may set
36 higher growth targets for the lowest performing schools because
37 they have the greatest room for improvement. To meet its growth
38 target, a school shall demonstrate that the annual growth in its API
39 is equal to or more than its schoolwide annual percentage growth

1 target and that all numerically significant pupil subgroups, as
2 defined in subdivision (a), are making comparable improvement.

3 (d) Upon adoption of state performance standards by the state
4 board, the Superintendent shall recommend, and the state board
5 shall adopt, a statewide API performance target that includes
6 consideration of performance standards and represents the
7 proficiency level required to meet the state performance target.
8 When the API is fully developed, schools, at a minimum, shall
9 meet their annual API growth targets to be eligible for the
10 Governor's Performance Award Program as set forth in Section
11 52057. The state board may establish additional criteria that schools
12 must meet to be eligible for the Governor's Performance Award
13 Program.

14 (e) (1) A school with 11 to 99 pupils with valid test scores shall
15 receive an API score with an asterisk that indicates less statistical
16 certainty than API scores based on 100 or more test scores.

17 (2) A school annually shall receive an API score, unless the
18 Superintendent determines that an API score would be an invalid
19 measure of the performance of the school for one or more of the
20 following reasons:

21 (A) Irregularities in testing procedures occurred.

22 (B) The data used to calculate the API score of the school are
23 not representative of the pupil population at the school.

24 (C) Significant demographic changes in the pupil population
25 render year-to-year comparisons of pupil performance invalid.

26 (D) The department discovers or receives information indicating
27 that the integrity of the API score has been compromised.

28 (E) Insufficient pupil participation in the assessments included
29 in the API.

30 (3) If a school has fewer than 100 pupils with valid test scores,
31 the calculation of the API or adequate yearly progress pursuant to
32 the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301
33 et seq.) and federal regulations may be calculated over more than
34 one annual administration of the tests administered pursuant to
35 Section 60640 and the high school exit examination administered
36 pursuant to Section 60851, consistent with regulations adopted by
37 the state board.

38 (f) Only schools with 100 or more test scores contributing to
39 the API may be included in the API rankings.

1 (g) The Superintendent, with the approval of the state board,
2 shall develop an alternative accountability system for schools under
3 the jurisdiction of a county board of education or a county
4 superintendent of schools, community day schools, nonpublic,
5 nonsectarian schools pursuant to Section 56366, and alternative
6 schools serving high-risk pupils, including continuation high
7 schools and opportunity schools. Schools in the alternative
8 accountability system may receive an API score, but shall not be
9 included in the API rankings.

10 SEC. 46. Section 60200.8 of the Education Code is amended
11 to read:

12 60200.8. (a) Notwithstanding Section 60200.7, the state board
13 may consider the adoption of a revised curriculum framework and
14 evaluation criteria for instructional materials in history-social
15 science.

16 (b) The department shall conduct work necessary to revise the
17 curriculum framework and evaluation criteria for instructional
18 materials in history-social science only after it has completed work
19 related to the development of curriculum frameworks for the
20 common core academic-~~contents~~ *content* standards pursuant to
21 Section 60207.

22 SEC. 47. Section 60209 of the Education Code is amended to
23 read:

24 60209. For purposes of conducting an adoption of basic
25 instructional materials for mathematics pursuant to Section 60207,
26 all of the following shall apply:

27 (a) The department shall provide notice, pursuant to subdivision
28 (b), to all publishers or manufacturers known to produce basic
29 instructional materials in that subject, post an appropriate notice
30 on the Internet Web site of the department, and take other
31 reasonable measures to ensure that appropriate notice is widely
32 circulated to potentially interested publishers and manufacturers.

33 (b) The notice shall specify that each publisher or manufacturer
34 choosing to participate in the adoption shall be assessed a fee based
35 on the number of programs the publisher or manufacturer indicates
36 will be submitted for review and the number of grade levels
37 proposed to be covered by each program.

38 (c) The fee assessed pursuant to subdivision (d) shall be in an
39 amount that does not exceed the reasonable costs to the department
40 in conducting the adoption process. The department shall take

1 reasonable steps to limit costs of the adoption and to keep the fee
2 modest.

3 (d) The department, before incurring substantial costs for the
4 adoption, shall require that a publisher or manufacturer that wishes
5 to participate in the adoption first declare the intent to submit one
6 or more specific programs for adoption and specify the specific
7 grade levels to be covered by each program.

8 (1) After a publisher or manufacturer ~~has declared~~ *declares* the
9 intent to submit one or more programs and the grade levels to be
10 covered by each program, the department shall assess a fee that
11 shall be payable by the publisher or manufacturer even if the
12 publisher or manufacturer subsequently chooses to withdraw a
13 program or reduce the number of grade levels covered.

14 (2) A submission by a publisher or manufacturer shall not be
15 reviewed for purposes of adoption until the fee assessed has been
16 paid in full.

17 (e) (1) Upon the request of a small publisher or small
18 manufacturer, the state board may reduce the fee for participation
19 in the adoption.

20 (2) For purposes of this section, “small publisher” and “small
21 manufacturer” mean an independently owned or operated publisher
22 or manufacturer that is not dominant in its field of operation and
23 that, together with its affiliates, has 100 or fewer employees, and
24 has average annual gross receipts of ten million dollars
25 (\$10,000,000) or less over the previous three years.

26 (f) If the department determines that there is little or no interest
27 in participating in an adoption by publishers and manufacturers,
28 the department shall recommend to the state board whether or not
29 the adoption shall be conducted, and the state board may choose
30 not to conduct the adoption.

31 (g) Revenue derived from fees assessed pursuant to subdivision
32 (d) shall be budgeted as reimbursements and subject to review
33 through the annual budget process, and may be used to pay for
34 costs associated with any adoption and for any costs associated
35 with the review of instructional materials, including reimbursement
36 of substitute costs for teacher reviewers and may be used to cover
37 stipends for content review experts.

38 SEC. 48. Section 60605.87 of the Education Code is amended
39 to read:

1 60605.87. (a) The department shall recommend, and the state
2 board shall approve, evaluation criteria to guide the development
3 and review of supplemental instructional materials for English
4 learners.

5 (b) Notwithstanding any other law, and on a one-time basis, the
6 department, on or before March 1, 2014, shall develop a list of
7 supplemental instructional materials for beginning through
8 advanced levels of proficiency for use in kindergarten and grades
9 1 to 8, inclusive, that are aligned with the revised English language
10 development standards adopted pursuant to Section 60811.3. The
11 supplemental instructional materials shall provide a bridge between
12 the current English language development standards and the revised
13 English language development standards pursuant to Section
14 60811.3 with the purpose of ensuring the supplemental
15 *instructional* materials address the unique features of the English
16 language development standards and remain consistent with the
17 relevant elements of the evaluation criteria for English language
18 arts supplemental instructional materials adopted pursuant to
19 Section 60605.86.

20 (c) (1) The department shall recommend, and the state board
21 shall approve, content review experts to review, in an open and
22 transparent process, supplemental instructional materials submitted
23 for approval in the subject area of English language development.

24 (2) The majority of content review experts approved pursuant
25 to paragraph (1) shall be elementary and secondary schoolteachers
26 who are credentialed in English language arts, possess the
27 appropriate state English learner authorization, and have five years
28 of classroom experience instructing English learners. The content
29 review experts also shall include appropriate persons possessing
30 English learner expertise from postsecondary educational
31 institutions and school and school district curriculum administrators
32 possessing English learner expertise, and other persons who are
33 knowledgeable in English language arts and English language
34 development.

35 (d) (1) On or before June 30, 2014, the state board shall do the
36 following:

37 (A) Approve all, or a portion, of the list of supplemental
38 instructional materials proposed by the department, taking into
39 consideration the review of the content review experts and any
40 other relevant information, as appropriate.

1 (B) Reject all, or a portion, of the list of supplemental
2 instructional materials proposed by the department, taking into
3 consideration the review of the content review experts and any
4 other relevant information, as appropriate.

5 (2) If the state board rejects all, or a portion, of the list of
6 supplemental instructional materials proposed by the department,
7 or adds an item to the list, the state board, in a public meeting held
8 pursuant to the Bagley-Keene Open Meeting Act (Article 9
9 commencing with Section 11120) of Chapter 1 of Part 1 of
10 Division 3 of Title 2 of the Government Code), shall provide
11 written reasons for the removal or addition of an item on the list.
12 The state board shall not approve a supplemental instructional
13 material it adds to the list at the same time it provides its written
14 reason for adding the material; instead, the state board shall
15 approve the added material at a subsequent public meeting.

16 (e) (1) The governing board of a school district and a county
17 board of education may approve supplemental instructional
18 materials other than those approved by the state board pursuant to
19 subdivision (d) if the governing board of a school district or county
20 board of education determines that other supplemental instructional
21 materials are aligned with the revised English language
22 development standards adopted pursuant to Section 60811.3 and
23 meet the needs of pupils of the district who are English learners.
24 The governing board of a school district or the county board of
25 education may only approve supplemental instructional materials
26 that comply with all of the following:

27 (A) The evaluation criteria approved pursuant to subdivision
28 (a).

29 (B) Section 60226.

30 (C) Subdivision (h).

31 (D) Article 4 (commencing with Section 60060) of Chapter 1.

32 (2) (A) A supplemental instructional material approved by a
33 governing board of a school district or county board of education
34 pursuant to this subdivision that is in the subject area of English
35 language development shall be reviewed by content review experts
36 chosen by the governing board.

37 (B) The majority of the content review experts chosen pursuant
38 to subparagraph (A) shall be elementary and secondary
39 schoolteachers who are credentialed in English language arts,
40 possess the appropriate state English learner authorization, and

1 have five years of classroom experience instructing English
2 learners.

3 (C) The content review experts also shall include appropriate
4 persons possessing English learner expertise from postsecondary
5 educational institutions and school and school district curriculum
6 administrators possessing English learner expertise, and other
7 persons who are knowledgeable in English language arts and
8 English language development.

9 (f) Publishers choosing to submit supplemental instructional
10 materials for approval by the state board shall submit standards
11 maps.

12 (g) (1) Before approving supplemental instructional materials
13 pursuant to this section, the state board shall review those
14 instructional materials for academic content, social content, and
15 instructional support to teachers and pupils. Supplemental
16 instructional materials approved by the state board pursuant to this
17 section shall meet required program criteria for grade-level
18 programs and shall include materials for use by teachers.

19 (2) Before approving supplemental instructional materials
20 pursuant to this section, the governing board of a school district
21 or county board of education shall review those instructional
22 materials for academic content and instructional support to teachers
23 and pupils who are English learners. Supplemental instructional
24 materials approved by the governing board of a school district or
25 county board of education pursuant to this section shall meet
26 required program criteria for grade-level programs and shall include
27 materials for use by teachers.

28 (h) Supplemental instructional materials approved pursuant to
29 this section shall comply with the social content review
30 requirements pursuant to Section 60050.

31 (i) The department shall maintain on its Internet Web site the
32 list of supplemental instructional materials approved by the state
33 board pursuant to subdivision (d).

34 (j) This section shall become inoperative on July 1, 2014, and,
35 as of July 1, 2015, is repealed, unless a later enacted statute, that
36 becomes operative on or before July 1, 2015, deletes or extends
37 the dates on which it becomes inoperative and is repealed.

38 SEC. 49. Section 60852.1 of the Education Code is amended
39 to read:

1 60852.1. (a) The Superintendent shall recommend, and the
2 state board shall select, members of a panel that ~~will~~ *shall* convene
3 to make recommendations regarding alternative means for eligible
4 pupils with disabilities to demonstrate that they have achieved the
5 same level of academic achievement in the content standards in
6 English language arts or mathematics, or both, required for passage
7 of the high school exit examination.

8 (1) The panel shall be composed of educators and other
9 individuals who have experience with the population of pupils
10 with disabilities eligible for alternative means of demonstrating
11 academic achievement, as defined in Section 60852.2, and
12 educators and other individuals who have expertise with multiple
13 forms of assessment. The panel shall consult with experts in other
14 states that offer alternative means for pupils with disabilities to
15 demonstrate academic achievement. A majority of the panel shall
16 be classroom teachers.

17 (2) The panel shall make findings and recommendations
18 regarding all of the following:

19 (A) Specific options for alternative assessments, submission of
20 evidence, or other alternative means by which eligible pupils with
21 disabilities may demonstrate that they have achieved the same
22 level of academic achievement in the content standards in English
23 language arts or mathematics, or both, required for passage of the
24 high school exit examination.

25 (B) Scoring or other evaluation systems designed to ensure that
26 the eligible pupil with a disability has achieved the same
27 competence in the content standards required for passage of the
28 high school exit examination.

29 (C) Processes to ensure that the form, content, and scoring of
30 assessments, evidence, or other means of demonstrating academic
31 achievement are applied uniformly across the state.

32 (D) Estimates of one-time or ongoing costs, and whether each
33 option should be implemented on a statewide or regional basis, or
34 both.

35 (3) The panel shall present its options and make its findings and
36 recommendations to the Superintendent and to the state board by
37 October 1, 2009.

38 (b) For those portions of, or those academic content standards
39 assessed by, the high school exit examination for which the state
40 board determines it is feasible to create alternative means by which

1 eligible pupils with disabilities may demonstrate the same level
2 of academic achievement required for passage of the high school
3 exit examination, the state board, taking into consideration the
4 findings and recommendations of the panel, shall adopt regulations
5 for alternative means by which eligible pupils with disabilities, as
6 defined in Section 60852.2, may demonstrate that they have
7 achieved the same level of academic achievement in the content
8 standards required for passage of the high school exit examination.
9 The regulations shall include appropriate timelines and the manner
10 in which eligible pupils with disabilities and school districts shall
11 be timely notified of the results.

12 SEC. 50. Section 66407 of the Education Code is amended to
13 read:

14 66407. (a) (1) The publisher of a textbook, or an agent or
15 employee of the publisher, shall provide a prospective purchaser
16 of the textbook with all of the following:

17 (A) A list of all the products offered for sale by the publisher
18 germane to the prospective purchaser's subject area of interest.

19 (B) For a product listed pursuant to subparagraph (A), the
20 wholesale or retail price of the product, and the estimated length
21 of time the publisher intends to keep the product on the market.

22 (C) For each new edition of a product listed pursuant to
23 ~~paragraph (1)~~, *subparagraph (A)*, a list of the substantial content
24 differences or changes between the new edition and the previous
25 edition of the textbook.

26 (2) The publisher shall make the lists required by paragraph (1)
27 available to a prospective purchaser at the commencement of a
28 sales interaction, including, but not necessarily limited to, a sales
29 interaction conducted in person, by telephone, or electronically.
30 The publisher shall also post in a prominent position on its Internet
31 Web site the lists required by paragraph (1).

32 (b) As used in this section, the following terms have the
33 following meanings:

34 (1) "Product" means each version, including, but not necessarily
35 limited to, a version in a digital format, of a textbook, or set of
36 textbooks, in a particular subject area, including, but not necessarily
37 limited to, a supplemental item, whether or not the supplemental
38 item is sold separately or together with a textbook.

39 (2) "Publisher" has the same meaning as defined in subdivision
40 (b) of Section 66406.7.

1 (3) “Purchaser” means a faculty member of a public or private
2 postsecondary educational institution who selects the textbooks
3 assigned to students.

4 (4) “Textbook” has the same meaning as defined in subdivision
5 (b) of Section 66406.7.

6 SEC. 51. Section 81378.1 of the Education Code is amended
7 to read:

8 81378.1. (a) The governing board of a community college
9 district may, without complying with any other provision of this
10 article, let, in the name of the district, any buildings, grounds, or
11 space therein, together with any personal property located thereon,
12 not needed for academic activities, upon the terms and conditions
13 agreed upon by the governing board and the lessee for a period of
14 more than five days but less than five years, as determined by the
15 governing board. Before executing the lease, the governing board
16 shall include in an agenda of a meeting of the board open to the
17 public a description of the proposed lease and an explanation of
18 the methodology used to establish the lease rate and for determining
19 the fair market value of the lease.

20 (b) The governing board shall give public notice before taking
21 any action pursuant to subdivision (a). The notice shall include a
22 description of the governing board’s intended action. The notice
23 shall be printed once a week for three successive weeks prior to
24 the board meeting described in subdivision (a) in a newspaper of
25 general circulation that is published at least once a week.

26 (c) The governing board shall include, as a condition in any
27 agreement to let any buildings, grounds, or space therein, together
28 with any personal property located thereon, a provision that the
29 agreement shall be subject to renegotiation and may be rescinded
30 after 60 days’ notice to the lessee if the governing board determines
31 at any time during the term of the agreement that the buildings,
32 grounds, or space therein subject to the agreement are needed for
33 academic activities. Any revenue derived pursuant to the agreement
34 shall be retained for the exclusive use of the community college
35 district whose buildings, grounds, or space therein are the basis of
36 the agreement and shall be used to supplement, but not supplant,
37 any state funding. Any buildings, grounds, or space ~~therein~~, *therein*
38 let by the district shall be included as space actually available for
39 use by the college in any calculations related to any plan for capital

1 construction submitted to the board of governors pursuant to
2 Chapter 4 (commencing with Section 81800), or any other law.

3 (d) The authority of a governing board under this section does
4 not apply to the letting of an entire campus.

5 (e) The use of any buildings, grounds, or space therein, together
6 with any personal property located thereon, let by the governing
7 board pursuant to this section shall be consistent with all applicable
8 zoning ordinances and regulations.

9 SEC. 52. Section 88620 of the Education Code is amended to
10 read:

11 88620. The following definitions govern the construction of
12 this part:

13 (a) “Board of governors” means the Board of Governors of the
14 California Community Colleges.

15 (b) “Business Resource Assistance and Innovation Network”
16 means the network of projects and programs that comprise the
17 California Community Colleges Economic and Workforce
18 Development Program.

19 (c) “California Community Colleges Economic and Workforce
20 Development Program” and “economic and workforce development
21 program” mean the program.

22 (d) “Career pathways,” and “career ladders,” or “career lattices”
23 mean an identified series of positions, work experiences, or
24 educational benchmarks or credentials that offer occupational and
25 financial advancement within a specified career field or related
26 fields over time.

27 (e) (1) “Center” means a comprehensive program of services
28 offered by one or more community colleges to an economic region
29 of the state in accordance with criteria established by the
30 chancellor’s office for designation as an economic and workforce
31 development program center. Center services shall be designed to
32 respond to the statewide strategic priorities pursuant to the mission
33 of the community colleges’ economic and workforce development
34 program, and to be consistent with programmatic priorities,
35 competitive and emerging industry sectors and industry clusters,
36 identified economic development, career technical education,
37 business development, and continuous workforce training needs
38 of a region. Centers shall provide a foundation for the long-term,
39 sustained relationship with businesses, labor, colleges, and other

1 workforce education and training delivery systems, such as local
 2 workforce investment boards, in the region.

3 (2) A center shall support, develop, and deliver direct services
 4 to students, businesses, colleges, labor organizations, employees,
 5 and employers. For purposes of this subdivision, direct services
 6 include, but are not necessarily limited to, data analysis both of
 7 labor market information and college performance; intraregion
 8 and multiregion sector coordination and logistics; inventory of
 9 community college and other assets relevant to meeting a labor
 10 market need; curriculum development, curriculum model
 11 development, or job task analysis development; articulation of
 12 curriculum in a career pathway or career lattice or in a system of
 13 stackable credentials; faculty training; calibration to a career
 14 readiness or other assessment; assessment administration; career
 15 guidance module development or counseling; convenings, such
 16 as seminars, workshops, conferences, and training; facilitating
 17 collaboration between faculty working in related disciplines and
 18 sectors; upgrading, leveraging, and developing technology; and
 19 other educational services. The establishment and maintenance of
 20 the centers is under the sole authority of the chancellor’s office in
 21 order to preserve the flexibility of the system to adapt to labor
 22 market needs and to integrate resources.

23 (f) “Chancellor” means the Chancellor of the California
 24 Community Colleges.

25 (g) *“Economic security” means, with respect to a worker,*
 26 *earning a wage sufficient to adequately support a family and to,*
 27 *over time, save money for emergency expenses and adequate*
 28 *retirement income, the sufficiency of which is determined*
 29 *considering a variety of factors including household size, the cost*
 30 *of living in the worker’s community, and other factors that may*
 31 *vary by region.*

32 ~~(g)~~
 33 (h) “High-priority occupation” means an occupation that has a
 34 significant presence in a targeted industry sector or industry cluster,
 35 is in demand by employers, and pays or leads to payment of high
 36 wages.

37 ~~(h)~~
 38 (i) “Industry cluster” means a geographic concentration or
 39 emerging concentration of interdependent industries with direct
 40 service, supplier, and research relationships, or independent

1 industries that share common resources in a given regional
2 economy or labor market. An industry cluster is a group of
3 employers closely linked by a common product or services,
4 workforce needs, similar technologies, and supply chains in a given
5 regional economy or labor market.

6 ~~(i)~~

7 (j) “Industry-driven regional collaborative” means a regional
8 public, private, or other community organizational structure that
9 jointly defines priorities, delivers services across programs, sectors,
10 and in response to, or driven by, industry needs. The
11 industry-driven regional collaborative projects meet the needs and
12 fill gaps in services that respond to regional business, employee,
13 and labor needs. These service-delivery structures offer flexibility
14 to local communities and partners to meet the identified needs in
15 an economic development region. Industry-driven regional
16 collaboratives are broadly defined to allow maximum local
17 autonomy in developing projects responding to the needs of
18 business, industry, and labor.

19 ~~(j)~~

20 (k) “Industry sector” means those firms that produce similar
21 products or provide similar services using somewhat similar
22 business processes.

23 ~~(k)~~

24 (l) “Initiative” is an identified strategic priority area that is
25 organized statewide, but is a regionally based effort to develop
26 and implement innovative solutions designed to facilitate the
27 development, implementation, and coordination of community
28 college economic development and related programs and services.
29 Each initiative shall be workforce and business development driven
30 by a statewide committee made up of community college faculty
31 and administrators and practitioners and managers from business,
32 labor, and industry. Centers, industry-driven regional
33 collaboratives, and other economic and workforce development
34 programs performing services as a part of the implementation of
35 an initiative shall coordinate services statewide and within regions
36 of the state, as appropriate.

37 ~~(l)~~

38 (m) “Job development incentive training” means programs that
39 provide incentives to employers to create entry-level positions in

1 their businesses, or through their suppliers or prime customers, for
2 welfare recipients and the working poor.

3 ~~(m) “Economic security” means, with respect to a worker,~~
4 ~~earning a wage sufficient to adequately support a family and to,~~
5 ~~over time, save money for emergency expenses and adequate~~
6 ~~retirement income, the sufficiency of which is determined~~
7 ~~considering a variety of factors including household size, the cost~~
8 ~~of living in the worker’s community, and other factors that may~~
9 ~~vary by region.~~

10 (n) “Matching resources” means any combination of public or
11 private resources, either cash or in-kind, derived from sources
12 other than the economic and workforce development program
13 funds appropriated by the annual Budget Act, that are determined
14 to be necessary for the success of the project to which they are
15 applied. The criteria for in-kind resources shall be developed by
16 the board of governors, with advice from the chancellor and the
17 California Community Colleges Economic and Workforce
18 Development Program Advisory Committee, and shall be consistent
19 with generally accepted accounting practices for state and federal
20 matching requirements. The ratio of matching resources to
21 economic and workforce development program funding shall be
22 determined by the board of governors.

23 (o) “Performance improvement training” means training
24 delivered by a community college that includes all of the following:

25 (1) An initial needs assessment process that identifies both
26 training and nontraining issues that need to be addressed to improve
27 individual and organizational performance.

28 (2) Consultation with employers to develop action plans that
29 address business or nonprofit performance improvements.

30 (3) Training programs that link individual performance
31 requirements with quantifiable business measures, resulting in
32 demonstrable productivity gains, and, as appropriate, job retention,
33 job creation, improvement in wages, or attainment of wages that
34 provide economic security.

35 (p) “Program” means the California Community Colleges
36 Economic and Workforce Development Program established under
37 this part.

38 (q) “Region” means a geographic area of the state defined by
39 economic and labor market factors containing at least one industry
40 cluster and the cities, counties, or community college districts, or

1 all of them, in the industry cluster’s geographic area. For the
2 purposes of this chapter, “California Community College economic
3 development regions” shall be designated by the board of governors
4 based on factors, including, but not necessarily limited to, all of
5 the following:

6 (1) Regional economic development and training needs of
7 business and industry.

8 (2) Regional collaboration, as appropriate, among community
9 colleges and districts, and existing economic development,
10 continuous workforce improvement, technology deployment, and
11 business development.

12 (3) Other state economic development definitions of regions.

13 (r) “Sector strategies” means prioritizing investments in
14 competitive and emerging industry sectors and industry clusters
15 on the basis of labor market and other economic data that indicate
16 strategic growth potential, especially with regard to jobs and
17 income. Sector strategies focus workforce investment in education
18 and workforce training programs that are likely to lead to
19 high-wage jobs or to entry-level jobs with well-articulated career
20 pathways into high-wage jobs. Sector strategies effectively boost
21 labor productivity or reduce business barriers to growth and
22 expansion stemming from workforce supply problems, including
23 skills gaps, and occupational shortages by directing resources and
24 making investments to plug skills gaps and provide education and
25 training programs for high-priority occupations. Sector strategies
26 may be implemented using articulated career pathways or career
27 lattices and a system of stackable credentials. Sector strategies
28 often target underserved communities, disconnected youth,
29 incumbent workers, and recently separated military veterans.
30 Cluster-based sector strategies focus workforce and economic
31 development on those sectors that have demonstrated a capacity
32 for economic growth and job creation in a particular geographic
33 area. Industry clusters are similar to industry sectors, but the focus
34 is on a geographic concentration of interdependent industries.

35 (s) “Skills panel” means a collaboration which brings together
36 multiple employers from an industry sector or industry cluster with
37 career technical educators, including, but not limited to, community
38 college career technical education faculty, and other stakeholders
39 which may include workers and organized labor to address
40 common workforce needs. Skills panels assess workforce training

1 and education needs through the identification of assets relevant
2 to industry need, produce curricula models, perform job task
3 analysis, define how curricula articulate into career pathways or
4 career lattices or a system of stackable credentials, calibrate career
5 readiness, develop other assessment tools, and produce career
6 guidance tools.

7 (t) “Stackable credentials” means a progression of training
8 modules, credentials, or certificates that build on one another and
9 are linked to educational and career advancement.

10 SEC. 53. Section 2162 of the Elections Code is amended to
11 read:

12 2162. (a) No affidavits of registration other than those provided
13 by the Secretary of State to the county elections officials or the
14 national voter registration forms authorized pursuant to the *federal*
15 *National Voter Registration Act of 1993* (42 U.S.C. Sec. 1973gg
16 *et seq.*) shall be used for the registration of voters.

17 (b) No voter registration card shall *not* be altered, defaced, or
18 changed in any way, other than by the insertion of a mailing
19 address and the affixing of postage, if mailed, or as otherwise
20 specifically authorized by the Secretary of State, prior to
21 distribution of the cards.

22 (c) The affidavit portion of a voter registration card shall not
23 be marked, stamped, or partially or fully completed by ~~any~~ a person
24 other than an elector attempting to register to vote or by a person
25 assisting the elector in completing the affidavit at the request of
26 the elector.

27 SEC. 54. Section 2224 of the Elections Code is amended to
28 read:

29 2224. (a) If a voter has not voted in an election within the
30 preceding four years, and his or her residence address, name, or
31 party affiliation has not been updated during that time, the county
32 elections official may send an alternate residency confirmation
33 postcard. The use of this postcard may be sent subsequent to NCOA
34 or sample ballot returns, but shall not be used in the residency
35 confirmation process conducted under Section 2220. The postcard
36 shall be forwardable, including a postage-paid and preaddressed
37 return form to enable the voter to verify or correct the address
38 information, and shall be in substantially the following form:

1 “If the person named on the postcard is not at this address,
2 PLEASE help keep the voter rolls current and save taxpayer dollars
3 by returning this postcard to your mail carrier.”

4 “IMPORTANT NOTICE”

5 “According to our records you have not voted in any election
6 during the past four years, which may indicate that you no longer
7 reside in ____ County. If you continue to reside in this county you
8 must confirm your residency address in order to remain on the
9 active voter list and receive election materials in the mail.”

10 “If confirmation has not been received within 15 days, you may
11 be required to provide proof of your residence address in order to
12 vote at future elections. If you no longer live in ____ County, you
13 must reregister at your new residence address in order to vote in
14 the next election. California residents may obtain a mail registration
15 form by calling the county elections office ~~of~~ or the Secretary of
16 State’s ~~Office.~~” *office.*”

17 (b) The use of a toll-free number to confirm the old residence
18 address is optional. Any change to a voter’s address shall be
19 received in writing.

20 (c) A county using the alternate residency confirmation
21 procedure shall notify all voters of the procedure in the sample
22 ballot pamphlet or in a separate mailing.

23 SEC. 55. Section 2225 of the Elections Code is amended to
24 read:

25 2225. (a) Based on change-of-address data received from the
26 United States Postal Service or its licensees, the county elections
27 official shall send a forwardable notice, including a postage-paid
28 and preaddressed return form, to enable the voter to verify or
29 correct address information.

30 Notification received through NCOA or Operation Mail that a
31 voter has moved and has given no forwarding address shall not
32 require the mailing of a forwardable notice to that voter.

33 (b) If postal service change-of-address data indicates that the
34 voter has moved to a new residence address in the same county,
35 the forwardable notice shall be in substantially the following form:
36

37 “We have received notification that the voter has moved to a
38 new residence address in ____ County. You will be registered to
39 vote at your new address unless you notify our office within 15
40 days that the address to which this card was mailed is not a change

1 of your permanent residence. You must notify our office by either
2 returning the attached postage-paid postcard, or by calling toll
3 free. If this is not a permanent residence, and if you do not notify
4 us within 15 days, you may be required to provide proof of your
5 residence address in order to vote at future elections.”

6
7 (c) If postal service change-of-address data indicates that the
8 voter has moved to a new address in another county, the
9 forwardable notice shall be in substantially the following form:

10
11 “We have received notification that you have moved to a new
12 address not in ____ County. Please use the attached postage-paid
13 postcard to: (1) advise us if this is or is not a permanent change of
14 residence address, or (2) to advise us if our information is incorrect.
15 If you do not return this card within 15 days and continue to reside
16 in ____ County, you may be required to provide proof of your
17 residence address in order to vote at future elections and, if you
18 do not offer to vote at any election in the period between the date
19 of this notice and the second federal general election following
20 this notice, your voter registration will be ~~cancelled~~ *canceled* and
21 you will have to reregister in order to vote. If you no longer live
22 in ____ County, you must reregister at your new residence address
23 in order to vote in the next election. California residents may obtain
24 a mail registration form by calling the county elections officer or
25 1-800-345-VOTE.”

26
27 (d) If postal service change-of-address data received from a
28 nonforwardable mailing indicates that a voter has moved and left
29 no forwarding address, a forwardable notice shall be sent in
30 substantially the following form:

31
32 “We are attempting to verify postal notification that the voter to
33 whom this card is addressed has moved and left no forwarding
34 address. If the person receiving this card is the addressed voter,
35 please confirm your continued residence or provide current
36 residence information on the attached postage-paid postcard within
37 15 days. If you do not return this card and continue to reside in
38 ____ County, you may be required to provide proof of your
39 residence address in order to vote at future elections and, if you
40 do not offer to vote at any election in the period between the date

1 of this notice and the second federal general election following
2 this notice, your voter registration will be cancelled and you will
3 have to reregister in order to vote. If you no longer live in ____
4 County, you must reregister at your new residence address in order
5 to vote in the next election. California residents may obtain a mail
6 registration form by calling the county elections office or the
7 Secretary of State's ~~Office.~~ *office.*"

8

9 (e) The use of a toll-free number to confirm the old residence
10 address is optional. Any change to the voter address must be
11 received in writing.

12 SEC. 56. Section 3111 of the Elections Code is amended to
13 read:

14 3111. If a military or overseas voter is unable to appear at his
15 or her polling place because of being recalled to service after the
16 final day for making application for a vote by mail ballot, but
17 before 5 p.m. on the day before the day of election, he or she may
18 appear before the elections official in the county in which the
19 military or overseas voter is registered or, if within the state, in
20 the county in which he or she is recalled to service and make
21 application for a vote by mail ballot, which may be submitted by
22 facsimile, or by ~~email~~ *electronic mail* or online transmission if the
23 elections official makes the transmission option available. The
24 elections official shall deliver to him or her a vote by mail ballot
25 which may be voted in the elections official's office or voted
26 outside the elections official's office on or before the close of the
27 polls on the day of election and returned as are other vote by mail
28 ballots. To be counted, the ballot shall be returned to the elections
29 official's office in person, by facsimile transmission, or by an
30 authorized person on or before the close of the polls on the day of
31 the election. If the military or overseas voter appears in the county
32 in which he or she is recalled to service, rather than the county to
33 which he or she is registered, the elections official shall coordinate
34 with the elections official in the county in which the military or
35 overseas voter is registered to provide the ballot that contains the
36 appropriate measures and races for the precinct in which the
37 military or overseas voter is registered.

38 SEC. 57. Section 13115 of the Elections Code is amended to
39 read:

1 13115. The order in which all state measures that are to be
2 submitted to the voters shall appear ~~upon~~ on the ballot is as follows:

3 (a) Bond measures, including those proposed by initiative, in
4 the order in which they qualify.

5 (b) Constitutional amendments, including those proposed by
6 initiative, in the order in which they qualify.

7 (c) Legislative measures, other than those described in
8 subdivision (a) or (b), in the order in which they are approved by
9 the Legislature.

10 (d) Initiative measures, other than those described in subdivision
11 (a) or (b), in the order in which they qualify.

12 (e) Referendum measures, in the order in which they qualify.

13 SEC. 58. Section 21000 of the Elections Code is amended to
14 read:

15 21000. The county elections official in each county shall
16 compile and make available to the Legislature or any appropriate
17 committee of the Legislature any information and statistics that
18 may be necessary for use in connection with the reapportionment
19 of legislative districts, including, but not limited to, precinct maps
20 indicating the boundaries of municipalities, school districts, judicial
21 districts, Assembly districts, senatorial districts, and congressional
22 districts, lists showing the election returns for each precinct, and
23 election returns for each precinct reflecting the vote total for all
24 ballots cast, including both vote by mail ballots and ballots cast at
25 polling places, compiled pursuant to Section 15321 in the county
26 at each statewide election. If the county elections official stores
27 the information and statistics in data-processing files, he or she
28 shall make the files available, along with whatever documentation
29 shall be necessary in order to allow the use of the files by the
30 appropriate committee of the Legislature and shall retain these
31 files until the next reapportionment has been completed.

32 SEC. 59. Section 3047 of the Family Code is amended to read:

33 3047. (a) A party's absence, relocation, or failure to comply
34 with custody and visitation orders shall not, by itself, be sufficient
35 to justify a modification of a custody or visitation order if the
36 reason for the absence, relocation, or failure to comply is the party's
37 activation to military duty or temporary duty, mobilization in
38 support of combat or other military operation, or military
39 deployment out of state.

1 (b) (1) If a party with sole or joint physical custody or visitation
2 receives temporary duty, deployment, or mobilization orders from
3 the military that require the party to move a substantial distance
4 from his or her residence or otherwise has a material effect on the
5 ability of the party to exercise custody or visitation rights, any
6 necessary modification of the existing custody order shall be
7 deemed a temporary custody order made without prejudice, which
8 shall be subject to review and reconsideration upon the return of
9 the party from military deployment, mobilization, or temporary
10 duty.

11 (2) If the temporary order is reviewed upon return of the party
12 from military deployment, mobilization, or temporary duty, there
13 shall be a presumption that the custody order shall revert to the
14 order that was in place before the modification, unless the court
15 determines that it is not in the best interest of the child. The court
16 shall not, as part of its review of the temporary order upon the
17 return of the deploying party, order a child custody evaluation
18 under Section 3111 of this code or Section 730 of the Evidence
19 Code, unless the party opposing reversion of the order makes a
20 prima facie showing that reversion is not in the best interest of the
21 child.

22 (3) (A) If the court makes a temporary custody order, it shall
23 consider any appropriate orders to ensure that the relocating party
24 can maintain frequent and continuing contact with the child by
25 means that are reasonably available.

26 (B) Upon a motion by the relocating party, the court may grant
27 reasonable visitation rights to a stepparent, grandparent, or other
28 family member if the court does all of the following:

29 (i) Finds that there is a preexisting relationship between the
30 family member and the child that has engendered a bond such that
31 visitation is in the best interest of the child.

32 (ii) Finds that the visitation will facilitate the child's contact
33 with the relocating party.

34 (iii) Balances the interest of the child in having visitation with
35 the family member against the right of the parents to exercise
36 parental authority.

37 (C) Nothing in this paragraph shall increase the authority of the
38 persons described in subparagraph (B) to seek visitation orders
39 independently.

1 (D) The granting of visitation rights to a nonparent pursuant to
2 subparagraph (B) shall not impact the calculation of child support.

3 (c) If a party’s deployment, mobilization, or temporary duty
4 will have a material effect on his or her ability, or anticipated
5 ability, to appear in person at a regularly scheduled hearing, the
6 court shall do either of the following:

7 (1) Upon motion of the party, hold an expedited hearing to
8 determine custody and visitation issues prior to the departure of
9 the party.

10 (2) Upon motion of the party, allow the party to present
11 testimony and evidence and participate in court-ordered child
12 custody mediation by electronic means, including, but not limited
13 to, telephone, video teleconferencing, or the Internet, to the extent
14 that this technology is reasonably available to the court and protects
15 the due process rights of all parties.

16 (d) A relocation by a nondeploying parent during a period of a
17 deployed parent’s absence while a temporary modification order
18 for a parenting plan is in effect shall not, by itself, terminate the
19 exclusive and continuing jurisdiction of the court for purposes of
20 later determining custody or parenting time under this chapter.

21 (e) When a court of this state has issued a custody or visitation
22 order, the absence of a child from this state during the deployment
23 of a parent shall be considered a “temporary absence” for purposes
24 of the Uniform Child Custody Jurisdiction and Enforcement Act
25 (Part 3 (commencing with Section 3400)), and the court shall retain
26 exclusive continuing jurisdiction under Section 3422.

27 (f) The deployment of a parent shall not be used as a basis to
28 assert inconvenience of the forum under Section ~~3247~~ 3427.

29 (g) For purposes of this section, the following terms have the
30 following meanings:

31 (1) “Deployment” means the temporary transfer of a member
32 of the Armed Forces in active-duty status in support of combat or
33 some other military operation.

34 (2) “Mobilization” means the transfer of a member of the
35 National Guard or Military Reserve to extended active-duty status,
36 but does not include National Guard or Military Reserve annual
37 training.

38 (3) “Temporary duty” means the transfer of a service member
39 from one military base to a different location, usually another base,

1 for a limited period of time to accomplish training or to assist in
2 the performance of a noncombat mission.

3 (h) It is the intent of the Legislature that this section provide a
4 fair, efficient, and expeditious process to resolve child custody
5 and visitation issues when a party receives temporary duty,
6 deployment, or mobilization orders from the military, as well as
7 at the time that the party returns from service and files a motion
8 to revert back to the custody order in place before the deployment.
9 The Legislature intends that family courts shall, to the extent
10 feasible within existing resources and court practices, prioritize
11 the calendaring of these cases, avoid unnecessary delay or
12 continuances, and ensure that parties who serve in the military are
13 not penalized for their service by a delay in appropriate access to
14 their children.

15 SEC. 60. Section 3200.5 of the Family Code is amended to
16 read:

17 3200.5. (a) Any standards for supervised visitation providers
18 adopted by the Judicial Council pursuant to Section 3200 shall
19 conform to this section. A provider, as described in Section 3200,
20 shall be a professional provider or nonprofessional provider.

21 (b) In any case in which the court has determined that there is
22 domestic violence; *or* child abuse or neglect, as defined in Section
23 11165.6 of the Penal Code, and the court determines supervision
24 is necessary, the court shall consider whether to use a professional
25 or nonprofessional provider based upon the child's best interest.

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

28 (1) "Nonprofessional provider" means any person who is not
29 paid for providing supervised visitation services. Unless otherwise
30 ordered by the court or stipulated by the parties, the
31 nonprofessional provider shall:

32 (A) Have no record of a conviction for child molestation, child
33 abuse, or other crimes against a person.

34 (B) Have proof of automobile insurance if transporting the child.

35 (C) Have no current or past court order in which the provider
36 is the person being supervised.

37 (D) Agree to adhere to and enforce the court order regarding
38 supervised visitation.

39 (2) "Professional provider" means any person paid for providing
40 supervised visitation services, or an independent contractor,

- 1 employee, intern, or volunteer operating independently or through
2 a supervised visitation center or agency. The professional provider
3 shall:
- 4 (A) Be at least 21 years of age.
 - 5 (B) Have no record of a conviction for driving under the
6 influence (DUI) within the last five years.
 - 7 (C) Not have been on probation or parole for the last 10 years.
 - 8 (D) Have no record of a conviction for child molestation, child
9 abuse, or other crimes against a person.
 - 10 (E) Have proof of automobile insurance if transporting the child.
 - 11 (F) Have no civil, criminal, or juvenile restraining orders within
12 the last 10 years.
 - 13 (G) Have no current or past court order in which the provider
14 is the person being supervised.
 - 15 (H) Be able to speak the language of the party being supervised
16 and of the child, or the provider must provide a neutral interpreter
17 over 18 years of age who is able to do so.
 - 18 (I) Agree to adhere to and enforce the court order regarding
19 supervised visitation.
 - 20 (J) Meet the training requirements set forth in subdivision (d).
- 21 (d) (1) Professional providers shall have received 24 hours of
22 training that includes training in the following subjects:
- 23 (A) The role of a professional provider.
 - 24 (B) Child abuse reporting laws.
 - 25 (C) Recordkeeping procedures.
 - 26 (D) Screening, monitoring, and termination of visitation.
 - 27 (E) Developmental needs of children.
 - 28 (F) Legal responsibilities and obligations of a provider.
 - 29 (G) Cultural sensitivity.
 - 30 (H) Conflicts of interest.
 - 31 (I) Confidentiality.
 - 32 (J) Issues relating to substance abuse, child abuse, sexual abuse,
33 and domestic violence.
 - 34 (K) Basic knowledge of family and juvenile law.
- 35 (2) Professional providers shall sign a declaration or any Judicial
36 Council form that they meet the training and qualifications of a
37 provider.
- 38 (e) The ratio of children to a professional provider shall be
39 contingent on:
- 40 (1) The degree of risk factors present in each case.

- 1 (2) The nature of supervision required in each case.
- 2 (3) The number and ages of the children to be supervised during
- 3 a visit.
- 4 (4) The number of people visiting the child during the visit.
- 5 (5) The duration and location of the visit.
- 6 (6) The experience of the provider.
- 7 (f) Professional providers of supervised visitation shall:
- 8 (1) Advise the parties before commencement of supervised
- 9 visitation that no confidential privilege exists.
- 10 (2) Report suspected child abuse to the appropriate agency, as
- 11 provided by law, and inform the parties of the provider's obligation
- 12 to make those reports.
- 13 (3) Suspend or terminate visitation under subdivision (h).
- 14 (g) Professional providers shall:
- 15 (1) Prepare a written contract to be signed by the parties before
- 16 commencement of the supervised visitation. The contract should
- 17 inform each party of the terms and conditions of supervised
- 18 visitation.
- 19 (2) Review custody and visitation orders relevant to the
- 20 supervised visitation.
- 21 (3) Keep a record for each case, including, at least, all of the
- 22 following:
- 23 (A) A written record of each contact and visit.
- 24 (B) Who attended the visit.
- 25 (C) Any failure to comply with the terms and conditions of the
- 26 visitation.
- 27 (D) Any incidence of abuse, as required by law.
- 28 (h) (1) Each provider shall make every reasonable effort to
- 29 provide a safe visit for the child and the noncustodial party.
- 30 (2) If a provider determines that the rules of the visit have been
- 31 violated, the child has become acutely distressed, or the safety of
- 32 the child or the provider is at risk, the visit may be temporarily
- 33 interrupted, rescheduled at a later date, or terminated.
- 34 (3) All interruptions or terminations of visits shall be recorded
- 35 in the case file.
- 36 (4) All providers shall advise both parties of the reasons for the
- 37 interruption or termination of a visit.
- 38 (i) A professional provider shall state the reasons for temporary
- 39 suspension or termination of supervised visitation in writing and

1 shall provide the written statement to both parties, their attorneys,
 2 the attorney for the child, and the court.

3 SEC. 61. Section 4055 of the Family Code, as amended by
 4 Section 1 of Chapter 646 of the Statutes of 2012, is amended to
 5 read:

6 4055. (a) The statewide uniform guideline for determining
 7 child support orders is as follows: $CS = K \frac{HN - (H\%)(TN)}{K[HN - (H\%)(TN)]}$
 8 $K[HN - (H\%)(TN)]$.

9 (b) (1) The components of the formula are as follows:

10 (A) CS = child support amount.

11 (B) K = amount of both parents' income to be allocated for child
 12 support as set forth in paragraph (3).

13 (C) HN = high earner's net monthly disposable income.

14 (D) H% = approximate percentage of time that the high earner
 15 has or will have primary physical responsibility for the children
 16 compared to the other parent. In cases in which parents have
 17 different time-sharing arrangements for different children, H%
 18 equals the average of the approximate percentages of time the high
 19 earner parent spends with each child.

20 (E) TN = total net monthly disposable income of both parties.

21 (2) To compute net disposable income, see Section 4059.

22 (3) K (amount of both parents' income allocated for child
 23 support) equals one plus H% (if H% is less than or equal to 50
 24 percent) or two minus H% (if H% is greater than 50 percent) times
 25 the following fraction:

26

27 Total Net Disposable	
28 Income Per Month	K
29 \$0–800	$0.20 + TN/16,000$
30 \$801–6,666	0.25
31 \$6,667–10,000	$0.10 + 1,000/TN$
32 Over \$10,000	$0.12 + 800/TN$

33
 34 For example, if H% equals 20 percent and the total monthly net
 35 disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$,
 36 or 0.30. If H% equals 80 percent and the total monthly net
 37 disposable income of the parents is \$1,000, $K = (2 - 0.80) \times 0.25$
 38 $(2 - 0.80) \times 0.25$, or 0.30.

39 (4) For more than one child, multiply CS by:

1	2 children	1.6
2	3 children	2
3	4 children	2.3
4	5 children	2.5
5	6 children	2.625
6	7 children	2.75
7	8 children	2.813
8	9 children	2.844
9	10 children	2.86

10

11 (5) If the amount calculated under the formula results in a
12 positive number, the higher earner shall pay that amount to the
13 lower earner. If the amount calculated under the formula results
14 in a negative number, the lower earner shall pay the absolute value
15 of that amount to the higher earner.

16 (6) In any default proceeding where proof is by affidavit
17 pursuant to Section 2336, or in any proceeding for child support
18 in which a party fails to appear after being duly noticed, H% shall
19 be set at zero in the formula if the noncustodial parent is the higher
20 earner or at 100 if the custodial parent is the higher earner, where
21 there is no evidence presented demonstrating the percentage of
22 time that the noncustodial parent has primary physical
23 responsibility for the children. H% shall not be set as described
24 above if the moving party in a default proceeding is the
25 noncustodial parent or if the party who fails to appear after being
26 duly noticed is the custodial parent. A statement by the party who
27 is not in default as to the percentage of time that the noncustodial
28 parent has primary physical responsibility for the children shall
29 be deemed sufficient evidence.

30 (7) In all cases in which the net disposable income per month
31 of the obligor is less than one thousand five hundred dollars
32 (\$1,500), adjusted annually for cost-of-living increases, there shall
33 be a rebuttable presumption that the obligor is entitled to a
34 low-income adjustment. On March 1, 2013, and annually thereafter,
35 the Judicial Council shall determine the amount of the net
36 disposable income adjustment based on the change in the annual
37 California Consumer Price Index for All Urban Consumers,
38 published by the California Department of Industrial Relations,
39 Division of Labor Statistics *and Research*. The presumption may
40 be rebutted by evidence showing that the application of the

1 low-income adjustment would be unjust and inappropriate in the
 2 particular case. In determining whether the presumption is rebutted,
 3 the court shall consider the principles provided in Section 4053,
 4 and the impact of the contemplated adjustment on the respective
 5 net incomes of the obligor and the obligee. The low-income
 6 adjustment shall reduce the child support amount otherwise
 7 determined under this section by an amount that is no greater than
 8 the amount calculated by multiplying the child support amount
 9 otherwise determined under this section by a fraction, the
 10 numerator of which is 1,500 minus the obligor’s net disposable
 11 income per month, and the denominator of which is 1,500.

12 (8) Unless the court orders otherwise, the order for child support
 13 shall allocate the support amount so that the amount of support for
 14 the youngest child is the amount of support for one child, and the
 15 amount for the next youngest child is the difference between that
 16 amount and the amount for two children, with similar allocations
 17 for additional children. However, this paragraph does not apply
 18 to cases in which there are different time-sharing arrangements
 19 for different children or where the court determines that the
 20 allocation would be inappropriate in the particular case.

21 (c) If a court uses a computer to calculate the child support
 22 order, the computer program shall not automatically default
 23 affirmatively or negatively on whether a low-income adjustment
 24 is to be applied. If the low-income adjustment is applied, the
 25 computer program shall not provide the amount of the low-income
 26 adjustment. Instead, the computer program shall ask the user
 27 whether or not to apply the low-income adjustment, and if
 28 answered affirmatively, the computer program shall provide the
 29 range of the adjustment permitted by paragraph (7) of subdivision
 30 (b).

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

34 SEC. 62. Section 4055 of the Family Code, as added by Section
 35 2 of Chapter 646 of the Statutes of 2012, is amended to read:

36 4055. (a) The statewide uniform guideline for determining
 37 child support orders is as follows: $CS = K \frac{HN - (H\%)(TN)}{H - (H\%)(T)}$
 38 $K[HN - (H\%)(TN)]$.

39 (b) (1) The components of the formula are as follows:

40 (A) CS = child support amount.

1 (B) K = amount of both parents' income to be allocated for child
2 support as set forth in paragraph (3).

3 (C) HN = high earner's net monthly disposable income.

4 (D) H% = approximate percentage of time that the high earner
5 has or will have primary physical responsibility for the children
6 compared to the other parent. In cases in which parents have
7 different time-sharing arrangements for different children, H%
8 equals the average of the approximate percentages of time the high
9 earner parent spends with each child.

10 (E) TN = total net monthly disposable income of both parties.

11 (2) To compute net disposable income, see Section 4059.

12 (3) K (amount of both parents' income allocated for child
13 support) equals one plus H% (if H% is less than or equal to 50
14 percent) or two minus H% (if H% is greater than 50 percent) times
15 the following fraction:

16		
17	Total Net Disposable	
18	Income Per Month	K
19	\$0-800	$0.20 + TN/16,000$
20	\$801-6,666	0.25
21	\$6,667-10,000	$0.10 + 1,000/TN$
22	Over \$10,000	$0.12 + 800/TN$

23
24 For example, if H% equals 20 percent and the total monthly net
25 disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$,
26 or 0.30. If H% equals 80 percent and the total monthly net
27 disposable income of the parents is \$1,000, $K = (2 - 0.80)(2 -$
28 $0.80) \times 0.25$, or 0.30.

29 (4) For more than one child, multiply CS by:

30		
31	2 children	1.6
32	3 children	2
33	4 children	2.3
34	5 children	2.5
35	6 children	2.625
36	7 children	2.75
37	8 children	2.813
38	9 children	2.844
39	10 children	2.86

40

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 dollars (\$1,000), there shall
22 be a rebuttable presumption that the obligor is entitled to a
23 low-income adjustment. The presumption may be rebutted by
24 evidence showing that the application of the low-income
25 adjustment would be unjust and inappropriate in the particular
26 case. In determining whether the presumption is rebutted, the court
27 shall consider the principles provided in Section 4053, and the
28 impact of the contemplated adjustment on the respective net
29 incomes of the obligor and the obligee. The low-income adjustment
30 shall reduce the child support amount otherwise determined under
31 this section by an amount that is no greater than the amount
32 calculated by multiplying the child support amount otherwise
33 determined under this section by a fraction, the numerator of which
34 is 1,000 minus the obligor's net disposable income per month, and
35 the denominator of which is 1,000.

36 (8) Unless the court orders otherwise, the order for child support
37 shall allocate the support amount so that the amount of support for
38 the youngest child is the amount of support for one child, and the
39 amount for the next youngest child is the difference between that
40 amount and the amount for two children, with similar allocations

1 for additional children. However, this paragraph does not apply
2 to cases in which there are different time-sharing arrangements
3 for different children or where the court determines that the
4 allocation would be inappropriate in the particular case.

5 (c) If a court uses a computer to calculate the child support
6 order, the computer program shall not automatically default
7 affirmatively or negatively on whether a low-income adjustment
8 is to be applied. If the low-income adjustment is applied, the
9 computer program shall not provide the amount of the low-income
10 adjustment. Instead, the computer program shall ask the user
11 whether or not to apply the low-income adjustment, and if
12 answered affirmatively, the computer program shall provide the
13 range of the adjustment permitted by paragraph (7) of subdivision
14 (b).

15 (d) This section shall become operative on January 1, 2018.

16 SEC. 63. Section 1587 of the Fish and Game Code is amended
17 to read:

18 1587. (a) The Mirage Trail within the Magnesia Spring
19 Ecological Reserve shall be open nine months of the year to
20 recreational hiking; if the commission determines that the following
21 conditions are met:

22 (1) Local public agencies or other entities will assume complete
23 financial responsibility for the following as determined to be
24 necessary by the commission:

25 (A) Fencing to dissuade hikers from traversing beyond the trail
26 and into sensitive Peninsular bighorn sheep habitat.

27 (B) Signage and educational materials to educate hikers about
28 Peninsular bighorn sheep.

29 (2) A single entity has been designated to fulfill the financial
30 arrangements and other terms and conditions determined by the
31 commission to be necessary pursuant to paragraph (1).

32 (b) The commission shall determine seasonal openings and
33 closures of the trail that will not conflict with the use of the area
34 by Peninsular bighorn sheep, consistent with subdivision (a).

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

38 SEC. 64. Section 15100 of the Fish and Game Code is amended
39 to read:

1 15100. There is within the department an aquaculture
2 coordinator who shall perform all of the following duties as part
3 of the department's aquaculture program:

4 (a) Promote understanding of aquaculture among public agencies
5 and the general public.

6 (b) Propose methods of reducing the negative impact of public
7 regulation at all levels of government on the aquaculture industry.

8 (c) Provide information on all aspects of regulatory compliance
9 to the various sectors of the aquaculture industry.

10 (d) Provide advice to *the* owner of a registered aquaculture
11 facility on project siting and facility design, as necessary, to comply
12 with regulatory requirements.

13 (e) Coordinate with the Aquaculture Development Committee
14 regarding the duties described in subdivisions (a) to (d), inclusive.

15 SEC. 65. Section 4101.3 of the Food and Agricultural Code,
16 as amended by Section 2 of Chapter 137 of the Statutes of 2012,
17 is amended to read:

18 4101.3. (a) Notwithstanding any other provision of law, the
19 California Science Center is hereby authorized to enter into a site
20 lease with the California Science Center Foundation, a California
21 Nonprofit Corporation, with the approval of the Natural Resources
22 Agency, the Department of Finance, and the Department of General
23 Services, for the purpose of the foundation developing,
24 constructing, equipping, furnishing, and funding the project known
25 as Phase II of the California Science Center. The overall
26 construction cost and scope shall be consistent with the amount
27 authorized in ~~2002~~ *the Budget Act of 2002*, provided that nothing
28 in this section shall prevent the foundation from expending
29 additional nonstate funds to complete Phase II provided that the
30 additional expenditures do not result in additional state operation
31 and maintenance costs. Any additional expenditure of nonstate
32 funds by the foundation shall not increase the state's contribution.

33 (b) For the purpose of carrying out subdivision (a), all of the
34 following shall apply:

35 (1) In connection with the development described in subdivision
36 (a), above, the foundation may, in its determination, select the
37 most qualified construction manager/general contractor to oversee
38 and manage the work and prepare the competitive bid packages
39 for all major subcontractors to be engaged in the construction of
40 Phase II Project. Any construction manager/general contractor

1 selected shall be required to have a California general contractor's
2 license.

3 (2) Prior to commencement of construction of the Phase II
4 Project, the California Science Center shall enter into a
5 lease-purchase agreement upon approval by the Department of
6 Finance with the foundation on terms that are compatible with the
7 Phase I Project financing. The term of the lease-purchase agreement
8 shall be a term not to exceed 25 years. Lease payments on behalf
9 of the state shall be commensurate with the twenty-two million
10 nine hundred forty-five thousand two hundred sixty-three dollars
11 (\$22,945,263), (nineteen million one hundred thirty-seven thousand
12 dollars (\$19,137,000) plus 19.9 percent augmentation authority)
13 construction cost allocation of the state. Lease payments may also
14 include any cost of financing that the foundation may incur related
15 to ~~tax exempt~~ *tax-exempt* financing. The California Science Center
16 shall be authorized to direct the Controller to send the rental
17 payments under the lease-purchase agreement directly to the
18 foundation's bond trustee.

19 (3) The foundation shall ensure that the Phase II Project is
20 inspected during construction by the state in the manner consistent
21 with state infrastructure projects. The foundation shall also
22 indemnify and defend and save harmless the Department of General
23 Services for any and all claims and losses accruing and resulting
24 from or arising out of the foundation's use of the state's plans and
25 specifications. The foundation and the California Science Center,
26 upon consultation with the Director of General Services and the
27 Department of Finance shall agree on a reasonable level of state
28 oversight throughout the construction of the Phase II Project in
29 order to assist the foundation in the completion of the project within
30 the intended scope and cost.

31 (4) At the end of the term of the site lease and the lease-purchase
32 agreement unencumbered title to the land and improvements shall
33 return to the state with jurisdiction held by the California Science
34 Center.

35 SEC. 66. Section 4106 of the Food and Agricultural Code, as
36 amended by Section 6 of Chapter 137 of the Statutes of 2012, is
37 amended to read:

38 4106. (a) The California Science Center shall work with the
39 Los Angeles Memorial Coliseum Commission, the City of Los
40 Angeles, and the County of Los Angeles to develop additional

1 parking facilities in Exposition Park to the extent necessary to
2 allow for expansion of the park.

3 (b) The California Science Center shall manage or operate its
4 parking facilities in a manner that preserves and protects the
5 interests of itself and the California ~~African-American~~ *African*
6 *American* Museum and recognizes the cultural and educational
7 character of Exposition Park.

8 (c) The Exposition Park Improvement Fund is hereby created
9 in the State Treasury. All revenues received by the California
10 Science Center from its parking facilities, from rental of museum
11 facilities, or from other business activities shall be deposited in
12 the Exposition Park Improvement Fund.

13 (d) The moneys in the Exposition Park Improvement Fund may
14 only be used, upon appropriation by the Legislature, for
15 improvements to Exposition Park, including, but not limited to,
16 maintenance of existing parking and museum facilities, replacement
17 of museum equipment, supplies and wages expended to generate
18 revenues from rental of museum facilities, development of new
19 parking facilities, and acquisition of land within or adjacent to
20 Exposition Park.

21 (e) (1) The Legislature hereby finds and declares that there is
22 a need for development of additional park, recreation, museum,
23 and parking facilities in Exposition Park. The Legislature
24 recognizes that the provision of these needed improvements as
25 identified in the California Science Center Exposition Park Master
26 Plan may require the use of funds provided by other governmental
27 agencies or private donors.

28 (2) The California Science Center may accept funds from other
29 governmental agencies or private contributions for the purpose of
30 implementation of the California Science Center Exposition Park
31 Master Plan. The private contributions and funds from
32 governmental agencies other than state governmental agencies
33 shall be deposited in the Exposition Park Improvement Fund in
34 the State Treasury and shall be available for expenditure without
35 regard to fiscal years by the California Science Center for
36 implementation of the California Science Center Exposition Park
37 Master Plan. Funds from other state governmental agencies shall
38 be deposited in the Exposition Park Improvement Fund and shall
39 be available for expenditure, upon appropriation, by the California
40 Science Center for implementation of the California Science Center

1 Exposition Park Master Plan. However, any expenditure is not
2 authorized sooner than 30 days after notification in writing of the
3 necessity therefor to the chairperson of the committee in each
4 house that considers appropriations and the Chairperson of the
5 Joint Legislative Budget Committee, or not sooner than whatever
6 lesser time as the chairperson of the joint committee, or his or her
7 designee, may in each instance determine. Neither the City of Los
8 Angeles nor the County of Los Angeles shall impose any tax upon
9 tickets purchased authorizing the use of parking facilities owned
10 by the California Science Center.

11 SEC. 67. Section 14611 of the Food and Agricultural Code is
12 amended to read:

13 14611. (a) A licensee whose name appears on the label who
14 sells or distributes bulk fertilizing materials, as defined in Sections
15 14517 and 14533, to unlicensed purchasers, shall pay to the
16 secretary an assessment not to exceed two mills (\$0.002) per dollar
17 of sales for all fertilizing materials. A licensee whose name appears
18 on the label of packaged fertilizing materials, as defined in Sections
19 14533 and 14551, shall pay to the secretary an assessment not to
20 exceed two mills (\$0.002) per dollar of sales. The secretary may,
21 based on the findings and recommendations of the board, reduce
22 the assessment rate to a lower rate that provides sufficient revenue
23 to carry out this chapter.

24 (b) In addition to the assessment provided in subdivision (a),
25 the secretary may impose an assessment in an amount not to exceed
26 one mill (\$0.001) per dollar of sales for all sales of fertilizing
27 materials, to provide funding for research and education regarding
28 the use and handling of fertilizing material, including, but not
29 limited to, support for University of California Cooperative
30 Extension, the California resource conservation districts, other
31 California institutions of postsecondary education, or other
32 qualified entities to develop programs in the following areas:

33 (1) Technical education for users of fertilizer materials in the
34 development and implementation of nutrient management projects
35 that result in more agronomically sound uses of fertilizer materials
36 and minimize the environmental impacts of fertilizer use, including,
37 but not limited to, nitrates in groundwater and emissions of
38 greenhouse gases resulting from fertilizer use.

39 (2) Research to improve nutrient management practices resulting
40 in more agronomically sound uses of fertilizer materials and to

1 minimize the environmental impacts of fertilizer use, including,
2 but not limited to, nitrates in groundwater and emissions of
3 greenhouse gases resulting from fertilizer use.

4 (3) Education to increase awareness of more agronomically
5 sound use of fertilizer—~~products~~ *materials* to reduce the
6 environmental impacts resulting from the overuse or inefficient
7 use of fertilizing materials.

8 SEC. 68. Section 19447 of the Food and Agricultural Code is
9 amended to read:

10 19447. (a) In lieu of any civil action pursuant to Section 19445,
11 and in lieu of seeking prosecution, the secretary may levy a civil
12 penalty against a person who violates Article 6 (commencing with
13 Section 19300), Article 6.5 (commencing with Section 19310), or
14 any regulation adopted pursuant to those articles, in an amount not
15 to exceed five thousand dollars (\$5,000) for each violation.

16 (b) Before a civil penalty is levied, the person charged with the
17 violation shall receive notice of the nature of the violation and
18 shall be granted the opportunity to review the secretary's evidence
19 and, for up to 30 days following the issuance of the notice, the
20 opportunity to present written argument and evidence to the
21 secretary as to why the civil penalty should not be imposed or
22 should be reduced from the amount specified in the penalty notice.
23 Notwithstanding Chapter 4.5 (commencing with Section 11400)
24 of, and Chapter 5 (commencing with Section 11500) of, Part 1 of
25 Division 3 of Title 2 of the Government Code or any other
26 provision of law, this section does not require the department to
27 conduct either a formal or informal hearing. The secretary instead
28 may dispose of the matter upon review of the documentation
29 presented.

30 (c) Any person upon whom a civil penalty is levied may appeal
31 to the secretary within 20 days of the date of receiving notification
32 of the penalty, as follows:

33 (1) The appeal shall be in writing and signed by the appellant
34 or his or her authorized agent and shall state the grounds for the
35 appeal.

36 (2) Any party, at the time of filing the appeal, or within 10 days
37 thereafter, may present written evidence and a written argument
38 to the secretary.

39 (3) The secretary may grant oral arguments upon application
40 made at the time written arguments are made.

1 (4) If an application to present an oral argument is granted,
2 written notice of the time and place for the oral argument shall be
3 given at least 10 days prior to the date set therefor. This time
4 requirement may be altered by an agreement between the secretary
5 and the person appealing the penalty.

6 (5) The secretary shall decide the appeal on any oral or written
7 arguments, briefs, and evidence that he or she has received.

8 (6) The secretary shall render a written decision within 45 days
9 of the date of appeal, or within 15 days of the date of oral
10 arguments. A copy of the secretary's decision shall be delivered
11 or mailed to the appellant.

12 (7) The secretary may sustain the decision, modify the decision
13 by reducing the amount of the penalty levied, or reverse the
14 decision.

15 (8) A review of the decision of the secretary may be sought by
16 the appellant pursuant to Section 1094.5 of the Code of Civil
17 Procedure.

18 (d) (1) If the person upon whom a penalty is levied does not
19 file a petition for a writ of administrative mandamus, the court,
20 upon receiving a certified copy of the department's final decision
21 that directs payment of a civil penalty, shall enter judgment in
22 favor of the department.

23 (2) After completion of the appeal procedure provided for in
24 this section, the secretary may file a certified copy of the
25 department's final decision that directs payment of a civil penalty
26 and, if applicable, any order denying a petition for a writ of
27 administrative mandamus, with the clerk of the superior court of
28 any county that has jurisdiction over the matter. No fees shall be
29 charged by the clerk of the superior court for the performance of
30 any official services required in connection with the entry of
31 judgment pursuant to this section.

32 (e) Any penalties levied by the secretary pursuant to this section
33 shall be deposited in the Department of Food and Agriculture Fund,
34 and, upon appropriation by the Legislature, shall be used for the
35 purposes described in Section 221.

36 SEC. 69. Section 55527.6 of the Food and Agricultural Code
37 is amended to read:

38 55527.6. (a) Licensees or applicants for a license shall be
39 required to furnish and maintain an irrevocable guarantee in a form
40 and amount satisfactory to the secretary; if, within the preceding

1 four years, the secretary determines that they have done any of the
2 following:

3 (1) Engaged in conduct which demonstrates a lack of financial
4 responsibility including, but not limited to, delinquent accounts
5 payable, judgments of liability, insolvency, or bankruptcy.

6 (2) Failed to assure future financial responsibility unless an
7 irrevocable guarantee is provided.

8 (3) Otherwise violated this chapter which resulted in license
9 revocation.

10 ~~(4)~~

11 (b) The irrevocable guarantee may include a personal or
12 corporate guarantee, a certificate of deposit, a bank letter of credit,
13 or a surety bond, as determined to be appropriate by the secretary.

14 (c) The guarantee shall not be less than ten thousand dollars
15 (\$10,000) or 20 percent of the annual dollar volume of business
16 based on farm product value returned to the grower, whichever is
17 greater, as assurance that the licensee's or applicant's business
18 will be conducted in accordance with this chapter and that the
19 licensee or applicant will pay all amounts due farm products
20 creditors.

21 (d) The secretary, based on changes in the nature and volume
22 of business conducted by the licensee, may require an increase or
23 authorize a reduction in the amount of the guarantee, but in no
24 case shall the guarantee be reduced below ten thousand dollars
25 (\$10,000). A licensee who is notified by the secretary to provide
26 a guarantee in an increased amount shall do so within a reasonable
27 time as specified by the secretary. If the licensee fails to do so, the
28 secretary may, after a notice and opportunity for a hearing, suspend
29 or revoke the license of the licensee.

30 SEC. 70. Section 64101 of the Food and Agricultural Code is
31 amended to read:

32 64101. There is in the state government the Dairy Council of
33 California which shall consist of not less than 24, nor more than
34 25, members. All members of the council shall be appointed by
35 the secretary and may hold office at the pleasure of the secretary.
36 The membership of the council shall be as follows:

37 (a) There shall be 12 members that are actually engaged in the
38 production of milk. These 12 members are the producer members
39 of the council.

1 (b) There shall be 12 members that are handlers or
2 producer-handlers of dairy products. These 12 members are the
3 handler members of the council.

4 (c) Upon the recommendation of the council, the secretary may
5 appoint one person who is neither a producer, handler, or
6 producer-handler, and who shall represent the public generally.

7 SEC. 71. Section 3513 of the Government Code is amended
8 to read:

9 3513. As used in this chapter:

10 (a) "Employee organization" means any organization that
11 includes employees of the state and that has as one of its primary
12 purposes representing these employees in their relations with the
13 state.

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

17 (c) "State employee" means any civil service employee of the
18 state, and the teaching staff of schools under the jurisdiction of the
19 State Department of Education or the Superintendent of Public
20 Instruction, except managerial employees, confidential employees,
21 supervisory employees, employees of the Department of ~~Personnel~~
22 ~~Administration~~ *Human Resources*, professional employees of the
23 Department of Finance engaged in technical or analytical state
24 budget preparation other than the auditing staff, professional
25 employees in the Personnel/Payroll Services Division of the
26 Controller's office engaged in technical or analytical duties in
27 support of the state's personnel and payroll systems other than the
28 training staff, employees of the Legislative Counsel Bureau,
29 employees of the Bureau of State Audits, employees of the office
30 of the Inspector General, employees of the board, conciliators
31 employed by the California State Mediation and Conciliation
32 Service, employees of the Office of the State Chief Information
33 Officer except as otherwise provided in Section 11546.5, and
34 intermittent athletic inspectors who are employees of the State
35 Athletic Commission.

36 (d) "Mediation" means effort by an impartial third party to assist
37 in reconciling a dispute regarding wages, hours and other terms
38 and conditions of employment between representatives of the
39 public agency and the recognized employee organization or

1 recognized employee organizations through interpretation,
2 suggestion and advice.

3 (e) “Managerial employee” means any employee having
4 significant responsibilities for formulating or administering agency
5 or departmental policies and programs or administering an agency
6 or department.

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

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

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

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

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

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

13 SEC. 72. Section 3527 of the Government Code is amended
14 to read:

15 3527. As used in this chapter:

16 (a) “Employee” means a civil service employee of the State of
17 California. The “State of California” as used in this chapter
18 includes those state agencies, boards, and commissions as may be
19 designated by law that employ civil service employees, except the
20 University of California, Hastings College of the Law, and the
21 California State University.

22 (b) “Excluded employee,” means all managerial employees, as
23 defined in subdivision (e) of Section 3513, all confidential
24 employees, as defined in subdivision (f) of Section 3513, and all
25 supervisory employees, as defined in subdivision (g) of Section
26 3513, and all civil service employees of the Department of
27 ~~Personnel Administration~~ *Human Resources*, professional
28 employees of the Department of Finance engaged in technical or
29 analytical state budget preparation other than the auditing staff,
30 professional employees in the Personnel/Payroll Services Division
31 of the Controller’s office engaged in technical or analytical duties
32 in support of the state’s personnel and payroll systems other than
33 the training staff, employees of the Legislative Counsel Bureau,
34 employees of the Bureau of State Audits, employees of the Public
35 Employment Relations Board, conciliators employed by the
36 California State Mediation and Conciliation Service, employees
37 of the office of the State Chief Information Officer except as
38 provided in Section 11546.5, and intermittent athletic inspectors
39 who are employees of the State Athletic Commission.

1 (c) “Supervisory employee organization” means an organization
2 that represents members who are supervisory employees under
3 subdivision (g) of Section 3513.

4 (d) “Excluded employee organization” means an organization
5 that includes excluded employees of the state, as defined in
6 subdivision (b), and that has as one of its primary purposes
7 representing its members in employer-employee relations.
8 Excluded employee organization includes supervisory employee
9 organizations.

10 (e) “State employer” or “employer,” for purposes of meeting
11 and conferring on matters relating to supervisory
12 employer-employee relations, means the Governor or his or her
13 designated representatives.

14 SEC. 73. Section 7480 of the Government Code, as amended
15 by Section 2 of Chapter 304 of the Statutes of 2011, is repealed.

16 ~~7480. Nothing in this chapter shall prohibit any of the~~
17 ~~following:~~

18 ~~(a) The dissemination of any financial information that is not~~
19 ~~identified with, or identifiable as being derived from, the financial~~
20 ~~records of a particular customer.~~

21 ~~(b) When any police or sheriff’s department or district attorney~~
22 ~~in this state certifies to a bank, credit union, or savings association~~
23 ~~in writing that a crime report has been filed that involves the~~
24 ~~alleged fraudulent use of drafts, checks, access cards, or other~~
25 ~~orders drawn upon any bank, credit union, or savings association~~
26 ~~in this state, the police or sheriff’s department or district attorney,~~
27 ~~a county adult protective services office when investigating the~~
28 ~~financial abuse of an elder or dependent adult, or a long-term care~~
29 ~~ombudsman when investigating the financial abuse of an elder or~~
30 ~~dependent adult, may request a bank, credit union, or savings~~
31 ~~association to furnish, and a bank, credit union, or savings~~
32 ~~association shall furnish, a statement setting forth the following~~
33 ~~information with respect to a customer account specified by the~~
34 ~~requesting party for a period 30 days prior to, and up to 30 days~~
35 ~~following, the date of occurrence of the alleged illegal act involving~~
36 ~~the account:~~

- 37 ~~(1) The number of items dishonored.~~
- 38 ~~(2) The number of items paid that created overdrafts.~~
- 39 ~~(3) The dollar volume of the dishonored items and items paid~~
40 ~~which created overdrafts and a statement explaining any credit~~

1 arrangement between the bank, credit union, or savings association
2 and customer to pay overdrafts.

3 ~~(4) The dates and amounts of deposits and debits and the account
4 balance on these dates.~~

5 ~~(5) A copy of the signature card, including the signature and
6 any addresses appearing on a customer's signature card.~~

7 ~~(6) The date the account opened and, if applicable, the date the
8 account closed.~~

9 ~~(7) Surveillance photographs and video recordings of persons
10 accessing the crime victim's financial account via an automated
11 teller machine (ATM) or from within the financial institution for
12 dates on which illegal acts involving the account were alleged to
13 have occurred. Nothing in this paragraph does any of the following:~~

14 ~~(A) Requires a financial institution to produce a photograph or
15 video recording if it does not possess the photograph or video
16 recording.~~

17 ~~(B) Affects any existing civil immunities as provided in Section
18 47 of the Civil Code or any other provision of law.~~

19 ~~(8) A bank, credit union, or savings association that provides
20 the requesting party with copies of one or more complete account
21 statements prepared in the regular course of business shall be
22 deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

23 ~~(e) When any police or sheriff's department or district attorney
24 in this state certifies to a bank, credit union, or savings association
25 in writing that a crime report has been filed that involves the
26 alleged fraudulent use of drafts, checks, access cards, or other
27 orders drawn upon any bank, credit union, or savings association
28 doing business in this state, the police or sheriff's department or
29 district attorney, a county adult protective services office when
30 investigating the financial abuse of an elder or dependent adult,
31 or a long-term care ombudsman when investigating the financial
32 abuse of an elder or dependent adult, may request, with the consent
33 of the accountholder, the bank, credit union, or savings association
34 to furnish, and the bank, credit union, or savings association shall
35 furnish, a statement setting forth the following information with
36 respect to a customer account specified by the requesting party for
37 a period 30 days prior to, and up to 30 days following, the date of
38 occurrence of the alleged illegal act involving the account:~~

39 ~~(1) The number of items dishonored.~~

40 ~~(2) The number of items paid that created overdrafts.~~

1 ~~(3) The dollar volume of the dishonored items and items paid~~
2 ~~which created overdrafts and a statement explaining any credit~~
3 ~~arrangement between the bank, credit union, or savings association~~
4 ~~and customer to pay overdrafts.~~
5 ~~(4) The dates and amounts of deposits and debits and the account~~
6 ~~balance on these dates.~~
7 ~~(5) A copy of the signature card, including the signature and~~
8 ~~any addresses appearing on a customer's signature card.~~
9 ~~(6) The date the account opened and, if applicable, the date the~~
10 ~~account closed.~~
11 ~~(7) Surveillance photographs and video recordings of persons~~
12 ~~accessing the crime victim's financial account via an automated~~
13 ~~teller machine (ATM) or from within the financial institution for~~
14 ~~dates on which illegal acts involving this account were alleged to~~
15 ~~have occurred. Nothing in this paragraph does any of the following:~~
16 ~~(A) Requires a financial institution to produce a photograph or~~
17 ~~video recording if it does not possess the photograph or video~~
18 ~~recording.~~
19 ~~(B) Affects any existing civil immunities as provided in Section~~
20 ~~47 of the Civil Code or any other provision of law.~~
21 ~~(8) A bank, credit union, or savings association doing business~~
22 ~~in this state that provides the requesting party with copies of one~~
23 ~~or more complete account statements prepared in the regular course~~
24 ~~of business shall be deemed to be in compliance with paragraphs~~
25 ~~(1), (2), (3), and (4).~~
26 ~~(d) For purposes of subdivision (c), consent of the accountholder~~
27 ~~shall be satisfied if an accountholder provides to the financial~~
28 ~~institution and the person or entity seeking disclosure, a signed~~
29 ~~and dated statement containing all of the following:~~
30 ~~(1) Authorization of the disclosure for the period specified in~~
31 ~~subdivision (c).~~
32 ~~(2) The name of the agency or department to which disclosure~~
33 ~~is authorized and, if applicable, the statutory purpose for which~~
34 ~~the information is to be obtained.~~
35 ~~(3) A description of the financial records that are authorized to~~
36 ~~be disclosed.~~
37 ~~(e) (1) The Attorney General, a supervisory agency, the~~
38 ~~Franchise Tax Board, the State Board of Equalization, the~~
39 ~~Employment Development Department, the Controller or an~~
40 ~~inheritance tax referee when administering the Prohibition of Gift~~

1 and Death Taxes (Part 8 (commencing with Section 13301) of
2 Division 2 of the Revenue and Taxation Code), a police or sheriff's
3 department or district attorney, a county adult protective services
4 office when investigating the financial abuse of an elder or
5 dependent adult, a long-term care ombudsman when investigating
6 the financial abuse of an elder or dependent adult, a county welfare
7 department when investigating welfare fraud, a county
8 auditor-controller or director of finance when investigating fraud
9 against the county, or the Department of Corporations when
10 conducting investigations in connection with the enforcement of
11 laws administered by the Commissioner of Corporations, from
12 requesting of an office or branch of a financial institution, and the
13 office or branch from responding to a request, as to whether a
14 person has an account or accounts at that office or branch and, if
15 so, any identifying numbers of the account or accounts.

16 (2) No additional information beyond that specified in this
17 section shall be released to a county welfare department without
18 either the accountholder's written consent or a judicial writ, search
19 warrant, subpoena, or other judicial order.

20 (3) A county auditor-controller or director of finance who
21 unlawfully discloses information he or she is authorized to request
22 under this subdivision is guilty of the unlawful disclosure of
23 confidential data, a misdemeanor, which shall be punishable as
24 set forth in Section 7485.

25 (f) The examination by, or disclosure to, any supervisory agency
26 of financial records that relate solely to the exercise of its
27 supervisory function. The scope of an agency's supervisory
28 function shall be determined by reference to statutes that grant
29 authority to examine, audit, or require reports of financial records
30 or financial institutions as follows:

31 (1) With respect to the Commissioner of Financial Institutions
32 by reference to Division 1 (commencing with Section 99), Division
33 1.5 (commencing with Section 4800), Division 2 (commencing
34 with Section 5000), Division 5 (commencing with Section 14000),
35 Division 7 (commencing with Section 18000), Division 15
36 (commencing with Section 31000), and Division 16 (commencing
37 with Section 33000), of the Financial Code.

38 (2) With respect to the Controller by reference to Title 10
39 (commencing with Section 1300) of Part 3 of the Code of Civil
40 Procedure.

1 ~~(3) With respect to the Administrator of Local Agency Security~~
2 ~~by reference to Article 2 (commencing with Section 53630) of~~
3 ~~Chapter 4 of Part 1 of Division 2 of Title 5 of the Government~~
4 ~~Code.~~

5 ~~(g) The disclosure to the Franchise Tax Board of (1) the amount~~
6 ~~of any security interest that a financial institution has in a specified~~
7 ~~asset of a customer or (2) financial records in connection with the~~
8 ~~filing or audit of a tax return or tax information return that are~~
9 ~~required to be filed by the financial institution pursuant to Part 10~~
10 ~~(commencing with Section 17001), Part 11 (commencing with~~
11 ~~Section 23001), or Part 18 (commencing with Section 38001), of~~
12 ~~the Revenue and Taxation Code.~~

13 ~~(h) The disclosure to the State Board of Equalization of any of~~
14 ~~the following:~~

15 ~~(1) The information required by Sections 6702, 6703, 8954,~~
16 ~~8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,~~
17 ~~41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,~~
18 ~~46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the~~
19 ~~Revenue and Taxation Code.~~

20 ~~(2) The financial records in connection with the filing or audit~~
21 ~~of a tax return required to be filed by the financial institution~~
22 ~~pursuant to Part 1 (commencing with Section 6001), Part 2~~
23 ~~(commencing with Section 7301), Part 3 (commencing with Section~~
24 ~~8601), Part 13 (commencing with Section 30001), Part 14~~
25 ~~(commencing with Section 32001), and Part 17 (commencing with~~
26 ~~Section 37001), of Division 2 of the Revenue and Taxation Code.~~

27 ~~(3) The amount of any security interest a financial institution~~
28 ~~has in a specified asset of a customer, if the inquiry is directed to~~
29 ~~the branch or office where the interest is held.~~

30 ~~(i) The disclosure to the Controller of the information required~~
31 ~~by Section 7853 of the Revenue and Taxation Code.~~

32 ~~(j) The disclosure to the Employment Development Department~~
33 ~~of the amount of any security interest a financial institution has in~~
34 ~~a specified asset of a customer, if the inquiry is directed to the~~
35 ~~branch or office where the interest is held.~~

36 ~~(k) The disclosure by a construction lender, as defined in Section~~
37 ~~8006 of the Civil Code, to the Registrar of Contractors, of~~
38 ~~information concerning the making of progress payments to a~~
39 ~~prime contractor requested by the registrar in connection with an~~

1 investigation under Section 7108.5 of the Business and Professions
2 Code.

3 (f) Upon receipt of a written request from a local child support
4 agency referring to a support order pursuant to Section 17400 of
5 the Family Code, a financial institution shall disclose the following
6 information concerning the account or the person named in the
7 request, whom the local child support agency shall identify,
8 whenever possible, by social security number:

9 (1) If the request states the identifying number of an account at
10 a financial institution, the name of each owner of the account.

11 (2) Each account maintained by the person at the branch to
12 which the request is delivered, and, if the branch is able to make
13 a computerized search, each account maintained by the person at
14 any other branch of the financial institution located in this state.

15 (3) For each account disclosed pursuant to paragraphs (1) and
16 (2), the account number, current balance, street address of the
17 branch where the account is maintained, and, to the extent available
18 through the branch's computerized search, the name and address
19 of any other person listed as an owner.

20 (4) Whenever the request prohibits the disclosure, a financial
21 institution shall not disclose either the request or its response, to
22 an owner of the account or to any other person, except the officers
23 and employees of the financial institution who are involved in
24 responding to the request and to attorneys, employees of the local
25 child support agencies, auditors, and regulatory authorities who
26 have a need to know in order to perform their duties, and except
27 as disclosure may be required by legal process.

28 (5) No financial institution, or any officer, employee, or agent
29 thereof, shall be liable to any person for (A) disclosing information
30 in response to a request pursuant to this subdivision, (B) failing to
31 notify the owner of an account, or complying with a request under
32 this paragraph not to disclose to the owner, the request or disclosure
33 under this subdivision, or (C) failing to discover any account owned
34 by the person named in the request pursuant to a computerized
35 search of the records of the financial institution.

36 (6) The local child support agency may request information
37 pursuant to this subdivision only when the local child support
38 agency has received at least one of the following types of physical
39 evidence:

40 (A) Any of the following, dated within the last three years:

- 1 (i) ~~Form 599.~~
2 (ii) ~~Form 1099.~~
3 (iii) ~~A bank statement.~~
4 (iv) ~~A check.~~
5 (v) ~~A bank passbook.~~
6 (vi) ~~A deposit slip.~~
7 (vii) ~~A copy of a federal or state income tax return.~~
8 (viii) ~~A debit or credit advice.~~
9 (ix) ~~Correspondence that identifies the child support obligor by~~
10 ~~name, the bank, and the account number.~~
11 (x) ~~Correspondence that identifies the child support obligor by~~
12 ~~name, the bank, and the banking services related to the account of~~
13 ~~the obligor.~~
14 (xi) ~~An asset identification report from a federal agency.~~
15 (B) ~~A sworn declaration of the custodial parent during the 12~~
16 ~~months immediately preceding the request that the person named~~
17 ~~in the request has had or may have had an account at an office or~~
18 ~~branch of the financial institution to which the request is made.~~
19 (7) ~~Information obtained by a local child support agency~~
20 ~~pursuant to this subdivision shall be used only for purposes that~~
21 ~~are directly connected with the administration of the duties of the~~
22 ~~local child support agency pursuant to Section 17400 of the Family~~
23 ~~Code.~~
24 (m) (1) ~~As provided in paragraph (1) of subdivision (e) of~~
25 ~~Section 666 of Title 42 of the United States Code, upon receipt of~~
26 ~~an administrative subpoena on the current federally approved~~
27 ~~interstate child support enforcement form, as approved by the~~
28 ~~federal Office of Management and Budget, a financial institution~~
29 ~~shall provide the information or documents requested by the~~
30 ~~administrative subpoena.~~
31 (2) ~~The administrative subpoena shall refer to the current federal~~
32 ~~Office of Management and Budget control number and be signed~~
33 ~~by a person who states that he or she is an authorized agent of a~~
34 ~~state or county agency responsible for implementing the child~~
35 ~~support enforcement program set forth in Part D (commencing~~
36 ~~with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the~~
37 ~~United States Code. A financial institution may rely on the~~
38 ~~statements made in the subpoena and has no duty to inquire into~~
39 ~~the truth of any statement in the subpoena.~~

1 ~~(3) If the person who signs the administrative subpoena directs~~
2 ~~a financial institution in writing not to disclose either the subpoena~~
3 ~~or its response to any owner of an account covered by the subpoena,~~
4 ~~the financial institution shall not disclose the subpoena or its~~
5 ~~response to the owner.~~

6 ~~(4) No financial institution, or any officer, employee, or agent~~
7 ~~thereof, shall be liable to any person for (A) disclosing information~~
8 ~~or providing documents in response to a subpoena pursuant to this~~
9 ~~subdivision, (B) failing to notify any owner of an account covered~~
10 ~~by the subpoena or complying with a request not to disclose to the~~
11 ~~owner, the subpoena or disclosure under this subdivision, or (C)~~
12 ~~failing to discover any account owned by the person named in the~~
13 ~~subpoena pursuant to a computerized search of the records of the~~
14 ~~financial institution.~~

15 ~~(n) The dissemination of financial information and records~~
16 ~~pursuant to any of the following:~~

17 ~~(1) Compliance by a financial institution with the requirements~~
18 ~~of Section 2892 of the Probate Code.~~

19 ~~(2) Compliance by a financial institution with the requirements~~
20 ~~of Section 2893 of the Probate Code.~~

21 ~~(3) An order by a judge upon a written ex parte application by~~
22 ~~a peace officer showing specific and articulable facts that there~~
23 ~~are reasonable grounds to believe that the records or information~~
24 ~~sought are relevant and material to an ongoing investigation of a~~
25 ~~felony violation of Section 186.10 or of any felony subject to the~~
26 ~~enhancement set forth in Section 186.11.~~

27 ~~(A) The ex parte application shall specify with particularity the~~
28 ~~records to be produced, which shall be only those of the individual~~
29 ~~or individuals who are the subject of the criminal investigation.~~

30 ~~(B) The ex parte application and any subsequent judicial order~~
31 ~~shall be open to the public as a judicial record unless ordered sealed~~
32 ~~by the court, for a period of 60 days. The sealing of these records~~
33 ~~may be extended for 60-day periods upon a showing to the court~~
34 ~~that it is necessary for the continuance of the investigation.~~
35 ~~Sixty-day extensions may continue for up to one year or until~~
36 ~~termination of the investigation of the individual or individuals,~~
37 ~~whichever is sooner.~~

38 ~~(C) The records ordered to be produced shall be returned to the~~
39 ~~peace officer applicant or his or her designee within a reasonable~~
40 ~~time period after service of the order upon the financial institution.~~

1 ~~(D) Nothing in this subdivision shall preclude the financial~~
2 ~~institution from notifying a customer of the receipt of the order~~
3 ~~for production of records unless a court orders the financial~~
4 ~~institution to withhold notification to the customer upon a finding~~
5 ~~that the notice would impede the investigation.~~

6 ~~(E) Where a court has made an order pursuant to this paragraph~~
7 ~~to withhold notification to the customer under this paragraph, the~~
8 ~~peace officer or law enforcement agency who obtained the financial~~
9 ~~information shall notify the customer by delivering a copy of the~~
10 ~~ex parte order to the customer within 10 days of the termination~~
11 ~~of the investigation.~~

12 ~~(4) An order by a judge issued pursuant to subdivision (c) of~~
13 ~~Section 532f of the Penal Code.~~

14 ~~(5) No financial institution, or any officer, employee, or agent~~
15 ~~thereof, shall be liable to any person for any of the following:~~

16 ~~(A) Disclosing information to a probate court pursuant to~~
17 ~~Sections 2892 and 2893.~~

18 ~~(B) Disclosing information in response to a court order pursuant~~
19 ~~to paragraph (3).~~

20 ~~(C) Complying with a court order under this subdivision not to~~
21 ~~disclose to the customer, the order, or the dissemination of~~
22 ~~information pursuant to the court order.~~

23 ~~(o) Disclosure by a financial institution to a peace officer, as~~
24 ~~defined in Section 830.1 of the Penal Code, pursuant to the~~
25 ~~following:~~

26 ~~(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the~~
27 ~~Civil Code, provided that the financial institution has first complied~~
28 ~~with the requirements of paragraph (2) of subdivision (a) and~~
29 ~~subdivision (b) of Section 1748.95 of the Civil Code.~~

30 ~~(2) Paragraph (1) of subdivision (a) of Section 4002 of the~~
31 ~~Financial Code, provided that the financial institution has first~~
32 ~~complied with the requirements of paragraph (2) of subdivision~~
33 ~~(a) and subdivision (b) of Section 4002 of the Financial Code.~~

34 ~~(3) Paragraph (1) of subdivision (a) of Section 22470 of the~~
35 ~~Financial Code, provided that any financial institution that is a~~
36 ~~finance lender has first complied with the requirements of~~
37 ~~paragraph (2) of subdivision (a) and subdivision (b) of Section~~
38 ~~22470 of the Financial Code.~~

39 ~~(p) When the governing board of the Public Employees'~~
40 ~~Retirement System or the State Teachers' Retirement System~~

1 certifies in writing to a financial institution that a benefit recipient
2 has died and that transfers to the benefit recipient's account at the
3 financial institution from the retirement system occurred after the
4 benefit recipient's date of death, the financial institution shall
5 furnish the retirement system with the name and address of any
6 coowner, cosigner, or any other person who had access to the funds
7 in the account following the date of the benefit recipient's death,
8 or if the account has been closed, the name and address of the
9 person who closed the account.

10 (q) ~~When the retirement board of a retirement system established~~
11 ~~under the County Employees Retirement Law of 1937 certifies in~~
12 ~~writing to a financial institution that a retired member or the~~
13 ~~beneficiary of a retired member has died and that transfers to the~~
14 ~~account of the retired member or beneficiary of a retired member~~
15 ~~at the financial institution from the retirement system occurred~~
16 ~~after the date of death of the retired member or beneficiary of a~~
17 ~~retired member, the financial institution shall furnish the retirement~~
18 ~~system with the name and address of any coowner, cosigner, or~~
19 ~~any other person who had access to the funds in the account~~
20 ~~following the date of death of the retired member or beneficiary~~
21 ~~of a retired member, or if the account has been closed, the name~~
22 ~~and address of the person who closed the account.~~

23 (r) ~~When the Franchise Tax Board certifies in writing to a~~
24 ~~financial institution that (1) a taxpayer filed a tax return that~~
25 ~~authorized a direct deposit refund with an incorrect financial~~
26 ~~institution account or routing number that resulted in all or a~~
27 ~~portion of the refund not being received, directly or indirectly, by~~
28 ~~the taxpayer; (2) the direct deposit refund was not returned to the~~
29 ~~Franchise Tax Board; and (3) the refund was deposited directly~~
30 ~~on a specified date into the account of an accountholder of the~~
31 ~~financial institution who was not entitled to receive the refund,~~
32 ~~then the financial institution shall furnish to the Franchise Tax~~
33 ~~Board the name and address of any coowner, cosigner, or any other~~
34 ~~person who had access to the funds in the account following the~~
35 ~~date of direct deposit refund, or if the account has been closed, the~~
36 ~~name and address of the person who closed the account.~~

37 SEC. 74. Section 7522.20 of the Government Code is amended
38 to read:

39 7522.20. (a) Each retirement system that offers a defined
40 benefit plan for nonsafety members of the system shall use the

1 formula prescribed by this section. The defined benefit plan shall
 2 provide a pension at retirement for service equal to the percentage
 3 of the member's final compensation set forth opposite the
 4 member's age at retirement, taken to the preceding quarter year,
 5 in the following table, multiplied by the number of years of service
 6 in the system as a nonsafety member. A member may retire for
 7 service under this section after five years of service and upon
 8 reaching 52 years of age.

9	Age of Retirement	Fraction
10		
11	52	1.00
12		1.000
13	52 1/4	1.025
14	52 1/2	1.050
15	52 3/4	1.075
16	53	1.100
17	53 1/4	1.125
18	53 1/2	1.150
19	53 3/4	1.175
20	54	1.200
21	54 1/4	1.225
22	54 1/2	1.250
23	54 3/4	1.275
24	55	1.300
25	55 1/4	1.325
26	55 1/2	1.350
27	55 3/4	1.375
28	56	1.400
29	56 1/4	1.425
30	56 1/2	1.450
31	56 3/4	1.475
32	57	1.500
33	57 1/4	1.525
34	57 1/2	1.550
35	57 3/4	1.575
36	58	1.600
37	58 1/4	1.625
38	58 1/2	1.650
39	58 3/4	1.675
40	59	1.700

1	59 ¹ / ₄	1.725
2	59 ¹ / ₂	1.750
3	59 ³ / ₄	1.775
4	60	1.800
5	60 ¹ / ₄	1.825
6	60 ¹ / ₂	1.850
7	60 ³ / ₄	1.875
8	61	1.900
9	61 ¹ / ₄	1.925
10	61 ¹ / ₂	1.950
11	61 ³ / ₄	1.975
12	62	2.000
13	62 ¹ / ₄	2.025
14	62 ¹ / ₂	2.050
15	62 ³ / ₄	2.075
16	63	2.100
17	63 ¹ / ₄	2.125
18	63 ¹ / ₂	2.150
19	63 ³ / ₄	2.175
20	64	2.200
21	64 ¹ / ₄	2.225
22	64 ¹ / ₂	2.250
23	64 ³ / ₄	2.275
24	65	2.300
25	65 ¹ / ₄	2.325
26	65 ¹ / ₂	2.350
27	65 ³ / ₄	2.375
28	66	2.400
29	66 ¹ / ₄	2.425
30	66 ¹ / ₂	2.450
31	66 ³ / ₄	2.475
32	67	2.500

33

34 (b) Pensionable compensation used to calculate the defined
35 benefit shall be limited as described in Section 7522.10.

36 (c) A new member of the State Teachers' Retirement System
37 shall be subject to the formula established pursuant to Section
38 24202.6 of the Education Code.

39 SEC. 75. Section 7522.56 of the Government Code is amended
40 to read:

1 7522.56. (a) This section shall apply to any person who is
2 receiving a pension benefit from a public retirement system and
3 shall supersede any other provision in conflict with this section.

4 (b) A retired person shall not serve, be employed by, or be
5 employed through a contract directly by, a public employer in the
6 same public retirement system from which the retiree receives the
7 benefit without reinstatement from retirement, except as permitted
8 by this section.

9 (c) A person who retires from a public employer may serve
10 without reinstatement from retirement or loss or interruption of
11 benefits provided by the retirement system upon appointment by
12 the appointing power of a public employer either during an
13 emergency to prevent stoppage of public business or because the
14 retired person has skills needed to perform work of limited
15 duration.

16 (d) Appointments of the person authorized under this section
17 shall not exceed a total for all employers in that public retirement
18 system of 960 hours or other equivalent limit, in a calendar or
19 fiscal year, depending on the administrator of the system. The rate
20 of pay for the employment shall not be less than the minimum,
21 nor exceed the maximum, paid by the employer to other employees
22 performing comparable duties, divided by 173.333 to equal an
23 hourly rate. A retired person whose employment without
24 reinstatement is authorized by this section shall acquire no service
25 credit or retirement rights under this section with respect to the
26 employment unless he or she reinstates from retirement.

27 (e) (1) Notwithstanding subdivision (c), any retired person shall
28 not be eligible to serve or be employed by a public employer if,
29 during the 12-month period prior to an appointment described in
30 this section, the retired person received any unemployment
31 insurance compensation arising out of prior employment subject
32 to this section with a public employer. A retiree shall certify in
33 writing to the employer upon accepting an offer of employment
34 that he or she is in compliance with this requirement.

35 (2) A retired person who accepts an appointment after receiving
36 unemployment insurance compensation as described in this
37 subdivision shall terminate that employment on the last day of the
38 current pay period and shall not be eligible for reappointment
39 subject to this section for a period of 12 months following the last
40 day of employment.

1 (f) A retired person shall not be eligible to be employed pursuant
2 to this section for a period of 180 days following the date of
3 retirement unless he or she meets one of the following conditions:

4 (1) The employer certifies the nature of the employment and
5 that the appointment is necessary to fill a critically needed position
6 before 180 days ~~has~~ *have* passed and the appointment has been
7 approved by the governing body of the employer in a public
8 meeting. The appointment may not be placed on a consent calendar.

9 (2) The state employer certifies the nature of the employment
10 and that the appointment is necessary to fill a critically needed
11 state employment position before 180 days ~~has~~ *have* passed and
12 the appointment has been approved by the Department of Human
13 Resources. The department may establish a process to delegate
14 appointing authority to individual state agencies, but shall audit
15 the process to determine if abuses of the system occur. If necessary,
16 the department may assume an agency's appointing authority for
17 retired workers and may charge the department an appropriate
18 amount for administering that authority.

19 (3) The retiree is eligible to participate in the Faculty Early
20 Retirement Program pursuant to a collective bargaining agreement
21 with the California State University that existed prior to January
22 1, 2013, or has been included in subsequent agreements.

23 (4) The retiree is a public safety officer ~~of~~ *or* firefighter.

24 (g) A retired person who accepted a retirement incentive upon
25 retirement shall not be eligible to be employed pursuant to this
26 section for a period of 180 days following the date of retirement
27 and subdivision (f) shall not apply.

28 (h) This section shall not apply to a person who is retired from
29 the State Teachers' Retirement System, and who is subject to
30 Section 24214, 24214.5, or 26812 of the Education Code.

31 (i) This section shall not apply to (1) a subordinate judicial
32 officer whose position, upon retirement, is converted to a judgeship
33 pursuant to Section 69615, and he or she returns to work in the
34 converted position, and the employer is a trial court, or (2) a retiree
35 who takes office as a judge of a court of record pursuant to Article
36 VI of the California Constitution or a retiree of the Judges'
37 Retirement System I or the Judges' Retirement System II who is
38 appointed to serve as a retired judge.

39 SEC. 76. Section 7522.57 of the Government Code is amended
40 to read:

1 7522.57. (a) This section shall apply to any retired person who
2 is receiving a pension benefit from a public retirement system and
3 is first appointed on or after January 1, 2013, to a salaried position
4 on a state board or commission. This section shall supersede any
5 other provision in conflict with this section.

6 (b) A person who is retired from a public retirement system
7 may serve without reinstatement from retirement or loss or
8 interruption of benefits provided that appointment is to a part-time
9 state board or commission. A retired person whose employment
10 without reinstatement is authorized by this subdivision shall acquire
11 no benefits, service credit, or retirement rights with respect to the
12 employment. Unless otherwise defined in statute, for the purpose
13 of this section, a part-time appointment shall mean an appointment
14 with a salary of no more than \$60,000 annually, which shall be
15 increased in any fiscal year in which a general salary increase is
16 provided for state employees. The amount of the increase provided
17 by this section shall be comparable to, but shall not exceed, the
18 percentage of the general salary increases provided for state
19 employees during that fiscal year.

20 (c) A person who is retired from the Public Employees'
21 Retirement System shall not serve on a full-time basis on a state
22 board or commission without reinstatement unless that person
23 serves as a nonsalaried member of the board or commission and
24 receives only per diem authorized to all members of the board or
25 commission. A person who serves as a nonsalaried member of a
26 board or commission shall not earn any service credit or benefits
27 in the Public Employees' Retirement System or make contributions
28 with respect to the service performed.

29 (d) A person retired from a public retirement system other than
30 the Public Employees' Retirement System who is appointed on a
31 full-time basis to a state board or commission shall choose one of
32 the following options:

33 (1) The person may serve as a nonsalaried member of the board
34 or commission and continue to receive his or her retirement
35 allowance, in addition to any per diem authorized to all members
36 of the board or commission. The person shall not earn service
37 credit or benefits in the Public Employees' Retirement System and
38 shall not make contributions with respect to the service performed.

39 (2) ~~(A)~~ (A) The person may suspend his or her retirement
40 allowance or allowances and instate as a new member of the Public

1 Employees' Retirement System for the service performed on the
2 board or commission. The pensionable compensation earned
3 pursuant to this paragraph shall not be eligible for reciprocity with
4 any other retirement system or plan.

5 (ii)

6 (B) Upon retiring for service after serving on the board or
7 commission, the appointee shall be entitled to reinstatement of any
8 suspended benefits, including employer provided retiree health
9 benefits, that he or she was entitled to at the time of being
10 appointed to the board or commission.

11 (e) Notwithstanding subdivisions (c) and (d), a person who
12 retires from a public employer may serve without reinstatement
13 from retirement or loss or interruption of benefits provided by the
14 retirement system upon appointment to a full-time state board
15 pursuant to Section 5075 of the Penal Code.

16 SEC. 77. Section 7522.72 of the Government Code is amended
17 to read:

18 7522.72. (a) This section shall apply to a public employee first
19 employed by a public employer or first elected or appointed to an
20 office before January 1, 2013, and, on and after that date, Section
21 7522.70 shall not apply.

22 (b) (1) If a public employee is convicted by a state or federal
23 trial court of any felony under state or federal law for conduct
24 arising out of or in the performance of his or her official duties, in
25 pursuit of the office or appointment, or in connection with
26 obtaining salary, disability retirement, service retirement, or other
27 benefits, he or she shall forfeit all accrued rights and benefits in
28 any public retirement system in which he or she is a member to
29 the extent provided in subdivision (c) and shall not accrue further
30 benefits in that public retirement system, effective on the date of
31 the conviction.

32 (2) If a public employee who has contact with children as part
33 of *his or* her official duties is convicted of a felony that was
34 committed within the scope of his or her official duties against or
35 involving a child who he or she has contact with as part of his or
36 her official duties, he or she shall forfeit all accrued rights and
37 benefits in any public retirement system in which he or she is a
38 member to the extent provided in subdivision (c) and shall not
39 accrue further benefits in that public retirement system, effective
40 on the date of the conviction.

1 (c) (1) A public employee shall forfeit all the retirement benefits
 2 earned or accrued from the earliest date of the commission of any
 3 felony described in subdivision (b) to the forfeiture date, inclusive.
 4 The retirement benefits shall remain forfeited notwithstanding any
 5 reduction in sentence or expungement of the conviction following
 6 the date of the public employee’s conviction. Retirement benefits
 7 attributable to service performed prior to the date of the first
 8 commission of the felony for which the public employee was
 9 convicted shall not be forfeited as a result of this section.

10 (2) For purposes of this subdivision, “forfeiture date” means
 11 the date of the conviction.

12 (d) (1) Any contributions to the public retirement system made
 13 by the public employee described in subdivision (b) on or after
 14 the earliest date of the commission of any felony described in
 15 subdivision (b) shall be returned, without interest, to the public
 16 employee upon the occurrence of a distribution event unless
 17 otherwise ordered by a court or determined by the pension
 18 administrator.

19 (2) Any funds returned to the public employee pursuant to
 20 subdivision (d) shall be disbursed by electronic funds transfer to
 21 an account of the public employee, in a manner conforming with
 22 the requirements of the Internal Revenue Code, and the public
 23 retirement system shall notify the court and the district attorney
 24 at least three business days before that disbursement of funds.

25 (3) For the purposes of this subdivision, a “distribution event”
 26 means any of the following:

- 27 (A) Separation from employment.
- 28 (B) Death of the member.
- 29 (C) Retirement of the member.

30 (e) (1) Upon conviction, a public employee as described in
 31 subdivision (b) and the prosecuting agency shall notify the public
 32 employer who employed the public employee at the time of the
 33 commission of the felony within 60 days of the felony conviction
 34 of all of the following information:

- 35 (A) The date of conviction.
- 36 (B) The date of the first known commission of the felony.

37 (2) The operation of this section is not dependent upon the
 38 performance of the notification obligations specified in this
 39 subdivision.

1 (f) The public employer that employs or employed a public
2 employee described in subdivision (b) and that public employee
3 shall each notify the public retirement system in which the public
4 employee is a member of that public employee's conviction within
5 90 days of the conviction. The operation of this section is not
6 dependent upon the performance of the notification obligations
7 specified in this subdivision.

8 (g) A public retirement system may assess a public employer a
9 reasonable amount to reimburse the cost of audit, adjustment, or
10 correction, if it determines that the public employer failed to
11 comply with this section.

12 (h) If a public employee's conviction is reversed and that
13 decision is final, the employee shall be entitled to do either of the
14 following:

15 (1) Recover the forfeited retirement benefits as adjusted for the
16 contributions received pursuant to subdivision (d).

17 (2) Redeposit those contributions and interest, as determined
18 by the system actuary, and then recover the full amount of the
19 forfeited benefits.

20 (i) A public employee first employed by a public employer or
21 first elected or appointed to an office on or after January 1, 2013,
22 shall be subject to Section 7522.74.

23 SEC. 78. Section 8164.1 of the Government Code is amended
24 to read:

25 8164.1. There is in state government a Capitol Area Committee
26 consisting of nine members who shall be appointed in the following
27 manner:

28 (a) Four members of the committee shall be appointed by the
29 Governor of which at least one member shall be appointed from
30 a list of three candidates submitted by the City of Sacramento and
31 at least one member shall be appointed from a list of three
32 candidates submitted by the County of Sacramento. Two members
33 shall be appointed for a term expiring December 31, 1979, and
34 two for a term expiring December 31, 1981.

35 (b) Two members shall be appointed by the Speaker of the
36 Assembly, one of whom may be a Member of the Assembly, and
37 two members shall be appointed by the Senate Rules Committee,
38 one of whom may be a Member of the Senate. Legislative members
39 of the committee shall meet and, except as otherwise provided by
40 the Constitution, advise the department to the extent that the

1 advisory participation is not incompatible with their respective
 2 positions as Members of the Legislature. Of the four appointments
 3 by the Legislature, two shall be appointed for a term expiring
 4 December 31, 1979, and two for a term expiring December 31,
 5 1981.

6 (c) One shall be appointed by and serve at the pleasure of the
 7 director.

8 Subsequent appointments pursuant to subdivisions (a) and (b)
 9 shall be for terms of four years, ending on December 31 of the
 10 fourth year after the end of the prior term, except that appointments
 11 to fill vacancies occurring for any reason other than the expiration
 12 of the term shall be for the unexpired portion of the term in which
 13 they occur. The members of the board shall hold office until their
 14 successors are appointed and qualify.

15 The members of the committee shall not receive compensation
 16 from the state for their services under this article but, when called
 17 to attend a meeting of the committee, shall be reimbursed for their
 18 actual and necessary expenses incurred in connection with the
 19 meeting in accordance with the rules of the Department of
 20 ~~Personnel Administration~~ *Human Resources*.

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

24 SEC. 79. The heading of Chapter 3.1 (commencing with
 25 Section 8240) of Division 1 of Title 2 of the Government Code is
 26 amended to read:

27
 28 CHAPTER 3.1. COMMISSION ON THE STATUS OF WOMEN AND
 29 *GIRLS*
 30

31 SEC. 80. Section 11019 of the Government Code is amended
 32 to read:

33 11019. (a) Any department or authority specified in subdivision
 34 (b) may, upon determining that an advance payment is essential
 35 for the effective implementation of a program within the provisions
 36 of this section, and to the extent funds are available, advance to a
 37 community-based private nonprofit agency with which it has
 38 contracted, pursuant to federal law and related state law, for the
 39 delivery of services, not to exceed 25 percent of the annual
 40 allocation to be made pursuant to the contract and those laws during

1 the fiscal year to the private nonprofit agency. Advances in excess
2 of 25 percent may be made on contracts financed by a federal
3 program when the advances are not prohibited by federal
4 guidelines. Advance payments may be provided for services to be
5 performed under any contract with a total annual contract amount
6 of four hundred thousand dollars (\$400,000) or less. This amount
7 shall be increased by 5 percent, as determined by the Department
8 of Finance, for each year commencing with 1989. Advance
9 payments may also be made with respect to any contract that the
10 Department of Finance determines has been entered into with any
11 community-based private nonprofit agency with modest reserves
12 and potential cashflow problems. No advance payment shall be
13 granted if the total annual contract exceeds four hundred thousand
14 dollars (\$400,000), without the prior approval of the Department
15 of Finance.

16 The specific departments and authority mentioned in subdivision
17 (b) shall develop a plan to establish control procedures for advance
18 payments. Each plan shall include a procedure whereby the
19 department or authority determines whether or not an advance
20 payment is essential for the effective implementation of a particular
21 program being funded. Each plan shall be approved by the
22 Department of Finance.

23 (b) Subdivision (a) shall apply to the Emergency Medical
24 ~~Service Services~~ Authority, the California Department of Aging,
25 the State Department of Developmental Services, the State
26 Department of Alcohol and Drug Programs, the Department of
27 *Corrections and Rehabilitation, including the Division of Juvenile*
28 *Justice*, the Department of ~~Economic Opportunity~~ *Community*
29 *Services and Development*, the Employment Development
30 Department, the State Department of Health Services, the State
31 Department of State Hospitals, the Department of Rehabilitation,
32 the State Department of Social Services, the Department of Child
33 Support Services, ~~the Department of the Youth Authority~~, the State
34 Department of Education, the area boards on developmental
35 disabilities, the State Council on Developmental Disabilities, the
36 Office of Statewide Health Planning and Development, and the
37 California Environmental Protection Agency, including all boards
38 and departments contained therein.

39 Subdivision (a) shall also apply to the California Health and
40 Human Services Agency, which may make advance payments,

1 pursuant to the requirements of that subdivision, to multipurpose
2 senior services projects as established in Sections 9400 to 9413,
3 ~~inclusive~~, Chapter 8 (commencing with Section 9560) of Division
4 8.5 of the Welfare and Institutions Code.

5 Subdivision (a) shall also apply to the *Natural Resources*
6 Agency, including all boards and departments contained in that
7 agency, which may make advance payments pursuant to the
8 requirements of that subdivision with respect to grants and
9 contracts awarded to certified local community conservation corps.

10 (c) A county may, upon determining that an advance payment
11 is essential for the effective implementation of a program within
12 the provisions of this section, and to the extent funds are available,
13 and not more frequently than once each fiscal year, advance to a
14 community-based private nonprofit agency with which it has
15 contracted, pursuant to any applicable federal or state law, for the
16 delivery of services, not to exceed 25 percent of the annual
17 allocation to be made pursuant to the contract and those laws,
18 during the fiscal year to the private nonprofit agency.

19 SEC. 81. Section 11020 of the Government Code is amended
20 to read:

21 11020. (a) Unless otherwise provided by law, all offices of
22 every state agency shall be kept open for the transaction of business
23 from 8 a.m. until 5 p.m. of each day from Monday to Friday,
24 inclusive, other than legal holidays. However, any state agency or
25 division, branch or office thereof may be kept open for the
26 transaction of business on other hours and on other days than those
27 specified in this subdivision.

28 (b) If this section is in conflict with ~~the~~ a memorandum of
29 understanding reached pursuant to Chapter 12 (commencing with
30 Section 3560) of Division 4 of Title 1, the memorandum of
31 understanding shall be controlling without further legislative action,
32 except that if the memorandum of understanding requires the
33 expenditure of funds, the memorandum shall not become effective
34 unless approved by the Legislature in the annual Budget Act.

35 (c) Subdivision (a) shall not apply to any fair or association
36 specified under Division 3 (commencing with Section 3001) of
37 the Food and Agricultural Code.

38 SEC. 82. Section 11435.15 of the Government Code is amended
39 to read:

1 11435.15. (a) The following state agencies shall provide
2 language assistance in adjudicative proceedings to the extent
3 provided in this article:

- 4 Agricultural Labor Relations Board
- 5 ~~Department of Alcohol and Drug Abuse~~
- 6 *State Department of Alcohol and Drug Programs*
- 7 State Athletic Commission
- 8 California Unemployment Insurance Appeals Board
- 9 ~~Board of Prison Terms Parole Hearings~~
- 10 State Board of Barbering and Cosmetology
- 11 State Department of Developmental Services
- 12 Public Employment Relations Board
- 13 Franchise Tax Board
- 14 State Department of Health *Care Services*
- 15 Department of Housing and Community Development
- 16 Department of Industrial Relations
- 17 State Department of State Hospitals
- 18 Department of Motor Vehicles
- 19 Notary Public Section, Office of the Secretary of State
- 20 Public Utilities Commission
- 21 Office of Statewide Health Planning and Development
- 22 State Department of Social Services
- 23 Workers' Compensation Appeals Board
- 24 ~~Department of the Youth Authority~~
- 25 *Division of Juvenile Justice*
- 26 ~~Youthful Offender Parole Board~~
- 27 *Division of Juvenile Parole Operations*
- 28 Department of Insurance
- 29 State Personnel Board
- 30 California Board of Podiatric Medicine
- 31 Board of Psychology

32 (b) Nothing in this section prevents an agency other than an
33 agency listed in subdivision (a) from electing to adopt any of the
34 procedures in this article, provided that any selection of an
35 interpreter is subject to Section 11435.30.

36 (c) Nothing in this section prohibits an agency from providing
37 an interpreter during a proceeding to which this chapter does not
38 apply, including an informal factfinding or informal investigatory
39 hearing.

1 (d) This article applies to an agency listed in subdivision (a)
 2 notwithstanding a general provision that this chapter does not apply
 3 to some or all of an agency’s adjudicative proceedings.

4 SEC. 83. Section 11552 of the Government Code is amended
 5 to read:

6 11552. (a) Effective January 1, 1988, an annual salary of
 7 eighty-five thousand four hundred two dollars (\$85,402) shall be
 8 paid to each of the following:

9 (1) Commissioner of ~~Financial Institutions~~ *Business Oversight*.

10 ~~(2) Commissioner of Corporations.~~

11 ~~(3)~~

12 (2) Director of Transportation.

13 ~~(4)~~

14 (3) Real Estate Commissioner.

15 ~~(5)~~

16 (4) Director of Social Services.

17 ~~(6)~~

18 (5) Director of Water Resources.

19 ~~(7)~~

20 (6) Director of General Services.

21 ~~(8)~~

22 (7) Director of Motor Vehicles.

23 ~~(9)~~

24 (8) Executive Officer of the Franchise Tax Board.

25 ~~(10)~~

26 (9) Director of Employment Development.

27 ~~(11)~~

28 (10) Director of Alcoholic Beverage Control.

29 ~~(12)~~

30 (11) Director of Housing and Community Development.

31 ~~(13)~~

32 (12) Director of Alcohol and Drug Programs.

33 ~~(14)~~

34 (13) Director of Statewide Health Planning and Development.

35 ~~(15)~~

36 (14) Director of the Department of ~~Personnel Administration~~

37 *Human Resources*.

38 ~~(16)~~

39 (15) Director of Health Care Services.

40 ~~(17)~~

- 1 (16) Director of ~~Mental Health~~ *State Hospitals*.
- 2 ~~(18)~~
- 3 (17) Director of Developmental Services.
- 4 ~~(19)~~
- 5 (18) State Public Defender.
- 6 ~~(20)~~
- 7 (19) Director of the California State Lottery.
- 8 ~~(21)~~
- 9 (20) Director of Fish and ~~Game~~ *Wildlife*.
- 10 ~~(22)~~
- 11 (21) Director of Parks and Recreation.
- 12 ~~(23)~~
- 13 (22) Director of Rehabilitation.
- 14 ~~(24)~~
- 15 (23) Director of the Office of Administrative Law.
- 16 ~~(25)~~
- 17 (24) Director of Consumer Affairs.
- 18 ~~(26)~~
- 19 (25) Director of Forestry and Fire Protection.
- 20 ~~(27)~~
- 21 (26) The Inspector General pursuant to Section 6125 of the
- 22 Penal Code.
- 23 ~~(28)~~
- 24 (27) Director of Child Support Services.
- 25 ~~(29)~~
- 26 (28) Director of Industrial Relations.
- 27 ~~(30)~~
- 28 (29) Director of Toxic Substances Control.
- 29 ~~(31)~~
- 30 (30) Director of Pesticide Regulation.
- 31 ~~(32)~~
- 32 (31) Director of Managed Health Care.
- 33 ~~(33)~~
- 34 (32) Director of Environmental Health Hazard Assessment.
- 35 ~~(34)~~
- 36 (33) Director of Technology.
- 37 ~~(35)~~
- 38 (34) Director of California Bay-Delta Authority.
- 39 ~~(36)~~
- 40 (35) Director of California Conservation Corps.

1 (b) The annual compensation provided by this section shall be
2 increased in any fiscal year in which a general salary increase is
3 provided for state employees. The amount of the increase provided
4 by this section shall be comparable to, but shall not exceed, the
5 percentage of the general salary increases provided for state
6 employees during that fiscal year.

7 SEC. 84. Section 12460 of the Government Code is amended
8 to read:

9 12460. The Controller shall submit an annual report to the
10 Governor containing a statement of the funds of the state, its
11 revenues, and the public expenditures during the preceding fiscal
12 year. The annual report shall be known as the budgetary-legal basis
13 annual report and prepared in a manner that will account for prior
14 year adjustments, fund balances, encumbrances, deferred payroll,
15 revenues, expenditures, and other components on the same basis
16 as that of the applicable Governor's Budget and the applicable
17 Budget Act, as determined by the Director of Finance in
18 consultation with the Controller. If the Governor's Budget or the
19 Budget Act ~~do~~ does not provide the applicable information for this
20 purpose, funds shall be accounted for in the budgetary-legal basis
21 annual report in a manner prescribed by Section 13344. The
22 requirements of this section shall apply beginning with the issuance
23 of the budgetary-legal basis annual report for the 2013–14 fiscal
24 year. The Controller shall confer with the Department of Finance
25 to propose and develop methods to facilitate these changes pursuant
26 to Section 13344, including methods to ensure that information
27 related to encumbrances and deferred payroll continue to be listed
28 in the state's financial statements, as deemed appropriate by the
29 Controller.

30 The Controller shall also issue a comprehensive annual financial
31 report prepared strictly in accordance with "Generally Accepted
32 Accounting Principles."

33 The annual reports referenced in this section shall be compiled
34 and published by the Controller in the time, form, and manner
35 prescribed by him or her.

36 SEC. 85. Section 12838.14 of the Government Code is amended
37 to read:

38 12838.14. (a) Notwithstanding any other provision of law,
39 money recovered by the Department of Corrections and
40 Rehabilitation from a union paid leave settlement agreement shall

1 be credited to the fiscal year in which the recovered money is
2 received. An amount not to exceed the amount of the money
3 received shall be available for expenditure to the Department of
4 Corrections and Rehabilitation for the fiscal year in which the
5 recovered money is received, upon approval of the Department of
6 Finance. If this statute is enacted on or after July 1, 2012, any
7 money received prior to July 1, 2012, for purposes of this section,
8 shall be available for expenditure for the 2012–13 fiscal year.

9 (b) The Department of Corrections and Rehabilitation shall
10 identify and report the total amount collected annually to the
11 Department of Finance.

12 (c) This section shall become inoperative on June 30, 2021, and,
13 as of ~~January 1~~, January 1, 2022, is repealed, unless a later enacted
14 statute, that becomes operative on or before January 1, 2022,
15 deletes or extends the dates on which it becomes inoperative and
16 is repealed.

17 SEC. 86. Section 12926 of the Government Code is amended
18 to read:

19 12926. As used in this part in connection with unlawful
20 practices, unless a different meaning clearly appears from the
21 context:

22 (a) “Affirmative relief” or “prospective relief” includes the
23 authority to order reinstatement of an employee, awards of backpay,
24 reimbursement of out-of-pocket expenses, hiring, transfers,
25 reassignments, grants of tenure, promotions, cease and desist
26 orders, posting of notices, training of personnel, testing, expunging
27 of records, reporting of records, and any other similar relief that
28 is intended to correct unlawful practices under this part.

29 (b) “Age” refers to the chronological age of any individual who
30 has reached his or her 40th birthday.

31 (c) “Employee” does not include any individual employed by
32 his or her parents, spouse, or child, or any individual employed
33 under a special license in a nonprofit sheltered workshop or
34 rehabilitation facility.

35 (d) “Employer” includes any person regularly employing five
36 or more persons, or any person acting as an agent of an employer,
37 directly or indirectly, the state or any political or civil subdivision
38 of the state, and cities, except as follows:

39 “Employer” does not include a religious association or
40 corporation not organized for private profit.

1 (e) “Employment agency” includes any person undertaking for
2 compensation to procure employees or opportunities to work.

3 (f) “Essential functions” means the fundamental job duties of
4 the employment position the individual with a disability holds or
5 desires. “Essential functions” does not include the marginal
6 functions of the position.

7 (1) A job function may be considered essential for any of several
8 reasons, including, but not limited to, any one or more of the
9 following:

10 (A) The function may be essential because the reason the
11 position exists is to perform that function.

12 (B) The function may be essential because of the limited number
13 of employees available among whom the performance of that job
14 function can be distributed.

15 (C) The function may be highly specialized, so that the
16 incumbent in the position is hired for his or her expertise or ability
17 to perform the particular function.

18 (2) Evidence of whether a particular function is essential
19 includes, but is not limited to, the following:

20 (A) The employer’s judgment as to which functions are essential.

21 (B) Written job descriptions prepared before advertising or
22 interviewing applicants for the job.

23 (C) The amount of time spent on the job performing the function.

24 (D) The consequences of not requiring the incumbent to perform
25 the function.

26 (E) The terms of a collective bargaining agreement.

27 (F) The work experiences of past incumbents in the job.

28 (G) The current work experience of incumbents in similar jobs.

29 (g) (1) “Genetic information” means, with respect to any
30 individual, information about any of the following:

31 (A) The individual’s genetic tests.

32 (B) The genetic tests of family members of the individual.

33 (C) The manifestation of a disease or disorder in family members
34 of the individual.

35 (2) “Genetic information” includes any request for, or receipt
36 of, genetic services, or participation in clinical research that
37 includes genetic services, by an individual or any family member
38 of the individual.

39 (3) “Genetic information” does not include information about
40 the sex or age of any individual.

1 (h) “Labor organization” includes any organization that exists
2 and is constituted for the purpose, in whole or in part, of collective
3 bargaining or of dealing with employers concerning grievances,
4 terms or conditions of employment, or of other mutual aid or
5 protection.

6 (i) “Medical condition” means either of the following:

7 (1) Any health impairment related to or associated with a
8 diagnosis of cancer or a record or history of cancer.

9 (2) Genetic characteristics. For purposes of this section, “genetic
10 characteristics” means either of the following:

11 (A) Any scientifically or medically identifiable gene or
12 chromosome, or combination or alteration thereof, that is known
13 to be a cause of a disease or disorder in a person or his or her
14 offspring, or that is determined to be associated with a statistically
15 increased risk of development of a disease or disorder, and that is
16 presently not associated with any symptoms of any disease or
17 disorder.

18 (B) Inherited characteristics that may derive from the individual
19 or family member, that are known to be a cause of a disease or
20 disorder in a person or his or her offspring, or that are determined
21 to be associated with a statistically increased risk of development
22 of a disease or disorder, and that are presently not associated with
23 any symptoms of any disease or disorder.

24 (j) “Mental disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any mental or psychological disorder or condition,
27 such as intellectual disability, organic brain syndrome, emotional
28 or mental illness, or specific learning disabilities, that limits a
29 major life activity. For purposes of this section:

30 (A) “Limits” shall be determined without regard to mitigating
31 measures, such as medications, assistive devices, or reasonable
32 accommodations, unless the mitigating measure itself limits a
33 major life activity.

34 (B) A mental or psychological disorder or condition limits a
35 major life activity if it makes the achievement of the major life
36 activity difficult.

37 (C) “Major life activities” shall be broadly construed and shall
38 include physical, mental, and social activities and working.

1 (2) Any other mental or psychological disorder or condition not
2 described in paragraph (1) that requires special education or related
3 services.

4 (3) Having a record or history of a mental or psychological
5 disorder or condition described in paragraph (1) or (2), which is
6 known to the employer or other entity covered by this part.

7 (4) Being regarded or treated by the employer or other entity
8 covered by this part as having, or having had, any mental condition
9 that makes achievement of a major life activity difficult.

10 (5) Being regarded or treated by the employer or other entity
11 covered by this part as having, or having had, a mental or
12 psychological disorder or condition that has no present disabling
13 effect, but that may become a mental disability as described in
14 paragraph (1) or (2).

15 “Mental disability” does not include sexual behavior disorders,
16 compulsive gambling, kleptomania, pyromania, or psychoactive
17 substance use disorders resulting from the current unlawful use of
18 controlled substances or other drugs.

19 (k) “On the bases enumerated in this part” means or refers to
20 discrimination on the basis of one or more of the following: race,
21 religious creed, color, national origin, ancestry, physical disability,
22 mental disability, medical condition, genetic information, marital
23 status, sex, age, or sexual orientation.

24 (l) “Physical disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any physiological disease, disorder, condition,
27 cosmetic disfigurement, or anatomical loss that does both of the
28 following:

29 (A) Affects one or more of the following body systems:
30 neurological, immunological, musculoskeletal, special sense
31 organs, respiratory, including speech organs, cardiovascular,
32 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
33 and endocrine.

34 (B) Limits a major life activity. For purposes of this section:

35 (i) “Limits” shall be determined without regard to mitigating
36 measures such as medications, assistive devices, prosthetics, or
37 reasonable accommodations, unless the mitigating measure itself
38 limits a major life activity.

1 (ii) A physiological disease, disorder, condition, cosmetic
2 disfigurement, or anatomical loss limits a major life activity if it
3 makes the achievement of the major life activity difficult.

4 (iii) “Major life activities” shall be broadly construed and
5 includes physical, mental, and social activities and working.

6 (2) Any other health impairment not described in paragraph (1)
7 that requires special education or related services.

8 (3) Having a record or history of a disease, disorder, condition,
9 cosmetic disfigurement, anatomical loss, or health impairment
10 described in paragraph (1) or (2), which is known to the employer
11 or other entity covered by this part.

12 (4) Being regarded or treated by the employer or other entity
13 covered by this part as having, or having had, any physical
14 condition that makes achievement of a major life activity difficult.

15 (5) Being regarded or treated by the employer or other entity
16 covered by this part as having, or having had, a disease, disorder,
17 condition, cosmetic disfigurement, anatomical loss, or health
18 impairment that has no present disabling effect but may become
19 a physical disability as described in paragraph (1) or (2).

20 (6) “Physical disability” does not include sexual behavior
21 disorders, compulsive gambling, kleptomania, pyromania, or
22 psychoactive substance use disorders resulting from the current
23 unlawful use of controlled substances or other drugs.

24 (m) Notwithstanding subdivisions (j) and (l), if the definition
25 of “disability” used in the federal Americans with Disabilities Act
26 of 1990 (~~P.L.~~ *Public Law* 101-336) would result in broader
27 protection of the civil rights of individuals with a mental disability
28 or physical disability, as defined in subdivision (j) or (l), or would
29 include any medical condition not included within those definitions,
30 then that broader protection or coverage shall be deemed
31 incorporated by reference into, and shall prevail over conflicting
32 provisions of, the definitions in subdivisions (j) and (l).

33 (n) “Race, religious creed, color, national origin, ancestry,
34 physical disability, mental disability, medical condition, genetic
35 information, marital status, sex, age, or sexual orientation” includes
36 a perception that the person has any of those characteristics or that
37 the person is associated with a person who has, or is perceived to
38 have, any of those characteristics.

39 (o) “Reasonable accommodation” may include either of the
40 following:

- 1 (1) Making existing facilities used by employees readily
- 2 accessible to, and usable by, individuals with disabilities.
- 3 (2) Job restructuring, part-time or modified work schedules,
- 4 reassignment to a vacant position, acquisition or modification of
- 5 equipment or devices, adjustment or modifications of examinations,
- 6 training materials or policies, the provision of qualified readers or
- 7 interpreters, and other similar accommodations for individuals
- 8 with disabilities.
- 9 (p) “Religious creed,” “religion,” “religious observance,”
- 10 “religious belief,” and “creed” include all aspects of religious
- 11 belief, observance, and practice, including religious dress and
- 12 grooming practices. “Religious dress practice” shall be construed
- 13 broadly to include the wearing or carrying of religious clothing,
- 14 head or face coverings, jewelry, artifacts, and any other item that
- 15 is part of the observance by an individual of his or her religious
- 16 creed. “Religious grooming practice” shall be construed broadly
- 17 to include all forms of head, facial, and body hair that are part of
- 18 the observance by an individual of his or her religious creed.
- 19 (q) (1) “Sex” includes, but is not limited to, the following:
- 20 (A) Pregnancy or medical conditions related to pregnancy.
- 21 (B) Childbirth or medical conditions related to childbirth.
- 22 (C) Breastfeeding or medical conditions related to breastfeeding.
- 23 (2) “Sex” also includes, but is not limited to, a person’s gender.
- 24 “Gender” means sex, and includes a person’s gender identity and
- 25 gender expression. “Gender expression” means a person’s
- 26 gender-related appearance and behavior whether or not
- 27 stereotypically associated with the person’s assigned sex at birth.
- 28 (r) “Sexual orientation” means heterosexuality, homosexuality,
- 29 and bisexuality.
- 30 (s) “Supervisor” means any individual having the authority, in
- 31 the interest of the employer, to hire, transfer, suspend, layoff, recall,
- 32 promote, discharge, assign, reward, or discipline other employees,
- 33 or the responsibility to direct them, or to adjust their grievances,
- 34 or effectively to recommend that action, if, in connection with the
- 35 foregoing, the exercise of that authority is not of a merely routine
- 36 or clerical nature, but requires the use of independent judgment.
- 37 (t) “Undue hardship” means an action requiring significant
- 38 difficulty or expense, when considered in light of the following
- 39 factors:
- 40 (1) The nature and cost of the accommodation needed.

1 (2) The overall financial resources of the facilities involved in
2 the provision of the reasonable accommodations, the number of
3 persons employed at the facility, and the effect on expenses and
4 resources or the impact otherwise of these accommodations upon
5 the operation of the facility.

6 (3) The overall financial resources of the covered entity, the
7 overall size of the business of a covered entity with respect to the
8 number of employees, and the number, type, and location of its
9 facilities.

10 (4) The type of operations, including the composition, structure,
11 and functions of the workforce of the entity.

12 (5) The geographic separateness, administrative, or fiscal
13 relationship of the facility or facilities.

14 SEC. 87. Section 14837 of the Government Code is amended
15 to read:

16 14837. As used in this chapter:

17 (a) “Department” means the Department of General Services.

18 (b) “Director” means the Director of General Services.

19 (c) “Manufacturer” means a business that meets both of the
20 following requirements:

21 (1) It is primarily engaged in the chemical or mechanical
22 transformation of raw materials or processed substances into new
23 products.

24 (2) It is classified between Codes 31 to 33, inclusive, of the
25 North American Industry Classification System.

26 (d) (1) “Small business” means an independently owned and
27 operated business that is not dominant in its field of operation, the
28 principal office of which is located in California, the officers of
29 which are domiciled in California, and which, together with
30 affiliates, has 100 or fewer employees, and average annual gross
31 receipts of ten million dollars (\$10,000,000) or less over the
32 previous three years, or is a manufacturer, as defined in subdivision
33 (c), with 100 or fewer employees.

34 (2) “Microbusiness” is a small business which, together with
35 affiliates, has average annual gross receipts of two million five
36 hundred thousand dollars (\$2,500,000) or less over the previous
37 three years, or is a manufacturer, as defined in subdivision (c),
38 with 25 or fewer employees.

39 (3) The director shall conduct a biennial review of the average
40 annual gross receipt levels specified in this subdivision and may

1 adjust that level to reflect changes in the California Consumer
2 Price Index for all items. To reflect unique variations or
3 characteristics of different industries, the director may establish,
4 to the extent necessary, either higher or lower qualifying standards
5 than those specified in this subdivision, or alternative standards
6 based on other applicable criteria.

7 (4) Standards applied under this subdivision shall be established
8 by regulation, in accordance with Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude
10 the qualification of businesses that are dominant in their industry.
11 In addition, the standards shall provide that the certified small
12 business or microbusiness shall provide goods or services that
13 contribute to the fulfillment of the contract requirements by
14 performing a commercially useful function, as defined below:

15 (A) A certified small business or microbusiness is deemed to
16 perform a commercially useful function if the business does all of
17 the following:

18 (i) Is responsible for the execution of a distinct element of the
19 work of the contract.

20 (ii) Carries out its obligation by actually performing, managing,
21 or supervising the work involved.

22 (iii) Performs work that is normal for its business services and
23 functions.

24 (iv) Is responsible, with respect to products, inventories,
25 materials, and supplies required for the contract, for negotiating
26 price, determining quality and quantity, ordering, installing, if
27 applicable, and making payment.

28 (v) Is not further subcontracting a portion of the work that is
29 greater than that expected to be subcontracted by normal industry
30 practices.

31 (B) A contractor, subcontractor, or supplier will not be
32 considered to perform a commercially useful function if the
33 contractor's, subcontractor's, or supplier's role is limited to that
34 of an extra participant in a transaction, contract, or project through
35 which funds are passed in order to obtain the appearance of small
36 business or microbusiness participation.

37 (e) "Disabled veteran business enterprise" means an enterprise
38 that has been certified as meeting the qualifications established by
39 ~~subdivision (g) paragraph (7) of subdivision (b) of Section 999 of~~
40 the Military and Veterans Code.

1 SEC. 88. The heading of Chapter 3 (commencing with Section
2 15570) of Part 8.5 of Division 3 of Title 2 of the Government Code
3 is repealed.

4
5 ~~CHAPTER 3.~~

6 ~~CALIFORNIA ECONOMIC DEVELOPMENT STRATEGIC PLAN~~
7

8 SEC. 89. Section 15606.5 of the Government Code, as added
9 by Chapter 1167 of the Statutes of 1967, is amended and
10 renumbered to read:

11 ~~15606.5.~~

12 *15606.7* Training of assessors and their staffs under Sections
13 15606 and 15608 shall be provided by the board on a
14 nonreimbursable basis.

15 SEC. 90. Section 15814.25 of the Government Code, as added
16 by Section 1 of Chapter 234 of the Statutes of 1997, is amended
17 and renumbered to read:

18 ~~15814.25.~~

19 *15814.29* Notwithstanding subdivision (f) of Section 15814.11,
20 for the purposes of this chapter “state agency” also shall include
21 any local government as defined in subdivision (b) of Section
22 5921.

23 SEC. 91. Section 15819.30 of the Government Code, as added
24 by Section 8 of Chapter 585 of the Statutes of 1993, is amended
25 and renumbered to read:

26 ~~15819.30.~~

27 *15819.17* (a) The necessary funding for the construction of
28 the Secure Substance Abuse Treatment Facility authorized by
29 Section 5 of ~~the act enacting this section~~ *Chapter 585 of the*
30 *Statutes of 1993* may be obtained through lease-purchase financing
31 arrangements. Sections 15819.1 to 15819.13, inclusive, and Section
32 15819.15 shall apply for this purpose provided that the following
33 apply:

34 (1) “Prison facility” as used in Section 15819.1 includes the
35 Secure Substance Abuse Treatment Facility.

36 (2) Notwithstanding the limitation imposed by Section 15819.3
37 regarding the amount of bonds to be issued for construction,
38 acquisition, and financing of prison facilities, the State Public
39 Works Board may issue additional bonds in order to pay the costs

1 of acquiring and constructing or refinancing the Secure Substance
2 Abuse Treatment Facility.

3 (b) Notwithstanding Section 13340, funds derived from the
4 lease-purchase financing methods for the Secure Substance Abuse
5 Treatment Facility deposited in the State Treasury, are hereby
6 continuously appropriated to the State Public Works Board on
7 behalf of the Department of Corrections *and Rehabilitation* for
8 the purpose of acquiring and constructing or refinancing the prison
9 facility so financed.

10 The sum of ninety-three million five hundred thousand dollars
11 (\$93,500,000) shall be available for capital outlay for the Secure
12 Substance Abuse Treatment Facility from funds derived from
13 lease-purchase financing methods.

14 Funds so appropriated shall be available as necessary for the
15 purposes of site acquisition, site studies and suitability reports,
16 environmental studies, master planning, architectural programming,
17 schematics, preliminary plans, working drawings, construction,
18 long lead and equipment items. A maximum of two million dollars
19 (\$2,000,000) of the funds may be available for mitigation costs of
20 local government and school districts.

21 (c) The State Public Works Board may authorize the
22 augmentation of the cost of construction of the project set forth in
23 this section pursuant to the board’s authority under Section
24 13332.11. In addition, the State Public Works Board may authorize
25 any additional amounts necessary to establish a reasonable
26 construction reserve and to pay the costs of financing, including
27 the payment of interest during acquisition or construction of the
28 project, the cost of financing a debt service reserve fund, and the
29 cost of issuance of permanent financing for the project. This
30 additional amount may include interest payable on any interim
31 loan for the facility from the General Fund or the Pooled Money
32 Investment Account pursuant to Section 16312.

33 SEC. 92. Section 15820.922 of the Government Code is
34 amended to read:

35 15820.922. (a) The board may issue up to five hundred million
36 dollars (\$500,000,000) in revenue bonds, notes, or bond
37 anticipation notes, pursuant to Chapter 5 (commencing with Section
38 15830) to finance the acquisition, design, and construction,
39 including, without limitation, renovation, and a reasonable
40 construction reserve, of approved adult local criminal justice

1 facilities described in Section ~~15820.920~~ 15820.92, and any
2 additional amount authorized under Section 15849.6 to pay for the
3 cost of financing.

4 (b) Proceeds from the revenue bonds, notes, or bond anticipation
5 notes may be used to reimburse a participating county for the costs
6 of acquisition, design, and construction, including, without
7 limitation, renovation, for approved adult local criminal justice
8 facilities.

9 (c) Notwithstanding Section 13340, funds derived pursuant to
10 this section and Section 15820.921 are continuously appropriated
11 for purposes of this chapter.

12 SEC. 93. Section 19815 of the Government Code is amended
13 to read:

14 19815. As used in this part:

15 (a) “Department” means the Department of ~~Personnel~~
16 ~~Administration~~ *Human Resources*.

17 (b) “Director” means the Director of the Department of
18 ~~Personnel Administration~~ *Human Resources*.

19 (c) “Division” means the Division of Labor Relations.

20 (d) “Employee” or “state employee,” except where otherwise
21 indicated, means employees subject to the Ralph C. Dills Act
22 (Chapter 10.3 (commencing with Section 3512), Division 4, Title
23 1), supervisory employees as defined in subdivision (g) of Section
24 3513, managerial employees as defined in subdivision (e) of
25 Section 3513, confidential employees as defined in subdivision
26 (f) of Section 3513, employees of the Legislative Counsel Bureau,
27 employees of the Bureau of State Audits, employees of the office
28 of the Inspector General, employees of the Public Employment
29 Relations Board, conciliators employed by the California State
30 Mediation and Conciliation Service, employees of the Department
31 of ~~Personnel Administration~~ *Human Resources*, professional
32 employees of the Department of Finance engaged in technical or
33 analytical state budget preparation other than audit staff,
34 intermittent athletic inspectors who are employees of the State
35 Athletic Commission, professional employees in the
36 Personnel/Payroll Services Division of the Controller’s office and
37 all employees of the executive branch of government who are not
38 elected to office.

39 SEC. 94. Section 20391 of the Government Code is amended
40 to read:

1 20391. “State peace officer/firefighter member” means:

2 (a) All persons in the Board of ~~Prison Terms~~ *Parole Hearings*,
3 the Department of Consumer Affairs, the Department of
4 Developmental Services, the Department of Health *Care* Services,
5 the Department of Toxic Substances Control, the *California* Horse
6 Racing Board, the Department of Industrial Relations, the
7 Department of Insurance, the State Department of State Hospitals,
8 the Department of Motor Vehicles, the Department of Social
9 Services employed with the class title of Special Investigator (Class
10 Code 8553), Senior Special Investigator (Class Code 8550), and
11 Investigator Assistant (Class Code 8554) who have been designated
12 as peace officers as defined in Sections 830.2 and 830.3 of the
13 Penal Code.

14 (b) All persons in the Department of Alcoholic Beverage Control
15 employed with the class title Investigator Trainee, Alcoholic
16 Beverage Control (Class Code 7553), Investigator I, Alcoholic
17 Beverage Control, Range A and B (Class Code 7554), and
18 Investigator II, Alcoholic Beverage Control (Class Code 7555)
19 who have been designated as peace officers as defined in Sections
20 830.2 and 830.3 of the Penal Code.

21 (c) All persons within the Department of Justice who are state
22 employees as defined in subdivision (c) of Section 3513 and who
23 have been designated as peace officers and performing investigative
24 duties.

25 (d) All persons in the Department of Parks and Recreation
26 employed with the class title of Park Ranger (Intermittent) (Class
27 Code 0984) who have been designated as peace officers as defined
28 in Sections 830.2 and 830.3 of the Penal Code.

29 (e) All persons in the Franchise Tax Board who have been
30 designated as peace officers in subdivision (s) of Section 830.3 of
31 the Penal Code.

32 (f) A member who is employed in a position that is reclassified
33 to state peace officer/firefighter pursuant to this section may make
34 an irrevocable election in writing to remain subject to the service
35 retirement benefit and the normal rate of contribution applicable
36 prior to reclassification by filing a notice of election with the board
37 within 90 days of notification by the board. A member who so
38 elects shall be subject to the reduced benefit factors specified in
39 Section 21353 or 21354.1, as applicable, only for service included
40 in the federal system.

1 SEC. 95. Section 20410 of the Government Code is amended
2 to read:

3 20410. "State safety member" also includes all persons in the
4 Department of Alcoholic Beverage Control, the Board of ~~Prison~~
5 ~~Terms Parole Hearings~~, the Department of Consumer Affairs, the
6 Department of Developmental Services, the Department of Health
7 *Care Services*, the Department of Toxic Substances Control, the
8 *California* Horse Racing Board, the Department of Industrial
9 Relations, the Department of Insurance, the State Department of
10 State Hospitals, the Department of Motor Vehicles, and the
11 Department of Social Services employed with the class title of
12 Special Investigator (Class Code 8553), Senior Special Investigator
13 (Class Code 8550), Investigator Trainee (Class Code 8555) and
14 Investigator Assistant (Class Code 8554), Supervising Special
15 Investigator I (Class Code 8548), Special Investigator II (Class
16 Code 8547), and persons in the class of State Park Ranger
17 (Intermittent) (Class Code 0984) in the Department of Parks and
18 Recreation, who have been designated as peace officers as defined
19 in Sections 830.2 and 830.3 of the Penal Code.

20 SEC. 96. Section 20516 of the Government Code is amended
21 to read:

22 20516. (a) Notwithstanding any other provision of this part,
23 with or without a change in benefits, a contracting agency and its
24 employees may agree, in writing, to share the costs of the employer
25 contribution. The cost sharing pursuant to this section shall also
26 apply for related nonrepresented employees as approved in a
27 resolution passed by the contracting agency.

28 (b) The collective bargaining agreement shall specify the exact
29 percentage of member compensation that shall be paid toward the
30 current service cost of the benefits by members. The member
31 contributions shall be contributions over and above normal
32 contributions otherwise required by this part and shall be treated
33 as normal contributions for all purposes of this part. The
34 contributions shall be uniform, except as described in subdivision
35 (c), with respect to all members within each of the following
36 classifications: local miscellaneous members, local police officers,
37 local firefighters, county peace officers, and all local safety
38 members other than local police officers, local firefighters, and
39 county peace officers. The balance of any costs shall be paid by
40 the contracting agency and shall be credited to the employer's

1 account. An employer shall not use impasse procedures to impose
2 member cost sharing on any contribution amount above that which
3 is authorized by law.

4 (c) Member cost sharing may differ by classification for groups
5 of employees subject to different levels of benefits pursuant to
6 Sections 7522.20, 7522.25, and 20475, or by a recognized
7 collective bargaining unit if agreed to in a memorandum of
8 understanding reached pursuant to the applicable collective
9 bargaining laws.

10 (d) This section shall not apply to any contracting agency nor
11 to the employees of a contracting agency until the agency elects
12 to be subject to this section by contract or by amendment to its
13 contract made in the manner prescribed for approval of contracts.
14 Contributions provided by this section shall be withheld from
15 member compensation or otherwise collected when the contract
16 amendment becomes effective.

17 (e) For the purposes of this section, all contributions, liabilities,
18 actuarial interest rates, and other valuation factors shall be
19 determined on the basis of actuarial assumptions and methods that,
20 in the aggregate, are reasonable and ~~which~~ *that*, in combination,
21 offer the actuary's best estimate of anticipated experience under
22 this system.

23 (f) Nothing in this section shall preclude a contracting agency
24 and its employees from independently agreeing in a memorandum
25 of understanding to share the costs of any benefit, in a manner
26 inconsistent with this section. However, any agreement in a
27 memorandum of understanding that is inconsistent with this section
28 shall not be part of the contract between this system and the
29 contracting agency.

30 (g) If, and to the extent that, the board determines that a
31 cost-sharing agreement under this section would conflict with Title
32 26 of the United States Code, the board may refuse to approve the
33 agreement.

34 (h) Nothing in this section shall require a contracting agency to
35 enter into a memorandum of understanding or collective bargaining
36 agreement with a bargaining representative in order to increase
37 the amount of member contributions when such a member
38 contribution increase is authorized by other provisions under this
39 part.

1 SEC. 97. Section 20677.7 of the Government Code is amended
2 to read:

3 20677.7. (a) Notwithstanding Section 20677.4, effective with
4 the beginning of the September 2010 pay period, the normal rate
5 of contribution for state miscellaneous or state industrial members
6 who are represented by State Bargaining Unit 8, shall be:

7 (1) Eleven percent of the compensation in excess of three
8 hundred seventeen dollars (\$317) per month paid to a member
9 whose service is not included in the federal system.

10 (2) Ten percent of compensation in excess of five hundred
11 thirteen dollars (\$513) per month paid to ~~that~~ a member whose
12 service has been included in the federal system.

13 (b) Notwithstanding Section 20677.4, effective with the
14 beginning of the September 2010 pay period, the normal rate of
15 contribution for state miscellaneous or state industrial members
16 who are represented by State Bargaining Unit 5 shall be:

17 (1) Eight percent of the compensation in excess of three hundred
18 seventeen dollars (\$317) per month paid to a member whose service
19 is not included in the federal system.

20 (2) Seven percent of compensation in excess of five hundred
21 thirteen dollars (\$513) per month paid to ~~that~~ a member whose
22 service has been included in the federal system.

23 (c) If the provisions of this section are in conflict with the
24 provisions of a memorandum of understanding reached pursuant
25 to Section 3517.5, the memorandum of understanding shall be
26 controlling without further legislative action, except that if the
27 provisions of a memorandum of understanding require the
28 expenditure of funds, the provisions shall not become effective
29 unless and until approved by the Legislature in the annual Budget
30 Act.

31 (d) Consistent with the normal rate of contribution for all
32 members identified in this subdivision, the Director of the
33 Department of Personnel Administration may exercise his or her
34 discretion to establish the normal rate of contribution for a related
35 state employee who is excepted from the definition of “state
36 employee” in subdivision (c) of Section 3513, and an officer or
37 employee of the executive branch of state government who is not
38 a member of the civil service.

39 SEC. 98. Section 25060 of the Government Code is amended
40 to read:

1 25060. Whenever a vacancy occurs in ~~any~~ a board of
2 supervisors, the Governor shall fill the vacancy. The appointee
3 shall hold office until the election and qualification of his *or her*
4 successor.

5 SEC. 99. Section 25062 of the Government Code is amended
6 to read:

7 25062. When a vacancy occurs from the failure of the person
8 elected to file his *or her* oath or bond as provided by law, and the
9 person elected is appointed to fill the vacancy, he *or she* shall hold
10 office for the unexpired term.

11 SEC. 100. Section 65040.7 of the Government Code is amended
12 to read:

13 65040.7. (a) For purposes of this section, the following terms
14 have the following meanings:

15 (1) “Energy security and military mission goals” means federal
16 laws, regulations, or executive orders, related to alternative fuel
17 and vehicle technology, clean energy, energy efficiency, water
18 and waste conservation, greenhouse gas emissions reductions, and
19 related infrastructure, including, but not limited to, the federal
20 laws, regulations, and executive orders, and the goals set forth
21 therein, of the National Energy Conservation Policy Act (42 U.S.C.
22 Sec. 8201 et seq.), the Energy Independence and Security Act of
23 2007 (42 U.S.C. Sec. 17001 et seq.), the Energy Policy Act of
24 2005 (42 U.S.C. Sec. 15801 et seq.), and the Energy Policy Act
25 of 1992 (42 U.S.C. Sec. 13201 et seq.), and the goals set forth in
26 Executive Order No. 13514, Executive Order No. 13423, and
27 Executive Order No. 13221.

28 (2) “State energy and environmental policies” includes, but is
29 not limited to, policies involving alternative fuels and vehicle
30 technology and related fueling infrastructure, renewable electricity
31 generation and related transmission infrastructure, energy efficiency
32 and demand response, waste management, recycling, water
33 conservation, water quality, water supply, greenhouse gas
34 emissions reductions, and green chemistry.

35 (b) A state agency that is identified by the Office of Planning
36 *and* Research pursuant to paragraph (1) of subdivision (c) shall,
37 when developing and implementing state energy and environmental
38 policies, consider the direct impacts of those policies upon the
39 United States Department of Defense’s energy security and military
40 mission goals.

1 (c) The Office of Planning and Research shall do both of the
2 following:

3 (1) Identify state agencies that develop and implement state
4 energy and environmental policies that directly impact the United
5 States Department of Defense's energy security and military
6 mission goals in the state.

7 (2) Serve as a liaison to coordinate effective inclusion of the
8 United States Department of Defense in the development and
9 implementation of state energy and environmental policy.

10 (d) This section shall not do any of the following:

11 (1) Interfere with the existing authority of, or prevent, an agency
12 or department from carrying out of its programs, projects, or
13 responsibilities.

14 (2) Limit compliance with requirements imposed under any
15 other law.

16 (3) Authorize or require the United States Department of
17 Defense to operate differently from any other self-generating
18 ratepayer, or alter an existing rate structure.

19 SEC. 101. Section 65302.5 of the Government Code is amended
20 to read:

21 65302.5. (a) At least 45 days prior to adoption or amendment
22 of the safety element, each county and city shall submit to the
23 California Geological Survey of the Department of Conservation
24 one copy of a draft of the safety element or amendment and any
25 technical studies used for developing the safety element. The
26 division may review drafts submitted to it to determine whether
27 they incorporate known seismic and other geologic hazard
28 information, and report its findings to the planning agency within
29 30 days of receipt of the draft of the safety element or amendment
30 pursuant to this subdivision. The legislative body shall consider
31 the division's findings prior to final adoption of the safety element
32 or amendment unless the division's findings are not available
33 within the above prescribed time limits or unless the division has
34 indicated to the city or county that the division will not review the
35 safety element. If the division's findings are not available within
36 those prescribed time limits, the legislative body may take the
37 division's findings into consideration at the time it considers future
38 amendments to the safety element. Each county and city shall
39 provide the division with a copy of its adopted safety element or
40 amendments. The division may review adopted safety elements

1 or amendments and report its findings. All findings made by the
 2 division shall be advisory to the planning agency and legislative
 3 body.

4 (b) (1) The draft element of or draft amendment to the safety
 5 element of a county or a city’s general plan shall be submitted to
 6 the State Board of Forestry and Fire Protection and to every local
 7 agency that provides fire protection to territory in the city or county
 8 at least 90 days prior to either of the following:

9 (A) The adoption or amendment to the safety element of its
 10 general plan for each county that contains state responsibility areas.

11 (B) The adoption or amendment to the safety element of its
 12 general plan for each city or county that contains a very high fire
 13 hazard severity zone as defined pursuant to subdivision ~~(b)~~ (i) of
 14 Section 51177.

15 (2) A county that contains state responsibility areas and a city
 16 or county that contains a very high fire hazard severity zone as
 17 defined pursuant to subdivision ~~(b)~~ (i) of Section 51177 shall
 18 submit for review the safety element of its general plan to the State
 19 Board of Forestry and Fire Protection and every local agency that
 20 provides fire protection to territory in the city or county in
 21 accordance with the following dates, as specified, unless the local
 22 government submitted the element within five years prior to that
 23 date:

24 (A) Local governments within the regional jurisdiction of the
 25 San Diego Association of Governments: December 31, 2010.

26 (B) Local governments within the regional jurisdiction of the
 27 Southern California Association of Governments: December 31,
 28 2011.

29 (C) Local governments within the regional jurisdiction of the
 30 Association of Bay Area Governments: December 31, 2012.

31 (D) Local governments within the regional jurisdiction of the
 32 Council of Fresno County Governments, the Kern County Council
 33 of Governments, and the Sacramento Area Council of
 34 Governments: June 30, 2013.

35 (E) Local governments within the regional jurisdiction of the
 36 Association of Monterey Bay Area Governments: December 31,
 37 2014.

38 (F) All other local governments: December 31, 2015.

39 (3) The State Board of Forestry and Fire Protection shall, and
 40 a local agency may, review the draft or an existing safety element

1 and recommend changes to the planning agency within 60 days
2 of its receipt regarding both of the following:

3 (A) Uses of land and policies in state responsibility areas and
4 very high fire hazard severity zones that will protect life, property,
5 and natural resources from unreasonable risks associated with
6 wildland fires.

7 (B) Methods and strategies for wildland fire risk reduction and
8 prevention within state responsibility areas and very high fire
9 hazard severity zones.

10 (4) Prior to the adoption of its draft element or draft amendment,
11 the board of supervisors of the county or the city council of a city
12 shall consider the recommendations, if any, made by the State
13 Board of Forestry and Fire Protection and any local agency that
14 provides fire protection to territory in the city or county. If the
15 board of supervisors or city council determines not to accept all
16 or some of the recommendations, if any, made by the State Board
17 of Forestry and Fire Protection or local agency, the board of
18 supervisors or city council shall communicate in writing to the
19 State Board of Forestry and Fire Protection or the local agency,
20 its reasons for not accepting the recommendations.

21 (5) If the State Board of Forestry and Fire Protection's or local
22 agency's recommendations are not available within the time limits
23 required by this section, the board of supervisors or city council
24 may act without those recommendations. The board of supervisors
25 or city council shall take the recommendations into consideration
26 the next time it considers amendments to the safety element.

27 SEC. 102. Section 65915 of the Government Code, as amended
28 by Section 53 of Chapter 181 of the Statutes of 2012, is amended
29 to read:

30 65915. (a) When an applicant seeks a density bonus for a
31 housing development within, or for the donation of land for housing
32 within, the jurisdiction of a city, county, or city and county, that
33 local government shall provide the applicant with incentives or
34 concessions for the production of housing units and child care
35 facilities as prescribed in this section. All cities, counties, or cities
36 and counties shall adopt an ordinance that specifies how
37 compliance with this section will be implemented. Failure to adopt
38 an ordinance shall not relieve a city, county, or city and county
39 from complying with this section.

1 (b) (1) A city, county, or city and county shall grant one density
2 bonus, the amount of which shall be as specified in subdivision
3 (f), and incentives or concessions, as described in subdivision (d),
4 when an applicant for a housing development seeks and agrees to
5 construct a housing development, excluding any units permitted
6 by the density bonus awarded pursuant to this section, that will
7 contain at least any one of the following:

8 (A) Ten percent of the total units of a housing development for
9 lower income households, as defined in Section 50079.5 of the
10 Health and Safety Code.

11 (B) Five percent of the total units of a housing development for
12 very low income households, as defined in Section 50105 of the
13 Health and Safety Code.

14 (C) A senior citizen housing development, as defined in Sections
15 51.3 and 51.12 of the Civil Code, or mobilehome park that limits
16 residency based on age requirements for housing for older persons
17 pursuant to Section 798.76 or 799.5 of the Civil Code.

18 (D) Ten percent of the total dwelling units in a common interest
19 development as defined in Section 4100 of the Civil Code for
20 persons and families of moderate income, as defined in Section
21 50093 of the Health and Safety Code, provided that all units in the
22 development are offered to the public for purchase.

23 (2) For purposes of calculating the amount of the density bonus
24 pursuant to subdivision (f), the applicant who requests a density
25 bonus pursuant to this subdivision shall elect whether the bonus
26 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)
27 of paragraph (1).

28 (3) For the purposes of this section, “total units” or “total
29 dwelling units” does not include units added by a density bonus
30 awarded pursuant to this section or any local law granting a greater
31 density bonus.

32 (c) (1) An applicant shall agree to, and the city, county, or city
33 and county shall ensure, continued affordability of all low- and
34 very low income units that qualified the applicant for the award
35 of the density bonus for 30 years or a longer period of time if
36 required by the construction or mortgage financing assistance
37 program, mortgage insurance program, or rental subsidy program.
38 Rents for the lower income density bonus units shall be set at an
39 affordable rent as defined in Section 50053 of the Health and Safety
40 Code. Owner-occupied units shall be available at an affordable

1 housing cost as defined in Section 50052.5 of the Health and Safety
2 Code.

3 (2) An applicant shall agree to, and the city, county, or city and
4 county shall ensure that, the initial occupant of the
5 moderate-income units that are directly related to the receipt of
6 the density bonus in the common interest development, as defined
7 in Section 4100 of the Civil Code, are persons and families of
8 moderate income, as defined in Section 50093 of the Health and
9 Safety Code, and that the units are offered at an affordable housing
10 cost, as that cost is defined in Section 50052.5 of the Health and
11 Safety Code. The local government shall enforce an equity sharing
12 agreement, unless it is in conflict with the requirements of another
13 public funding source or law. The following apply to the equity
14 sharing agreement:

15 (A) Upon resale, the seller of the unit shall retain the value of
16 any improvements, the downpayment, and the seller's proportionate
17 share of appreciation. The local government shall recapture any
18 initial subsidy, as defined in subparagraph (B), and its proportionate
19 share of appreciation, as defined in subparagraph (C), which
20 amount shall be used within five years for any of the purposes
21 described in subdivision (e) of Section 33334.2 of the Health and
22 Safety Code that promote home ownership.

23 (B) For purposes of this subdivision, the local government's
24 initial subsidy shall be equal to the fair market value of the home
25 at the time of initial sale minus the initial sale price to the
26 moderate-income household, plus the amount of any downpayment
27 assistance or mortgage assistance. If upon resale the market value
28 is lower than the initial market value, then the value at the time of
29 the resale shall be used as the initial market value.

30 (C) For purposes of this subdivision, the local government's
31 proportionate share of appreciation shall be equal to the ratio of
32 the local government's initial subsidy to the fair market value of
33 the home at the time of initial sale.

34 (d) (1) An applicant for a density bonus pursuant to subdivision
35 (b) may submit to a city, county, or city and county a proposal for
36 the specific incentives or concessions that the applicant requests
37 pursuant to this section, and may request a meeting with the city,
38 county, or city and county. The city, county, or city and county
39 shall grant the concession or incentive requested by the applicant

1 unless the city, county, or city and county makes a written finding,
 2 based upon substantial evidence, of any of the following:

3 (A) The concession or incentive is not required in order to
 4 provide for affordable housing costs, as defined in Section 50052.5
 5 of the Health and Safety Code, or for rents for the targeted units
 6 to be set as specified in subdivision (c).

7 (B) The concession or incentive would have a specific adverse
 8 impact, as defined in paragraph (2) of subdivision (d) of Section
 9 65589.5, upon public health and safety or the physical environment
 10 or on any real property that is listed in the California Register of
 11 Historical Resources and for which there is no feasible method to
 12 satisfactorily mitigate or avoid the specific adverse impact without
 13 rendering the development unaffordable to low- and
 14 moderate-income households.

15 (C) The concession or incentive would be contrary to state or
 16 federal law.

17 (2) The applicant shall receive the following number of
 18 incentives or concessions:

19 (A) One incentive or concession for projects that include at least
 20 10 percent of the total units for lower income households, at least
 21 5 percent for very low income households, or at least 10 percent
 22 for persons and families of moderate income in a common interest
 23 development.

24 (B) Two incentives or concessions for projects that include at
 25 least 20 percent of the total units for lower income households, at
 26 least 10 percent for very low income households, or at least 20
 27 percent for persons and families of moderate income in a common
 28 interest development.

29 (C) Three incentives or concessions for projects that include at
 30 least 30 percent of the total units for lower income households, at
 31 least 15 percent for very low income households, or at least 30
 32 percent for persons and families of moderate income in a common
 33 interest development.

34 (3) The applicant may initiate judicial proceedings if the city,
 35 county, or city and county refuses to grant a requested density
 36 bonus, incentive, or concession. If a court finds that the refusal to
 37 grant a requested density bonus, incentive, or concession is in
 38 violation of this section, the court shall award the plaintiff
 39 reasonable attorney’s fees and costs of suit. Nothing in this
 40 subdivision shall be interpreted to require a local government to

1 grant an incentive or concession that has a specific, adverse impact,
2 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
3 upon health, safety, or the physical environment, and for which
4 there is no feasible method to satisfactorily mitigate or avoid the
5 specific adverse impact. Nothing in this subdivision shall be
6 interpreted to require a local government to grant an incentive or
7 concession that would have an adverse impact on any real property
8 that is listed in the California Register of Historical Resources.
9 The city, county, or city and county shall establish procedures for
10 carrying out this section, that shall include legislative body
11 approval of the means of compliance with this section.

12 (e) (1) In no case may a city, county, or city and county apply
13 any development standard that will have the effect of physically
14 precluding the construction of a development meeting the criteria
15 of subdivision (b) at the densities or with the concessions or
16 incentives permitted by this section. An applicant may submit to
17 a city, county, or city and county a proposal for the waiver or
18 reduction of development standards that will have the effect of
19 physically precluding the construction of a development meeting
20 the criteria of subdivision (b) at the densities or with the
21 concessions or incentives permitted under this section, and may
22 request a meeting with the city, county, or city and county. If a
23 court finds that the refusal to grant a waiver or reduction of
24 development standards is in violation of this section, the court
25 shall award the plaintiff reasonable attorney's fees and costs of
26 suit. Nothing in this subdivision shall be interpreted to require a
27 local government to waive or reduce development standards if the
28 waiver or reduction would have a specific, adverse impact, as
29 defined in paragraph (2) of subdivision (d) of Section 65589.5,
30 upon health, safety, or the physical environment, and for which
31 there is no feasible method to satisfactorily mitigate or avoid the
32 specific adverse impact. Nothing in this subdivision shall be
33 interpreted to require a local government to waive or reduce
34 development standards that would have an adverse impact on any
35 real property that is listed in the California Register of Historical
36 Resources, or to grant any waiver or reduction that would be
37 contrary to state or federal law.

38 (2) A proposal for the waiver or reduction of development
39 standards pursuant to this subdivision shall neither reduce nor

1 increase the number of incentives or concessions to which the
2 applicant is entitled pursuant to subdivision (d).

3 (f) For the purposes of this chapter, “density bonus” means a
4 density increase over the otherwise maximum allowable residential
5 density as of the date of application by the applicant to the city,
6 county, or city and county. The applicant may elect to accept a
7 lesser percentage of density bonus. The amount of density bonus
8 to which the applicant is entitled shall vary according to the amount
9 by which the percentage of affordable housing units exceeds the
10 percentage established in subdivision (b).

11 (1) For housing developments meeting the criteria of
12 subparagraph (A) of paragraph (1) of subdivision (b), the density
13 bonus shall be calculated as follows:

14	15 Percentage Low-Income Units	15 Percentage Density Bonus
16	10	20
17	11	21.5
18	12	23
19	13	24.5
20	14	26
21	15	27.5
22	17	30.5
23	18	32
24	19	33.5
25	20	35

26
27 (2) For housing developments meeting the criteria of
28 subparagraph (B) of paragraph (1) of subdivision (b), the density
29 bonus shall be calculated as follows:

30	31 Percentage Very Low Income Units	31 Percentage Density Bonus
32	5	20
33	6	22.5
34	7	25
35	8	27.5
36	9	30
37	10	32.5
38	11	35

39

1 (3) For housing developments meeting the criteria of
2 subparagraph (C) of paragraph (1) of subdivision (b), the density
3 bonus shall be 20 percent of the number of senior housing units.

4 (4) For housing developments meeting the criteria of
5 subparagraph (D) of paragraph (1) of subdivision (b), the density
6 bonus shall be calculated as follows:

	Percentage Moderate-Income Units	Percentage Density Bonus
7		
8		
9	10	5
10	11	6
11	12	7
12	13	8
13	14	9
14	15	10
15	16	11
16	17	12
17	18	13
18	19	14
19	20	15
20	21	16
21	22	17
22	23	18
23	24	19
24	25	20
25	26	21
26	27	22
27	28	23
28	29	24
29	30	25
30	31	26
31	32	27
32	33	28
33	34	29
34	35	30
35	36	31
36	37	32
37	38	33
38	39	34
39	40	35
40		

1 (5) All density calculations resulting in fractional units shall be
 2 rounded up to the next whole number. The granting of a density
 3 bonus shall not be interpreted, in and of itself, to require a general
 4 plan amendment, local coastal plan amendment, zoning change,
 5 or other discretionary approval.

6 (g) (1) When an applicant for a tentative subdivision map,
 7 parcel map, or other residential development approval donates
 8 land to a city, county, or city and county in accordance with this
 9 subdivision, the applicant shall be entitled to a 15-percent increase
 10 above the otherwise maximum allowable residential density for
 11 the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

35
 36 (2) This increase shall be in addition to any increase in density
 37 mandated by subdivision (b), up to a maximum combined mandated
 38 density increase of 35 percent if an applicant seeks an increase
 39 pursuant to both this subdivision and subdivision (b). All density
 40 calculations resulting in fractional units shall be rounded up to the

1 next whole number. Nothing in this subdivision shall be construed
2 to enlarge or diminish the authority of a city, county, or city and
3 county to require a developer to donate land as a condition of
4 development. An applicant shall be eligible for the increased
5 density bonus described in this subdivision if all of the following
6 conditions are met:

7 (A) The applicant donates and transfers the land no later than
8 the date of approval of the final subdivision map, parcel map, or
9 residential development application.

10 (B) The developable acreage and zoning classification of the
11 land being transferred are sufficient to permit construction of units
12 affordable to very low income households in an amount not less
13 than 10 percent of the number of residential units of the proposed
14 development.

15 (C) The transferred land is at least one acre in size or of
16 sufficient size to permit development of at least 40 units, has the
17 appropriate general plan designation, is appropriately zoned with
18 appropriate development standards for development at the density
19 described in paragraph (3) of subdivision (c) of Section 65583.2,
20 and is or will be served by adequate public facilities and
21 infrastructure.

22 (D) The transferred land shall have all of the permits and
23 approvals, other than building permits, necessary for the
24 development of the very low income housing units on the
25 transferred land, not later than the date of approval of the final
26 subdivision map, parcel map, or residential development
27 application, except that the local government may subject the
28 proposed development to subsequent design review to the extent
29 authorized by subdivision (i) of Section 65583.2 if the design is
30 not reviewed by the local government prior to the time of transfer.

31 (E) The transferred land and the affordable units shall be subject
32 to a deed restriction ensuring continued affordability of the units
33 consistent with paragraphs (1) and (2) of subdivision (c), which
34 shall be recorded on the property at the time of the transfer.

35 (F) The land is transferred to the local agency or to a housing
36 developer approved by the local agency. The local agency may
37 require the applicant to identify and transfer the land to the
38 developer.

1 (G) The transferred land shall be within the boundary of the
2 proposed development or, if the local agency agrees, within
3 one-quarter mile of the boundary of the proposed development.

4 (H) A proposed source of funding for the very low income units
5 shall be identified not later than the date of approval of the final
6 subdivision map, parcel map, or residential development
7 application.

8 (h) (1) When an applicant proposes to construct a housing
9 development that conforms to the requirements of subdivision (b)
10 and includes a child care facility that will be located on the
11 premises of, as part of, or adjacent to, the project, the city, county,
12 or city and county shall grant either of the following:

13 (A) An additional density bonus that is an amount of square
14 feet of residential space that is equal to or greater than the amount
15 of square feet in the child care facility.

16 (B) An additional concession or incentive that contributes
17 significantly to the economic feasibility of the construction of the
18 child care facility.

19 (2) The city, county, or city and county shall require, as a
20 condition of approving the housing development, that the following
21 occur:

22 (A) The child care facility shall remain in operation for a period
23 of time that is as long as or longer than the period of time during
24 which the density bonus units are required to remain affordable
25 pursuant to subdivision (c).

26 (B) Of the children who attend the child care facility, the
27 children of very low income households, lower income households,
28 or families of moderate income shall equal a percentage that is
29 equal to or greater than the percentage of dwelling units that are
30 required for very low income households, lower income
31 households, or families of moderate income pursuant to subdivision
32 (b).

33 (3) Notwithstanding any requirement of this subdivision, a city,
34 county, or city and county shall not be required to provide a density
35 bonus or concession for a child care facility if it finds, based upon
36 substantial evidence, that the community has adequate child care
37 facilities.

38 (4) “Child care facility,” as used in this section, means a child
39 day care facility other than a family day care home, including, but

1 not limited to, infant centers, preschools, extended day care
2 facilities, and schoolage child care centers.

3 (i) “Housing development,” as used in this section, means a
4 development project for five or more residential units. For the
5 purposes of this section, “housing development” also includes a
6 subdivision or common interest development, as defined in Section
7 4100 of the Civil Code, approved by a city, county, or city and
8 county and consists of residential units or unimproved residential
9 lots and either a project to substantially rehabilitate and convert
10 an existing commercial building to residential use or the substantial
11 rehabilitation of an existing multifamily dwelling, as defined in
12 subdivision (d) of Section 65863.4, where the result of the
13 rehabilitation would be a net increase in available residential units.
14 For the purpose of calculating a density bonus, the residential units
15 shall be on contiguous sites that are the subject of one development
16 application, but do not have to be based upon individual
17 subdivision maps or parcels. The density bonus shall be permitted
18 in geographic areas of the housing development other than the
19 areas where the units for the lower income households are located.

20 (j) The granting of a concession or incentive shall not be
21 interpreted, in and of itself, to require a general plan amendment,
22 local coastal plan amendment, zoning change, or other discretionary
23 approval. This provision is declaratory of existing law.

24 (k) For the purposes of this chapter, concession or incentive
25 means any of the following:

26 (1) A reduction in site development standards or a modification
27 of zoning code requirements or architectural design requirements
28 that exceed the minimum building standards approved by the
29 California Building Standards Commission as provided in Part 2.5
30 (commencing with Section 18901) of Division 13 of the Health
31 and Safety Code, including, but not limited to, a reduction in
32 setback and square footage requirements and in the ratio of
33 vehicular parking spaces that would otherwise be required that
34 results in identifiable, financially sufficient, and actual cost
35 reductions.

36 (2) Approval of mixed use zoning in conjunction with the
37 housing project if commercial, office, industrial, or other land uses
38 will reduce the cost of the housing development and if the
39 commercial, office, industrial, or other land uses are compatible

1 with the housing project and the existing or planned development
2 in the area where the proposed housing project will be located.

3 (3) Other regulatory incentives or concessions proposed by the
4 developer or the city, county, or city and county that result in
5 identifiable, financially sufficient, and actual cost reductions.

6 (l) Subdivision (k) does not limit or require the provision of
7 direct financial incentives for the housing development, including
8 the provision of publicly owned land, by the city, county, or city
9 and county, or the waiver of fees or dedication requirements.

10 (m) ~~Nothing in this~~ *This* section shall *not* be construed to
11 supersede or in any way alter or lessen the effect or application of
12 the California Coastal Act 1976 (Division 20 (commencing with
13 Section 30000) of the Public Resources Code).

14 (n) If permitted by local ordinance, nothing in this section shall
15 be construed to prohibit a city, county, or city and county from
16 granting a density bonus greater than what is described in this
17 section for a development that meets the requirements of this
18 section or from granting a proportionately lower density bonus
19 than what is required by this section for developments that do not
20 meet the requirements of this section.

21 (o) For purposes of this section, the following definitions shall
22 apply:

23 (1) “Development standard” includes a site or construction
24 condition, including, but not limited to, a height limitation, a
25 setback requirement, a floor area ratio, an onsite open-space
26 requirement, or a parking ratio that applies to a residential
27 development pursuant to any ordinance, general plan element,
28 specific plan, charter, or other local condition, law, policy,
29 resolution, or regulation.

30 (2) “Maximum allowable residential density” means the density
31 allowed under the zoning ordinance and land use element of the
32 general plan, or if a range of density is permitted, means the
33 maximum allowable density for the specific zoning range and land
34 use element of the general plan applicable to the project. Where
35 the density allowed under the zoning ordinance is inconsistent
36 with the density allowed under the land use element of the general
37 plan, the general plan density shall prevail.

38 (p) (1) Upon the request of the developer, no city, county, or
39 city and county shall require a vehicular parking ratio, inclusive

1 of handicapped and guest parking, of a development meeting the
2 criteria of subdivision (b), that exceeds the following ratios:

3 (A) Zero to one bedroom: one onsite parking space.

4 (B) Two to three bedrooms: two onsite parking spaces.

5 (C) Four and more bedrooms: two and one-half parking spaces.

6 (2) If the total number of parking spaces required for a
7 development is other than a whole number, the number shall be
8 rounded up to the next whole number. For purposes of this
9 subdivision, a development may provide “onsite parking” through
10 tandem parking or uncovered parking, but not through onstreet
11 parking.

12 (3) This subdivision shall apply to a development that meets
13 the requirements of subdivision (b) but only at the request of the
14 applicant. An applicant may request parking incentives or
15 concessions beyond those provided in this subdivision pursuant
16 to subdivision (d).

17 SEC. 103. The heading of Chapter 3 (commencing with Section
18 80) of Division 1 of the Harbors and Navigation Code, as added
19 by Section 2 of Chapter 136 of the Statutes of 2012, is amended
20 to read:

21

22 CHAPTER 3. BOATING ~~AND~~ AND WATERWAYS ~~ADVISORY~~
23 BOARD COMMISSION
24

25 SEC. 104. Section 80.2 of the Harbors and Navigation Code,
26 as added by Section 2 of Chapter 136 of the Statutes of 2012, is
27 amended to read:

28 80.2. The commission shall be composed of seven members
29 appointed by the Governor, with the advice and consent of the
30 Senate. The members shall have experience and background
31 consistent with the functions of the commission. In making
32 appointments to the commission, the Governor shall give primary
33 consideration to geographical location of the residence of members
34 as related to boating activities and harbors. In addition to *the*
35 geographical considerations, the members of the commission shall
36 be appointed with regard to their special interests in recreational
37 boating. At least one of the members shall be a member of a
38 recognized statewide organization representing recreational boaters.
39 One member of the commission shall be a private small craft harbor
40 owner and operator. One member of the commission shall be an

1 officer or employee of a law enforcement agency responsible for
2 enforcing boating laws.

3 The Governor shall appoint the first seven members of the
4 commission for the following terms to expire on January 15: one
5 member for one year, two members for two years, two members
6 for three years, and two members for four years. Thereafter,
7 appointments shall be for a four-year term. Vacancies occurring
8 prior to the expiration of the term shall be filled by appointment
9 for the unexpired term.

10 SEC. 105. Section 82 of the Harbors and Navigation Code, as
11 added by Section 2 of Chapter 136 of the Statutes of 2012, is
12 amended to read:

13 82. The division, consistent with Section 82.3, and in
14 furtherance of the public interest and in accordance therewith, shall
15 have only the following duties with respect to the commission:

16 (a) To submit any proposed changes in regulations pertaining
17 to boating functions and responsibilities of the division to the
18 commission for its advice and comment prior to enactment of
19 changes.

20 (b) To submit proposals for transfers pursuant to Section 70,
21 loans pursuant to Section 71.4 or 76.3, and grants pursuant to
22 Section 72.5 to the commission for its advice and comment.

23 (c) To submit any proposed project it is considering approving
24 to the commission if that project could have a potentially significant
25 impact on either public health or safety, public access, or the
26 environment for the commission’s advice and comment prior to
27 approval by the division.

28 (d) To annually submit a report on its budget and expenditures
29 to the commission for its advice and comment.

30 (e) To cause studies and surveys to be made of the need for
31 small craft harbors and connecting waterways throughout the state
32 and the most suitable sites ~~therefore~~, *therefor*, and submit those
33 studies and surveys to the commission for advice and comment.

34 SEC. 106. Section 1339.40 of the Health and Safety Code is
35 amended to read:

36 1339.40. For ~~the~~ purposes of this article, the following
37 definitions apply:

38 (a) “Bereavement services” has the same meaning as defined
39 in subdivision (a) of Section 1746.

1 (b) “Hospice care” means a specialized form of interdisciplinary
2 health care that is designed to provide palliative care, alleviate the
3 physical, emotional, social, and spiritual discomforts of an
4 individual who is experiencing the last phases of life due to the
5 existence of a terminal disease, and provide supportive care to the
6 primary caregiver and the family of the hospice patient, and that
7 meets all of the following criteria:

8 (1) Considers the patient and the patient’s family, in addition
9 to the patient, as the unit of care.

10 (2) Utilizes an interdisciplinary team to assess the physical,
11 medical, psychological, social, and spiritual needs of the patient
12 and the patient’s family.

13 (3) Requires the interdisciplinary team to develop an overall
14 plan of care and to provide coordinated care that emphasizes
15 supportive services, including, but not limited to, home care, pain
16 control, and limited inpatient services. Limited inpatient services
17 are intended to ensure both continuity of care and appropriateness
18 of services for those patients who cannot be managed at home
19 because of acute complications or the temporary absence of a
20 capable primary caregiver.

21 (4) Provides for the palliative medical treatment of pain and
22 other symptoms associated with a terminal disease, but does not
23 provide for efforts to cure the disease.

24 (5) Provides for bereavement services following death to assist
25 the family in coping with social and emotional needs associated
26 with the death of the patient.

27 (6) Actively utilizes volunteers in the delivery of hospice
28 services.

29 (7) To the extent appropriate, based on the medical needs of the
30 patient, provides services in the patient’s home or primary place
31 of residence.

32 (c) “Hospice facility” means a health facility as defined in
33 subdivision (n) of Section 1250.

34 (d) “Inpatient hospice care” means hospice care that is provided
35 to patients in a hospice facility, including routine, continuous and
36 inpatient care directly as specified in Section ~~418.10~~ 418.110 of
37 Title 42 of the Code of Federal Regulations, and may include
38 short-term inpatient respite care as specified in Section 418.108
39 of Title 42 of the Code of Federal Regulations.

1 (e) “Interdisciplinary team” has the same meaning as defined
 2 in subdivision (g) of Section 1746.

3 (f) “Medical direction” has the same meaning as defined in
 4 subdivision (h) of Section 1746.

5 (g) “Palliative care” has the same meaning as defined in
 6 subdivision (j) of Section 1746.

7 (h) “Plan of care” has the same meaning as defined in
 8 subdivision (l) of Section 1746.

9 (i) “Skilled nursing services” has the same meaning as defined
 10 in subdivision (n) of Section 1746.

11 (j) “Social services/counseling services” has the same meaning
 12 as defined in subdivision (o) of Section 1746.

13 (k) “Terminal disease” or “terminal illness” has the same
 14 meaning as defined in subdivision (p) of Section 1746.

15 (l) “Volunteer services” has the same meaning as defined in
 16 subdivision (q) of Section 1746.

17 SEC. 107. Section 1339.41 of the Health and Safety Code is
 18 amended to read:

19 1339.41. (a) A person, governmental agency, or political
 20 subdivision of the state shall not be licensed as a hospice facility
 21 under this chapter unless the person or entity is a provider of
 22 hospice services licensed pursuant to Section 1751 and is certified
 23 as a hospice facility under Part 418 of Title 42 of the Code of
 24 Federal Regulations.

25 (b) A hospice provider that intends to provide inpatient hospice
 26 care in the hospice provider’s own facility shall submit an
 27 application and fee for licensure as a hospice facility under this
 28 chapter. Notwithstanding the maximum period for a provisional
 29 license under subdivision (b) of Section 1268.5, the department
 30 may issue a provisional license to a hospice facility for a period
 31 of up to one year.

32 (c) A verified application for a new license completed on forms
 33 furnished by the department shall be submitted to the department
 34 upon the occurrence of either of the following:

- 35 (1) Establishment of a hospice facility.
- 36 (2) Change of ownership.

37 (d) The licensee shall submit to the department a verified
 38 application for a corrected license completed on forms furnished
 39 by the department upon the occurrence of any of the following:

- 40 (1) Construction of new or replacement hospice facility.

1 (2) Increase in licensed bed capacity.

2 (3) Change of name of facility.

3 (4) Change of licensed category.

4 (5) Change of location of facility.

5 (6) Change in bed classification.

6 (e) (1) A hospice facility that participates in the Medicare and
7 Medicaid-~~Programs~~ *programs* may obtain initial certification from
8 a federal Centers for Medicare and Medicaid Services (CMS)
9 approved accreditation organization.

10 (2) If the CMS-approved accreditation organization conducts
11 certification inspections, the hospice facility shall transmit to the
12 department, within 30 days of receipt, a copy of the final
13 accreditation report of the accreditation organization.

14 (f) A hospice facility shall be separately licensed, irrespective
15 of the location of the facility.

16 (g) (1) The licensee shall notify the department in writing of
17 any changes in the information provided pursuant to subdivision
18 (d) within 10 days of these changes. This notice shall include
19 information and documentation regarding the changes.

20 (2) Each licensee shall notify the department within 10 days in
21 writing of any change of the mailing address of the licensee. This
22 notice shall include the new mailing address of the licensee.

23 (3) When a change in the principal officer of a corporate
24 licensee, including the chairman, president, or general manager
25 occurs, the licensee shall notify the department of this change
26 within 10 days in writing. This notice shall include the name and
27 business address of the officer.

28 (4) Any decrease in licensed bed capacity of the facility shall
29 require notification by letter to the department and shall result in
30 the issuance of a corrected license.

31 SEC. 108. Section 1367.65 of the Health and Safety Code is
32 amended to read:

33 1367.65. (a) On or after January 1, 2000, ~~every~~ *each* health
34 care service plan contract, except a specialized health care service
35 plan contract, that is issued, amended, delivered, or renewed shall
36 be deemed to provide coverage for mammography for screening
37 or diagnostic purposes upon referral by a participating nurse
38 practitioner, participating certified nurse-midwife, participating
39 physician assistant, or participating physician, providing care to

1 the patient and operating within the scope of practice provided
2 under existing law.

3 (b) ~~Nothing in this~~*This section shall be construed to does not*
4 prevent application of copayment or deductible provisions in a
5 plan, nor shall this section be construed to require that a plan be
6 extended to cover any other procedures under an individual or a
7 group health care service plan contract. ~~Nothing in this~~*This section*
8 ~~shall be construed to does not~~ authorize a plan enrollee to receive
9 the services required to be covered by this section if those services
10 are furnished by a nonparticipating provider, unless the plan
11 enrollee is referred to that provider by a participating physician,
12 nurse practitioner, or certified ~~nurse-midwife~~ *nurse-midwife*
13 providing care.

14 SEC. 109. Section 1531.15 of the Health and Safety Code is
15 amended to read:

16 1531.15. (a) A licensee of an adult residential facility or group
17 home for no more than 15 residents, that is eligible for and serving
18 clients eligible for federal Medicaid funding and utilizing delayed
19 egress devices pursuant to Section 1531.1, may install and utilize
20 secured perimeters in accordance with the provisions of this
21 section.

22 (b) As used in this section, “secured perimeters” means fences
23 that meet the requirements prescribed by this section.

24 (c) Only individuals meeting all of the following conditions
25 may be admitted to or reside in a facility described in subdivision

26 (a) utilizing secured perimeters:

27 (1) The person shall have a developmental disability as defined
28 in Section 4512 of the Welfare and Institutions Code.

29 (2) The person shall be receiving services and case management
30 from a regional center under the Lanterman Developmental
31 Disabilities Services Act (Division 4.5 (commencing with Section
32 4500) of the Welfare and Institutions Code).

33 (3) (A) The person shall be 14 years of age or older, except as
34 specified in subparagraph (B).

35 (B) Notwithstanding subparagraph (A), a child who is at least
36 10 years of age and less than 14 years of age may be placed in a
37 licensed group home described in subdivision (a) using secured
38 perimeters only if both of the following occur:

39 (i) A comprehensive assessment is conducted and an individual
40 program plan meeting is convened to determine the services and

1 supports needed for the child to receive services in a less restrictive,
2 unlocked residential setting in California, and the regional center
3 requests assistance from the State Department of Developmental
4 Services' statewide specialized resource service to identify options
5 to serve the child in a less restrictive, unlocked residential setting
6 in California.

7 (ii) The regional center requests placement of the child in a
8 licensed group home described in subdivision (a) using secured
9 perimeters on the basis that the placement is necessary to prevent
10 out-of-state placement or placement in a more restrictive, locked
11 residential setting and the State Department of Developmental
12 Services approves the request.

13 (4) The person is not a foster child under the jurisdiction of the
14 juvenile court pursuant to Section 300, 450, 601, or 602 of the
15 Welfare and Institutions Code.

16 (5) An interdisciplinary team, through the individual program
17 plan (IPP) process pursuant to Section 4646.5 of the Welfare and
18 Institutions Code, shall have determined the person lacks hazard
19 awareness or impulse control and, for his or her safety and security,
20 requires the level of supervision afforded by a facility equipped
21 with secured perimeters, and, but for this placement, the person
22 would be at risk of admission to, or would have no option but to
23 remain in, a more restrictive placement. The individual program
24 planning team shall determine the continued appropriateness of
25 the placement at least annually.

26 (d) The licensee shall be subject to all applicable fire and
27 building codes, regulations, and standards, and shall receive
28 approval by the county or city fire department, the local fire
29 prevention district, or the State Fire Marshal for the installed
30 secured perimeters.

31 (e) The licensee shall provide staff training regarding the use
32 and operation of the secured perimeters, protection of residents'
33 personal rights, lack of hazard awareness and impulse control
34 behavior, and emergency evacuation procedures.

35 (f) The licensee shall revise its facility plan of operation. These
36 revisions shall ~~be~~ first be approved by the State Department of
37 Developmental Services. The plan of operation shall not be
38 approved by the State Department of Social Services unless the
39 licensee provides certification that the plan was approved by the

1 State Department of Developmental Services. The plan shall
 2 include, but not be limited to, all of the following:

3 (1) A description of how the facility is to be equipped with
 4 secured perimeters that are consistent with regulations adopted by
 5 the State Fire Marshal pursuant to Section 13143.6.

6 (2) A description of how the facility will provide training for
 7 staff.

8 (3) A description of how the facility will ensure the protection
 9 of the residents’ personal rights consistent with Sections 4502,
 10 4503, and 4504 of the Welfare and Institutions Code, and any
 11 applicable personal rights provided in Title 22 of the California
 12 Code of Regulations.

13 (4) A description of how the facility will manage residents’ lack
 14 of hazard awareness and impulse control behavior.

15 (5) A description of the facility’s emergency evacuation
 16 procedures.

17 (g) Secured perimeters shall not substitute for adequate staff.

18 (h) Emergency fire and earthquake drills shall be conducted on
 19 each shift in accordance with existing licensing requirements, and
 20 shall include all facility staff providing resident care and
 21 supervision on each shift.

22 (i) Interior and exterior space shall be available on the facility
 23 premises to permit clients to move freely and safely.

24 (j) For the purpose of using secured perimeters, the licensee
 25 shall not be required to obtain a waiver or exception to a regulation
 26 that would otherwise prohibit the locking of a perimeter fence or
 27 gate.

28 (k) This section shall become operative only upon the
 29 publication in Title 17 of the California Code of Regulations of
 30 emergency regulations filed by the State Department of
 31 Developmental Services. These regulations shall be developed
 32 with stakeholders, including the State Department of Social
 33 Services, consumer advocates, and regional centers. The regulations
 34 shall establish program standards for homes that include secured
 35 perimeters, including requirements and timelines for the completion
 36 and updating of a comprehensive assessment of each consumer’s
 37 needs, including the identification through the individual program
 38 plan process of the services and supports needed to transition the
 39 consumer to a less restrictive living arrangement, and a timeline
 40 for identifying or developing those services and supports. The

1 regulations shall establish a statewide limit on the total number of
2 beds in homes with secured perimeters. The adoption of these
3 regulations shall be deemed to be an emergency and necessary for
4 the immediate preservation of the public peace, health and safety,
5 or general welfare.

6 SEC. 110. Section 11378 of the Health and Safety Code is
7 amended to read:

8 11378. Except as otherwise provided in Article 7 (commencing
9 with Section ~~4211~~ 4110) of Chapter 9 of Division 2 of the
10 Business and Professions Code, ~~every~~ a person who possesses for
11 sale ~~any~~ a controlled substance ~~which is that meets any of the~~
12 ~~following criteria shall be punished by imprisonment pursuant to~~
13 ~~subdivision (h) of Section 1170 of the Penal Code.~~ ~~(1)~~

14 (1) ~~The substance is~~ classified in Schedule III, IV, or V and
15 ~~which~~ is not a narcotic drug, except ~~the substance specified in~~
16 ~~subdivision (g) of Section 11056, 11056.~~ ~~(2)~~

17 (2) ~~The substance is~~ specified in subdivision (d) of Section
18 11054, except paragraphs (13), (14), (15), (20), (21), (22), and
19 (23) of subdivision ~~(d)~~, (d). ~~(3)~~

20 (3) ~~The substance is~~ specified in paragraph (11) of subdivision
21 (c) of Section ~~11056, 11056.~~ ~~(4)~~

22 (4) ~~The substance is~~ specified in paragraph (2) or (3) of
23 subdivision (f) of Section ~~11054, or 11054.~~ ~~(5)~~

24 (5) ~~The substance is~~ specified in subdivision (d), (e), or (f),
25 except paragraph (3) of subdivision (e) and subparagraphs (A) and
26 (B) of paragraph (2) of subdivision (f), of Section ~~11055, shall be~~
27 ~~punished by imprisonment pursuant to subdivision (h) of Section~~
28 ~~1170 of the Penal Code. 11055.~~

29 SEC. 111. Section 11755 of the Health and Safety Code is
30 amended to read:

31 11755. The department shall do all of the following:

32 (a) Adopt regulations pursuant to Section 11152 of the
33 Government Code.

34 (b) Employ administrative, technical, and other personnel as
35 may be necessary for the performance of its powers and duties.

36 (c) Do or perform any of the acts that may be necessary,
37 desirable, or proper to carry out the purpose of this division.

38 (d) Provide funds to counties for the planning and
39 implementation of local programs to alleviate problems related to
40 alcohol and other drug use.

- 1 (e) Review and execute contracts for drug and alcohol services
2 submitted for funds allocated or administered by the department.
- 3 (f) Provide for technical assistance and training to local alcohol
4 and other drug programs to assist in the planning and
5 implementation of quality services.
- 6 (g) Review research in, and serve as a resource to provide
7 information relating to, alcohol and other drug programs.
- 8 (h) In cooperation with the Department of ~~Personnel~~
9 ~~Administration~~, *Human Resources*, encourage training in other
10 state agencies to assist the agencies to recognize employee
11 problems relating to alcohol and other drug use that affects job
12 performance and encourage the employees to seek appropriate
13 services.
- 14 (i) Assist and cooperate with the Office of Statewide Health
15 Planning and Development ~~and the California Health Policy and~~
16 ~~Data Advisory Commission~~ in the drafting and adoption of the
17 state health plan to ensure inclusion of appropriate provisions
18 relating to alcohol and other drug problems.
- 19 (j) In the same manner and subject to the same conditions as
20 other state agencies, develop and submit annually to the
21 Department of Finance a program budget for the alcohol and other
22 drug program, which budget shall include expenditures proposed
23 to be made under this division, and may include expenditures
24 proposed to be made by any other state agency relating to alcohol
25 and other drug problems, pursuant to an interagency agreement
26 with the department.
- 27 (k) Review and certify alcohol and other drug programs meeting
28 state standards pursuant to Chapter 7 (commencing with Section
29 11830) and Chapter 13 (commencing with Section 11847) of Part
30 2.
- 31 (l) Develop standards for ensuring minimal statewide levels of
32 service quality provided by alcohol and other drug programs.
- 33 (m) Review and license narcotic treatment programs.
- 34 (n) Develop and implement, in partnership with the counties,
35 alcohol and other drug prevention strategies especially designed
36 for youth.
- 37 (o) Develop and maintain a centralized alcohol and drug abuse
38 indicator data collection system that shall gather and obtain
39 information on the status of the alcohol and other drug abuse

1 problems in the state. This information shall include, but not be
2 limited to, all of the following:

3 (1) The number and characteristics of persons receiving recovery
4 or treatment services from alcohol and other drug programs
5 providing publicly funded services or services licensed by the
6 state.

7 (2) The location and types of services offered by these programs.

8 (3) The number of admissions to hospitals on both an emergency
9 room and inpatient basis for treatment related to alcohol and other
10 drugs.

11 (4) The number of arrests for alcohol and other drug violations.

12 (5) The number of Department of Corrections and
13 Rehabilitation, Division of Juvenile Facilities commitments for
14 drug violations.

15 (6) The number of Department of Corrections and Rehabilitation
16 commitments for drug violations.

17 (7) The number or percentage of persons having alcohol or other
18 drug problems as determined by survey information.

19 (8) The amounts of illicit drugs confiscated by law enforcement
20 in the state.

21 (9) The statewide alcohol and other drug program distribution
22 and the fiscal impact of alcohol and other drug problems upon the
23 state.

24 Providers of publicly funded services or services licensed by the
25 department to clients-participants shall report data in a manner, in
26 a format, and under a schedule prescribed by the department.

27 (p) Issue an annual report that portrays the drugs abused,
28 populations affected, user characteristics, crime-related costs,
29 socioeconomic costs, and other related information deemed
30 necessary in providing a problem profile of alcohol and other drug
31 abuse in the state.

32 (q) (1) Require any individual, public or private organization,
33 or government agency, receiving federal grant funds, to comply
34 with all federal statutes, regulations, guidelines, and terms and
35 conditions of the grants. The failure of the individual, public or
36 private organization, or government agency, to comply with the
37 statutes, regulations, guidelines, and terms and conditions of grants
38 received may result in the department's disallowing noncompliant
39 costs, or the suspension or termination of the contract or grant
40 award allocating the grant funds.

1 (2) Adopt regulations implementing this subdivision in
2 accordance with Chapter 3.5 (commencing with Section 11340)
3 of Part 1 of Division 3 of Title 2 of the Government Code. For the
4 purposes of the Administrative Procedure Act, the adoption of the
5 regulations shall be deemed necessary for the preservation of the
6 public peace, health and safety, or general welfare. Subsequent
7 amendments to the adoption of emergency regulations shall be
8 deemed an emergency only if those amendments are adopted in
9 direct response to a change in federal statutes, regulations,
10 guidelines, or the terms and conditions of federal grants. Nothing
11 in this paragraph shall be interpreted as prohibiting the department
12 from adopting subsequent amendments on a nonemergency basis
13 or as emergency regulations in accordance with the standards set
14 forth in Section 11346.1 of the Government Code.

15 SEC. 112. Section 25110.11 of the Health and Safety Code is
16 amended to read:

17 25110.11. (a) “Contained gaseous material,” for purposes of
18 subdivision (a) of Section 25124 or any other provision of this
19 chapter, means any gas that is contained in an enclosed cylinder
20 or other enclosed container.

21 (b) Notwithstanding ~~subdivision (a) of this section,~~ (a),
22 “contained gaseous material” does not include any exhaust or flue
23 gas, or other vapor stream, or any air or exhaust gas stream that is
24 filtered or otherwise processed to remove particulates, dusts, or
25 other air pollutants, regardless of the source.

26 SEC. 113. Section 34177 of the Health and Safety Code is
27 amended to read:

28 34177. Successor agencies are required to do all of the
29 following:

30 (a) Continue to make payments due for enforceable obligations.

31 (1) On and after February 1, 2012, and until a Recognized
32 Obligation Payment Schedule becomes operative, only payments
33 required pursuant to an enforceable obligations payment schedule
34 shall be made. The initial enforceable obligation payment schedule
35 shall be the last schedule adopted by the redevelopment agency
36 under Section 34169. However, payments associated with
37 obligations excluded from the definition of enforceable obligations
38 by paragraph (2) of subdivision (d) of Section 34171 shall be
39 excluded from the enforceable obligations payment schedule and
40 be removed from the last schedule adopted by the redevelopment

1 agency under Section 34169 prior to the successor agency adopting
2 it as its enforceable obligations payment schedule pursuant to this
3 subdivision. The enforceable obligation payment schedule may
4 be amended by the successor agency at any public meeting and
5 shall be subject to the approval of the oversight board as soon as
6 the board has sufficient members to form a quorum. In recognition
7 of the fact that the timing of the California Supreme Court’s ruling
8 in the case California Redevelopment Association v. Matosantos
9 (2011) 53 Cal.4th 231 delayed the preparation by successor
10 agencies and the approval by oversight boards of the January 1,
11 2012, through June 30, 2012, Recognized Obligation Payment
12 Schedule, a successor agency may amend the Enforceable
13 Obligation Payment Schedule to authorize the continued payment
14 of enforceable obligations until the time that the January 1, 2012,
15 through June 30, 2012, Recognized Obligation Payment Schedule
16 has been approved by the oversight board and by the Department
17 of Finance.

18 (2) The Department of Finance and the Controller shall each
19 have the authority to require any documents associated with the
20 enforceable obligations to be provided to them in a manner of their
21 choosing. Any taxing entity, the department, and the Controller
22 shall each have standing to file a judicial action to prevent a
23 violation under this part and to obtain injunctive or other
24 appropriate relief.

25 (3) Commencing on the date the Recognized Obligation Payment
26 Schedule is valid pursuant to subdivision (1), only those payments
27 listed in the Recognized Obligation Payment Schedule may be
28 made by the successor agency from the funds specified in the
29 Recognized Obligation Payment Schedule. In addition, after it
30 becomes valid, the Recognized Obligation Payment Schedule shall
31 supersede the Statement of Indebtedness, which shall no longer
32 be prepared nor have any effect under the Community
33 Redevelopment Law (Part 1 (commencing with Section 33000)).

34 (4) Nothing in the act adding this part is to be construed as
35 preventing a successor agency, with the prior approval of the
36 oversight board, as described in Section 34179, from making
37 payments for enforceable obligations from sources other than those
38 listed in the Recognized Obligation Payment Schedule.

39 (5) From February 1, 2012, to July 1, 2012, a successor agency
40 shall have no authority and is hereby prohibited from accelerating

1 payment or making any lump-sum payments that are intended to
2 prepay loans unless such accelerated repayments were required
3 prior to the effective date of this part.

4 (b) Maintain reserves in the amount required by indentures,
5 trust indentures, or similar documents governing the issuance of
6 outstanding redevelopment agency bonds.

7 (c) Perform obligations required pursuant to any enforceable
8 obligation.

9 (d) Remit unencumbered balances of redevelopment agency
10 funds to the county auditor-controller for distribution to the taxing
11 entities, including, but not limited to, the unencumbered balance
12 of the Low and Moderate Income Housing Fund of a former
13 redevelopment agency. In making the distribution, the county
14 auditor-controller shall utilize the same methodology for allocation
15 and distribution of property tax revenues provided in Section
16 34188.

17 (e) Dispose of assets and properties of the former redevelopment
18 agency as directed by the oversight board; provided, however, that
19 the oversight board may instead direct the successor agency to
20 transfer ownership of certain assets pursuant to subdivision (a) of
21 Section 34181. The disposal is to be done expeditiously and in a
22 manner aimed at maximizing value. Proceeds from asset sales and
23 related funds that are no longer needed for approved development
24 projects or to otherwise wind down the affairs of the agency, each
25 as determined by the oversight board, shall be transferred to the
26 county auditor-controller for distribution as property tax proceeds
27 under Section 34188. The requirements of this subdivision shall
28 not apply to a successor agency that has been issued a finding of
29 completion by the Department of Finance pursuant to Section
30 34179.7.

31 (f) Enforce all former redevelopment agency rights for the
32 benefit of the taxing entities, including, but not limited to,
33 continuing to collect loans, rents, and other revenues that were due
34 to the redevelopment agency.

35 (g) Effectuate transfer of housing functions and assets to the
36 appropriate entity designated pursuant to Section 34176.

37 (h) Expeditiously wind down the affairs of the redevelopment
38 agency pursuant to the provisions of this part and in accordance
39 with the direction of the oversight board.

1 (i) Continue to oversee development of properties until the
2 contracted work has been completed or the contractual obligations
3 of the former redevelopment agency can be transferred to other
4 parties. Bond proceeds shall be used for the purposes for which
5 bonds were sold unless the purposes can no longer be achieved,
6 in which case, the proceeds may be used to defease the bonds.

7 (j) Prepare a proposed administrative budget and submit it to
8 the oversight board for its approval. The proposed administrative
9 budget shall include all of the following:

10 (1) Estimated amounts for successor agency administrative costs
11 for the upcoming six-month fiscal period.

12 (2) Proposed sources of payment for the costs identified in
13 paragraph (1).

14 (3) Proposals for arrangements for administrative and operations
15 services provided by a city, county, city and county, or other entity.

16 (k) Provide administrative cost estimates, from its approved
17 administrative budget that are to be paid from property tax revenues
18 deposited in the Redevelopment Property Tax Trust Fund, to the
19 county auditor-controller for each six-month fiscal period.

20 (l) (1) Before each six-month fiscal period, prepare a
21 Recognized Obligation Payment Schedule in accordance with the
22 requirements of this paragraph. For each recognized obligation,
23 the Recognized Obligation Payment Schedule shall identify one
24 or more of the following sources of payment:

25 (A) Low and Moderate Income Housing Fund.

26 (B) Bond proceeds.

27 (C) Reserve balances.

28 (D) Administrative cost allowance.

29 (E) The Redevelopment Property Tax Trust Fund, but only to
30 the extent no other funding source is available or when payment
31 from property tax revenues is required by an enforceable obligation
32 or by ~~the provisions of this part.~~

33 (F) Other revenue sources, including rents, concessions, asset
34 sale proceeds, interest earnings, and any other revenues derived
35 from the former redevelopment agency, as approved by the
36 oversight board in accordance with this part.

37 (2) A Recognized Obligation Payment Schedule shall not be
38 deemed valid unless all of the following conditions have been met:

39 (A) A Recognized Obligation Payment Schedule is prepared
40 by the successor agency for the enforceable obligations of the

1 former redevelopment agency. The initial schedule shall project
2 the dates and amounts of scheduled payments for each enforceable
3 obligation for the remainder of the time period during which the
4 redevelopment agency would have been authorized to obligate
5 property tax increment had the a redevelopment agency not been
6 dissolved.

7 (B) The Recognized Obligation Payment Schedule is submitted
8 to and duly approved by the oversight board. The successor agency
9 shall submit a copy of the Recognized Obligation Payment
10 Schedule to the county administrative officer, the county
11 auditor-controller, and the Department of Finance at the same time
12 that the successor agency submits the Recognized Obligation
13 Payment Schedule to the oversight board for approval.

14 (C) A copy of the approved Recognized Obligation Payment
15 Schedule is submitted to the county auditor-controller and both
16 the Controller's office and the Department of Finance and be posted
17 on the successor agency's Internet Web site.

18 (3) The Recognized Obligation Payment Schedule shall be
19 forward looking to the next six months. The first Recognized
20 Obligation Payment Schedule shall be submitted to the Controller's
21 office and the Department of Finance by April 15, 2012, for the
22 period of January 1, 2012, to June 30, 2012, inclusive. This
23 Recognized Obligation Payment Schedule shall include all
24 payments made by the former redevelopment agency between
25 January 1, 2012, through January 31, 2012, and shall include all
26 payments proposed to be made by the successor agency from
27 February 1, 2012, through June 30, 2012. Former redevelopment
28 agency enforceable obligation payments due, and reasonable or
29 necessary administrative costs due or incurred, prior to January 1,
30 2012, shall be made from property tax revenues received in the
31 spring of 2011 property tax distribution, and from other revenues
32 and balances transferred to the successor agency.

33 (m) The Recognized Obligation Payment Schedule for the period
34 of January 1, 2013, to June 30, 2013, shall be submitted by the
35 successor agency, after approval by the oversight board, no later
36 than September 1, 2012. Commencing with the Recognized
37 Obligation Payment Schedule covering the period July 1, 2013,
38 through December 31, 2013, successor agencies shall submit an
39 oversight board-approved Recognized Obligation Payment
40 Schedule to the Department of Finance and to the county

1 auditor-controller no fewer than 90 days before the date of property
2 tax distribution. The Department of Finance shall make its
3 determination of the enforceable obligations and the amounts and
4 funding sources of the enforceable obligations no later than 45
5 days after the Recognized Obligation Payment Schedule is
6 submitted. Within five business days of the department's
7 determination, a successor agency may request additional review
8 by the department and an opportunity to meet and confer on
9 disputed items. The meet and confer period may vary; an untimely
10 submittal of a Recognized Obligation Payment Schedule may result
11 in a meet and confer period of less than 30 days. The department
12 shall notify the successor agency and the county auditor-controllers
13 as to the outcome of its review at least 15 days before the date of
14 property tax distribution.

15 (1) The successor agency shall submit a copy of the Recognized
16 Obligation Payment Schedule to the Department of Finance
17 electronically, and the successor agency shall complete the
18 Recognized Obligation Payment Schedule in the manner provided
19 for by the department. A successor agency shall be in
20 noncompliance with this paragraph if it only submits to the
21 department an electronic message or a letter stating that the
22 oversight board has approved a Recognized Obligation Payment
23 Schedule.

24 (2) If a successor agency does not submit a Recognized
25 Obligation Payment Schedule by the deadlines provided in this
26 subdivision, the city, county, or city and county that created the
27 redevelopment agency shall be subject to a civil penalty equal to
28 ten thousand dollars (\$10,000) per day for every day the schedule
29 is not submitted to the department. The civil penalty shall be paid
30 to the county auditor-controller for allocation to the taxing entities
31 under Section 34183. If a successor agency fails to submit a
32 Recognized Obligation Payment Schedule by the deadline, any
33 creditor of the successor agency or the Department of Finance or
34 any affected taxing entity shall have standing to and may request
35 a writ of mandate to require the successor agency to immediately
36 perform this duty. Those actions may be filed only in the County
37 of Sacramento and shall have priority over other civil matters.
38 Additionally, if an agency does not submit a Recognized Obligation
39 Payment Schedule within ten days of the deadline, the maximum

1 administrative cost allowance for that period shall be reduced by
2 25 percent.

3 (3) If a successor agency fails to submit to the department an
4 oversight board-approved Recognized Obligation Payment
5 Schedule that complies with all requirements of this subdivision
6 within five business days of the date upon which the Recognized
7 Obligation Payment Schedule is to be used to determine the amount
8 of property tax allocations, the department may determine if any
9 amount should be withheld by the county auditor-controller for
10 payments for enforceable obligations from distribution to taxing
11 entities, pending approval of a Recognized Obligation Payment
12 Schedule. The county auditor-controller shall distribute the portion
13 of any of the sums withheld pursuant to this paragraph to the
14 affected taxing entities in accordance with paragraph (4) of
15 subdivision (a) of Section 34183 upon notice by the department
16 that a portion of the withheld balances are in excess of the amount
17 of enforceable obligations. The county auditor-controller shall
18 distribute withheld funds to the successor agency only in
19 accordance with a Recognized Obligation Payment Schedule
20 approved by the department. County auditor-controllers shall lack
21 the authority to withhold any other amounts from the allocations
22 provided for under Section 34183 or 34188, unless required by a
23 court order.

24 (n) Cause a postaudit of the financial transactions and records
25 of the successor agency to be made at least annually by a certified
26 public accountant.

27 SEC. 114. Section 34183.5 of the Health and Safety Code is
28 amended to read:

29 34183.5. (a) The Legislature hereby finds and declares that
30 due to the delayed implementation of this part due to the California
31 Supreme Court's ruling in the case California Redevelopment
32 Association v. Matosantos ~~et al.~~ (2011) 53 Cal.4th 231, some
33 disruption to the intended application of this part and other law
34 with respect to passthrough payments may have occurred.

35 (1) If a redevelopment agency or successor agency did not pay
36 any portion of an amount owed for the 2011–12 fiscal year to an
37 affected taxing entity pursuant to Section 33401, 33492.140, 33607,
38 33607.5, 33607.7, or 33676, or pursuant to any passthrough
39 agreement entered into before January 1, 1994, between a
40 redevelopment agency and an affected taxing entity, and to the

1 extent the county auditor-controller did not remit the amounts
2 owed for passthrough payments during the 2011–12 fiscal year,
3 the county auditor-controller shall make the required payments to
4 the taxing entities owed passthrough payments and shall reduce
5 the amounts to which the successor agency would otherwise be
6 entitled pursuant to paragraph (2) of subdivision (a) of Section
7 34183 at the next allocation of property tax under this part, subject
8 to the provisions of subdivision (b) of Section 34183. If the amount
9 of available property tax allocation to the successor agency is not
10 sufficient to make the required payment, the county
11 auditor-controller shall continue to reduce allocations to the
12 successor agency under paragraph (2) of subdivision (a) of Section
13 34183 until the time that the owed amount is fully paid. ~~Alternately;~~
14 *Alternatively*, the county auditor-controller may accept payment
15 from the successor agency’s reserve funds for payments of
16 passthrough payments owed as defined in this subdivision.

17 (2) If a redevelopment agency did not pay any portion of the
18 amount owed for the 2011–12 fiscal year to an affected taxing
19 entity pursuant to Section 33401, 33492.140, 33607, 33607.5,
20 33607.7, or 33676, or pursuant to any passthrough agreement
21 entered into before January 1, 1994, between a redevelopment
22 agency and an affected taxing entity, but the county
23 auditor-controller did pay the difference that was owing, ~~the auditor~~
24 ~~controller~~ *county auditor-controller* shall deduct from the next
25 allocation of property tax to the successor agency under paragraph
26 (2) of subdivision (a) of Section 34183, the amount of the payment
27 made on behalf of the successor agency by the county
28 auditor-controller, not to exceed one-half the amount of
29 passthrough payments owed for the 2011–12 fiscal year. If the
30 amount of available property tax allocation to the successor agency
31 is not sufficient to make the required deduction, the county
32 auditor-controller shall continue to reduce allocations to the
33 successor agency under paragraph (2) of subdivision (a) of Section
34 34183 until the time that the amount is fully deducted.
35 Alternatively, the auditor-controller may accept payment from the
36 successor agency’s reserve funds for deductions of passthrough
37 payments owed as defined in this subdivision. Amounts reduced
38 from successor agency payments under this paragraph are available
39 for the purposes of paragraphs (2) to (4), inclusive, of subdivision

1 (a) of Section 34183 for the six-month period for which the
2 property tax revenues are being allocated.

3 (b) In recognition of the fact that county auditor-controllers
4 were unable to make the payments required by paragraph (4) of
5 subdivision (a) of Section 34183 for the period January 1, 2012,
6 through June 30, 2012, on January 16, 2012, due to the California
7 Supreme Court's ruling in the case of California Redevelopment
8 Association v. Matosantos (2011) 53 Cal.4th 231, in addition to
9 taking the actions specified in Section 34183 with respect to the
10 June 1 property tax allocations, county auditor-controllers should
11 have made allocations as provided in paragraph (1).

12 (1) From the allocations made on June 1, 2012, for the
13 Recognized Obligation Payment Schedule covering the period
14 July 1, 2012, through December 31, 2012, deduct from the amount
15 that otherwise would be deposited in the Redevelopment Property
16 Tax Trust Fund on behalf of the successor agency an amount
17 equivalent to the amount that each affected taxing entity was
18 entitled to pursuant to paragraph (4) of subdivision (a) of Section
19 34183 for the period January 1, 2012, through June 30, 2012. The
20 amount to be retained by taxing entities pursuant to paragraph (4)
21 of subdivision (a) of Section 34183 for the January 1, 2012, through
22 June 30, 2012, period is determined based on the Recognized
23 Obligation Payment Schedule approved by the Department of
24 Finance pursuant to subdivision (h) of Section 34179 and any
25 amount determined to be owed pursuant to ~~subdivision (b)~~. *this*
26 *subdivision*. Any amounts so computed shall not be offset by any
27 shortages in funding for recognized obligations for the period
28 covering July 1, 2012, through December 31, 2012.

29 (2) (A) If an affected taxing entity has not received the full
30 amount to which it was entitled pursuant to paragraph (4) of
31 subdivision (a) of Section 34183 of the property tax distributed
32 for the period January 1, 2012, through June 30, 2012, and
33 paragraph (1), no later than July 9, 2012, the county
34 auditor-controller shall determine the amount, if any, that is owed
35 by each successor agency to taxing entities and send a demand for
36 payment from the funds of the successor agency for the amount
37 owed to taxing entities if it has distributed the June 1, 2012,
38 allocation to the successor agencies. No later than July 12, 2012,
39 successor agencies shall make payment of the amounts demanded
40 to the county auditor-controller for deposit into the Redevelopment

1 Property Tax Trust Fund and subsequent distribution to taxing
2 entities. No later than July 16, 2012, the county auditor-controller
3 shall make allocations of all money received by that date from
4 successor agencies in amounts owed to taxing entities under this
5 paragraph to taxing entities in accordance with Section 34183. The
6 county auditor-controller shall make allocations of any money
7 received after that date under this paragraph within five business
8 days of receipt. These duties are not discretionary and shall be
9 carried out with due diligence.

10 (B) If a county auditor-controller fails to determine the amounts
11 owed to taxing entities and present a demand for payment by July
12 9, 2012, to the successor agencies, the Department of Finance or
13 any affected taxing entity may request a writ of mandate to require
14 the county auditor-controller to immediately perform this duty.
15 Such actions may be filed only in the County of Sacramento and
16 shall have priority over other civil matters. Any county in which
17 the county auditor-controller fails to perform the duties under this
18 paragraph shall be subject to a civil penalty of 10 percent of the
19 amount owed to taxing entities plus 1.5 percent of the amount
20 owed to taxing entities for each month that the duties are not
21 performed. The civil penalties shall be payable to the taxing entities
22 under Section 34183. Additionally, any county in which the county
23 auditor-controller fails to make the required determinations and
24 demands for payment under this paragraph by July 9, 2012, or fails
25 to distribute the full amount of funds received from successor
26 agencies as required by this paragraph shall not receive the
27 distribution of sales and use tax scheduled for July 18, 2012, or
28 any subsequent payment, up to the amount owed to taxing entities,
29 until the county auditor-controller performs the duties required by
30 this paragraph.

31 (C) If a successor agency fails to make the payment demanded
32 under subparagraph (A) by July 12, 2012, the Department of
33 Finance or any affected taxing entity may file for a writ of mandate
34 to require the successor agency to immediately make this payment.
35 Such actions may be filed only in the County of Sacramento and
36 shall have priority over other civil matters. Any successor agency
37 that fails to make payment by July 12, 2012, under this paragraph
38 shall be subject to a civil penalty of 10 percent of the amount owed
39 to taxing entities plus one and one-half percent of the amount owed
40 to taxing entities for each month that the payments are not made.

1 Additionally, the city or county or city and county that created the
2 redevelopment agency shall also be subject to a civil penalty of
3 10 percent of the amount owed to taxing entities plus 1.5 percent
4 of the amount owed to taxing entities for each month the payment
5 is late. The civil penalties shall be payable to the taxing entities
6 under Section 34183. If the Department of Finance finds that the
7 imposition of penalties will jeopardize the payment of enforceable
8 obligations it may request the court to waive some or all of the
9 penalties. A successor agency that does not pay the amount
10 required under this subparagraph by July 12, 2012, shall not pay
11 any obligations other than bond debt service until full payment is
12 made to the county auditor-controller. Additionally, any city,
13 county or city and county that created the redevelopment agency
14 that fails to make the required payment under this paragraph by
15 July 12, 2012, shall not receive the distribution of sales and use
16 tax scheduled for July 18, 2012, or any subsequent payment, up
17 to the amount owed to taxing entities, until the payment required
18 by this paragraph is made.

19 (D) The Legislature hereby finds and declares that time is of
20 the essence. Funds that should have been received and were
21 expected and spent in anticipation of receipt by community
22 colleges, schools, counties, cities, and special districts have not
23 been received resulting in significant fiscal impact to the state and
24 taxing entities. Continued delay and ~~uncertainly~~ *uncertainty*
25 whether funds will be received warrants the availability of
26 extraordinary relief as authorized herein.

27 (3) If an affected taxing entity has not received the full amount
28 to which it was entitled pursuant to paragraph (4) of subdivision
29 (a) of Section 34183 for the period January 1, 2012, through June
30 30, 2012, and paragraph (1), the county auditor-controller shall
31 reapply ~~the provisions of~~ paragraph (1) to each subsequent property
32 tax allocation until such time as the affected taxing entity has
33 received the full amount to which it was entitled pursuant to
34 paragraph (4) of subdivision (a) of Section 34183 for the period
35 January 1, 2012, through June 30, 2012.

36 SEC. 115. Section 39053 of the Health and Safety Code is
37 amended to read:

38 39053. “State ~~Board~~” *board*” means the State Air Resources
39 Board.

1 SEC. 116. Section 39510 of the Health and Safety Code is
2 amended to read:

3 39510. (a) The State Air Resources Board is continued in
4 existence in the California Environmental Protection Agency. The
5 state board shall consist of 12 members.

6 (b) The members shall be appointed by the Governor, with the
7 consent of the Senate, on the basis of their demonstrated interest
8 and proven ability in the field of air pollution control and their
9 understanding of the needs of the general public in connection
10 with air pollution problems.

11 (c) Six members shall have the following qualifications:

12 (1) One member shall have training and experience in
13 automotive engineering or closely related fields.

14 (2) One member shall have training and experience in chemistry,
15 meteorology, or related scientific fields, including agriculture or
16 law.

17 (3) One member shall be a physician and surgeon or an authority
18 on health effects of air pollution.

19 (4) Two members shall be public members.

20 (5) One member shall have the qualifications specified in
21 paragraph (1), (2), or (3) or shall have experience in the field of
22 air pollution control.

23 (d) Six members shall be board members from districts who
24 shall reflect the qualitative requirements of subdivision (c) to the
25 extent practicable. Of these members:

26 (1) One shall be a board member from the south coast district.

27 (2) One shall be a board member from the bay district.

28 (3) One shall be a board member from the San Joaquin Valley
29 Unified Air Pollution Control District.

30 (4) One shall be a board member from the San Diego County
31 Air Pollution Control District.

32 (5) One shall be a board member from the Sacramento
33 ~~Metropolitan Air Quality Management District, district,~~ the Placer
34 County Air Pollution Control District, the Yolo-Solano Air Quality
35 Management District, the Feather River Air Quality Management
36 District, or the El Dorado County Air Pollution Control District.

37 (6) One shall be a board member of any other district.

38 (e) Any vacancy shall be filled by the Governor within 30 days
39 of the date on which it occurs. If the Governor fails to make an
40 appointment for any vacancy within the 30-day period, the Senate

1 Committee on Rules may make the appointment to fill the vacancy
 2 in accordance with this section.

3 (f) While serving on the state board, all members shall exercise
 4 their independent judgment as officers of the state on behalf of the
 5 interests of the entire state in furthering the purposes of this
 6 division. A member of the state board shall not be precluded from
 7 voting or otherwise acting upon any matter solely because that
 8 member has voted or acted upon the matter in his or her capacity
 9 as a member of a district board, except that a member of the state
 10 board who is also a member of a district board shall not participate
 11 in any action regarding his or her district taken by the state board
 12 pursuant to Sections 41503 to 41505, inclusive.

13 SEC. 117. Section 39710 of the Health and Safety Code is
 14 amended to read:

15 39710. For purposes of this ~~part, fund~~ *chapter*, “*fund*” means
 16 the Greenhouse Gas Reduction Fund, created pursuant to Section
 17 16428.8 of the Government Code.

18 SEC. 118. Section 39712 of the Health and Safety Code is
 19 amended to read:

20 39712. (a) (1) It is the intent of the Legislature that moneys
 21 shall be appropriated from the fund only in a manner consistent
 22 with the requirements of this ~~part~~ *chapter* and Article 9.7
 23 (commencing with Section 16428.8) of Chapter 2 of Part 2 of
 24 Division 4 of Title 2 of the Government Code.

25 (2) The state shall not approve allocations for a measure or
 26 program using moneys appropriated from the fund except after
 27 determining, based on the available evidence, that the use of those
 28 moneys furthers the regulatory purposes of Division 25.5
 29 (commencing with Section 38500) and is consistent with law. If
 30 any expenditure of moneys from the fund for any measure or
 31 project is determined by a court to be inconsistent with law, the
 32 allocations for the remaining measures or projects shall be
 33 severable and shall not be affected.

34 (b) Moneys shall be used to facilitate the achievement of
 35 reductions of greenhouse gas emissions in this state consistent
 36 with ~~this division~~ *Division 25.5 (commencing with Section 38500)*
 37 and, where applicable and to the extent feasible:

38 (1) Maximize economic, environmental, and public health
 39 benefits to the state.

1 (2) Foster job creation by promoting in-state greenhouse gas
2 emissions reduction projects carried out by California workers and
3 businesses.

4 (3) Complement efforts to improve air quality.

5 (4) Direct investment toward the most disadvantaged
6 communities and households in the state.

7 (5) Provide opportunities for businesses, public agencies,
8 nonprofits, and other community institutions to participate in and
9 benefit from statewide efforts to reduce greenhouse gas emissions.

10 (6) Lessen the impacts and effects of climate change on the
11 state's communities, economy, and environment.

12 (c) Moneys appropriated from the fund may be allocated,
13 consistent with subdivision (a), for the purpose of reducing
14 greenhouse gas emissions in this state through investments that
15 may include, but are not limited to, any of the following:

16 (1) Funding to reduce greenhouse gas emissions through energy
17 efficiency, clean and renewable energy generation, distributed
18 renewable energy generation, transmission and storage, and other
19 related actions, including, but not limited to, at public universities,
20 state and local public buildings, and industrial and manufacturing
21 facilities.

22 (2) Funding to reduce greenhouse gas emissions through the
23 development of state-of-the-art systems to move goods and freight,
24 advanced technology vehicles and vehicle infrastructure, advanced
25 biofuels, and low-carbon and efficient public transportation.

26 (3) Funding to reduce greenhouse gas emissions associated with
27 water use and supply, land and natural resource conservation and
28 management, forestry, and sustainable agriculture.

29 (4) Funding to reduce greenhouse gas emissions through
30 strategic planning and development of sustainable infrastructure
31 projects, including, but not limited to, transportation and housing.

32 (5) Funding to reduce greenhouse gas emissions through
33 increased in-state diversion of municipal solid waste from disposal
34 through waste reduction, diversion, and reuse.

35 (6) Funding to reduce greenhouse gas emissions through
36 investments in programs implemented by local and regional
37 agencies, local and regional collaboratives, and nonprofit
38 organizations coordinating with local governments.

1 (7) Funding—~~in~~ research, development, and deployment of
2 innovative technologies, measures, and practices related to
3 programs and projects funded pursuant to this ~~part~~. *chapter*.

4 SEC. 119. Section 39716 of the Health and Safety Code is
5 amended to read:

6 39716. (a) The Department of Finance, on behalf of the
7 Governor, and in consultation with the state board and any other
8 relevant state entity, shall develop and submit to the Legislature
9 at the time of the department's adjustments to the proposed
10 2013–14 fiscal year budget pursuant to subdivision (e) of Section
11 13308 of the Government Code a three-year investment plan.
12 Commencing with the 2016–17 fiscal year budget and every three
13 years thereafter, with the release of the Governor's budget proposal,
14 the Department of Finance shall include updates to the investment
15 plan following the public process described in subdivisions (b)
16 and (c). The investment plan, consistent with the requirements of
17 Section 39712, shall do all of the following:

18 (1) Identify the state's near-term and long-term greenhouse gas
19 emissions reduction goals and targets by sector.

20 (2) Analyze gaps, where applicable, in current state strategies
21 to meeting the state's greenhouse gas emissions reduction goals
22 *and targets* by sector.

23 (3) Identify priority programmatic investments of moneys that
24 will facilitate the achievement of feasible and cost-effective
25 greenhouse gas emissions reductions toward achievement of
26 greenhouse gas reduction goals and targets by sector, consistent
27 with subdivision (c) of Section 39712.

28 (b) (1) The state board shall hold at least two public workshops
29 in different regions of the state and one public hearing prior to the
30 Department of Finance submitting the investment plan.

31 (2) The state board shall, prior to the submission of each
32 investment plan, consult with the Public Utilities Commission to
33 ensure the investment plan is coordinated with, and does not
34 conflict with or unduly overlap with, activities under the oversight
35 or administration of the Public Utilities Commission undertaken
36 pursuant to Part 5 (commencing with Section 38570) of Division
37 25.5 or other activities under the oversight or administration of
38 the Public Utilities Commission that facilitate greenhouse gas
39 emissions reductions consistent with this division. The investment
40 plan shall include a description of the use of any moneys generated

1 by the sale of allowances received at no cost by the investor-owned
2 utilities pursuant to a market-based compliance mechanism.

3 (c) The Climate Action Team, established under Executive
4 Order S-3-05, shall provide information to the Department of
5 Finance and the state board to assist in the development of each
6 investment plan. The Climate Action Team shall participate in
7 each public workshop held on an investment plan and provide
8 testimony to the state board on each investment plan. For purposes
9 of this section, the Secretary of Labor and Workforce Development
10 shall assist the Climate Action Team in its efforts.

11 SEC. 120. Section 39718 of the Health and Safety Code is
12 amended to read:

13 39718. (a) Moneys in the fund shall be appropriated through
14 the annual Budget Act consistent with the investment plan
15 developed and submitted pursuant to Section 39716.

16 (b) Upon appropriation, moneys in the ~~Greenhouse Gas~~
17 ~~Reduction Fund~~ *fund* shall be available to the state board and to
18 administering agencies for administrative purposes in carrying out
19 this chapter.

20 (c) Any repayment of loans, including interest payments and
21 all interest earnings on or accruing to any ~~money~~, *moneys*, resulting
22 from implementation of this chapter shall be deposited in the
23 ~~Greenhouse Gas Reduction Fund~~ *fund* for the purposes of this
24 chapter.

25 SEC. 121. Section 106985 of the Health and Safety Code is
26 amended to read:

27 106985. (a) (1) Notwithstanding Section 2052 of the Business
28 and Professions Code or any other ~~provision of~~ law, a radiologic
29 technologist certified pursuant to the Radiologic Technology Act
30 (Section 27) may, under the direct supervision of a licensed
31 physician and surgeon, and in accordance with the facility's
32 protocol that meets, at a minimum, the requirements described in
33 paragraph (2), perform venipuncture in an upper extremity to
34 administer contrast materials, manually or by utilizing a mechanical
35 injector, if the radiologic technologist has been deemed competent
36 to perform that venipuncture, in accordance with paragraph (3),
37 and issued a certificate, as described in subdivision (b).

38 (2) (A) In administering contrast materials, a radiologic
39 technologist may, to ensure the security and integrity of the
40 needle's placement or of an existing intravenous cannula, use a

1 saline-based solution conforms with the facility’s protocol and
 2 that has been approved by a licensed physician and surgeon. The
 3 protocol shall specify that only contrast materials or
 4 pharmaceuticals approved by the United States Food and Drug
 5 Administration may be used and shall also specify that the use
 6 shall be in accordance with the labeling.

7 (B) A person who is currently certified as meeting the standards
 8 of competence in nuclear medicine technology pursuant to Article
 9 6 (commencing with Section 107150) and who is authorized to
 10 perform a computerized tomography scanner only on a dual-mode
 11 machine, as described in Section 106976, may perform the conduct
 12 described in this subdivision.

13 (3) Prior to performing venipuncture pursuant to paragraph (1),
 14 a radiologic technologist shall have performed at least 10
 15 venipunctures on live humans under the personal supervision of
 16 a licensed physician and surgeon, a registered nurse, or a person
 17 the physician or nurse has previously deemed qualified to provide
 18 personal supervision to the technologist for purposes of performing
 19 venipuncture pursuant to this paragraph. Only after completion of
 20 a minimum of 10 venipunctures may the supervising individual
 21 evaluate whether the technologist is competent to perform
 22 venipuncture under direct supervision. The number of
 23 venipunctures required in this paragraph are in addition to those
 24 performed for meeting the requirements of paragraph (2) of
 25 subdivision (d). The facility shall document compliance with this
 26 subdivision.

27 (b) The radiologic technologist shall be issued a certificate ~~by~~
 28 as specified in subdivision (e) or by an instructor indicating
 29 satisfactory completion of the training and education described in
 30 subdivision (d). This certificate documents completion of the
 31 required education and training and may not, by itself, be construed
 32 to authorize a person to perform venipuncture or to administer
 33 contrast materials.

34 (c) (1) “Direct supervision,” for purposes of this section, means
 35 the direction of procedures authorized by this section by a licensed
 36 physician and surgeon who shall be physically present within the
 37 facility and available within the facility where the procedures are
 38 performed, in order to provide immediate medical intervention to
 39 prevent or mitigate injury to the patient in the event of adverse
 40 reaction.

1 (2) “Personal supervision,” for purposes of this section, means
2 the oversight of the procedures authorized by this section by a
3 supervising individual identified in paragraph (3) of subdivision
4 (a) who is physically present to observe, and correct, as needed,
5 the performance of the individual who is performing the procedure.

6 (d) The radiologic technologist shall have completed both of
7 the following:

8 (1) Received a total of 10 hours of instruction, including all of
9 the following:

10 (A) Anatomy and physiology of venipuncture sites.

11 (B) Venipuncture instruments, intravenous solutions, and related
12 equipment.

13 (C) Puncture techniques.

14 (D) Techniques of intravenous line establishment.

15 (E) Hazards and complications of venipuncture.

16 (F) Postpuncture care.

17 (G) Composition and purpose of antianaphylaxis tray.

18 (H) First aid and basic cardiopulmonary resuscitation.

19 (2) Performed 10 venipunctures on a human or training
20 mannequin upper extremity (for example, *an* infusion-~~arm~~, *arm*
21 *or a* mannequin arm) under personal supervision. If performance
22 is on a human, only an upper extremity may be used.

23 (e) Schools for radiologic technologists shall include the
24 training and education specified in subdivision (d). Upon
25 satisfactory completion of the training and education, the school
26 shall issue to the student a completion document. This document
27 may not be construed to authorize a person to perform venipuncture
28 or to administer contrast materials.

29 (f) Nothing in this section shall be construed to authorize a
30 radiologic technologist to perform arterial puncture, any central
31 venous access procedures including repositioning of previously
32 placed central venous catheter except as specified in paragraph (1)
33 of subdivision (a), or cutdowns, or establish an intravenous line.

34 (g) This section shall not be construed to apply to a person who
35 is currently certified as meeting the standards of competence in
36 nuclear medicine technology pursuant to Article 6 (commencing
37 with Section 107150), except as provided in subparagraph (B) of
38 paragraph (2) of subdivision (a).

39 (h) Radiologic technologists who met the training and education
40 requirements of subdivision (d) prior to January 1, 2013, need not

1 repeat those requirements, or perform the venipunctures specified
2 in paragraph (3) of subdivision (a), provided the facility documents
3 that the radiologic technologist is competent to perform the tasks
4 specified in paragraph (1) of subdivision (a).

5 SEC. 122. Section 114365.5 of the Health and Safety Code is
6 amended to read:

7 114365.5. (a) The department shall adopt and post on its
8 Internet Web site a list of ~~not potentially~~ *nonpotentially* hazardous
9 foods and their ethnic variations that are approved for sale by a
10 cottage food operation. A cottage food product shall not be
11 potentially hazardous food, as defined in Section 113871.

12 (b) This list of nonpotentially hazardous foods shall include,
13 but not be limited to, all of the following:

14 (1) Baked goods without cream, custard, or meat fillings, such
15 as breads, biscuits, churros, cookies, pastries, and tortillas.

16 (2) Candy, such as brittle and toffee.

17 (3) Chocolate-covered nonperishable foods, such as nuts and
18 dried fruit.

19 (4) Dried fruit.

20 (5) Dried pasta.

21 (6) Dry baking mixes.

22 (7) Fruit pies, fruit empanadas, and fruit tamales.

23 (8) Granola, cereals, and trail mixes.

24 (9) Herb blends and dried mole paste.

25 (10) Honey and sweet sorghum syrup.

26 (11) Jams, jellies, preserves, and fruit butter that comply with
27 the standard described in Part 150 of Title 21 of the Code of
28 Federal Regulations.

29 (12) Nut mixes and nut butters.

30 (13) Popcorn.

31 (14) Vinegar and mustard.

32 (15) Roasted coffee and dried tea.

33 (16) Waffle cones and pizelles.

34 (c) (1) The State Public Health Officer may add or delete food
35 products to or from the list described in subdivision (b), which
36 shall be known as the approved food products list. Notice of any
37 change to the approved food products list shall be posted on the
38 department's cottage food program Internet Web site, to also be
39 known as the program Internet Web site for purposes of this
40 chapter. Any change to the approved food products list shall

1 become effective 30 days after the notice is posted. The notice
2 shall state the reason for the change, the authority for the change,
3 and the nature of the change. The notice will provide an opportunity
4 for written comment by indicating the address to which to submit
5 the comment and the deadline by which the comment is required
6 to be received by the department. The address to which the
7 comment is to be submitted may be an electronic site. The notice
8 shall allow at least 20 calendar days for comments to be submitted.
9 The department shall consider all comments submitted before the
10 due date. The department may withdraw the proposed change at
11 any time by notification on the program Internet Web site or
12 through notification by other electronic means. The approved food
13 products list described in subdivision (b), and any updates to the
14 list, shall not be subject to the administrative rulemaking
15 requirements of Chapter 3.5 (commencing with Section 11340) of
16 Part 1 of Division 3 of Title 2 of the Government Code.

17 (2) The State Public Health Officer shall not remove any items
18 from the approved food products list unless the State Public Health
19 Officer also posts information on the program Internet Web site
20 explaining the basis upon which the removed food item has been
21 determined to be potentially hazardous.

22 SEC. 123. Section 114380 of the Health and Safety Code is
23 amended to read:

24 114380. (a) A person proposing to build or remodel a food
25 facility shall submit complete, easily readable plans drawn to scale,
26 and specifications to the enforcement agency for review, and shall
27 receive plan approval before starting any new construction or
28 remodeling of ~~any~~ a facility for use as a retail food facility.

29 (b) Plans and specifications may also be required by the
30 enforcement agency if the agency determines that they are
31 necessary to ~~assure~~ ensure compliance with the requirements of
32 this part, including, but not limited to, a menu change or change
33 in the facility's method of operation.

34 (c) (1) All new school food facilities or school food facilities
35 that undergo modernization or remodeling shall comply with all
36 structural requirements of this part. Upon submission of plans by
37 a public school authority, the ~~Office~~ *Division* of the State Architect
38 and the local enforcement agency shall review and approve all
39 new and remodeled school facilities for compliance with all
40 applicable requirements.

1 (2) Notwithstanding subdivision (a), the Office of Statewide
2 Health Planning and Development (OSHDP) shall maintain its
3 primary jurisdiction over licensed skilled nursing facilities, and
4 when new construction, modernization, or remodeling must be
5 undertaken to repair existing systems or to keep up the course of
6 normal or routine maintenance, the facility shall complete a
7 building application and plan check process as required by OSHDP.
8 Approval of the plans by OSHDP shall be deemed compliance
9 with the plan approval process required by the local county
10 enforcement agency described in this section.

11 (3) Except when a determination is made by the enforcement
12 agency that the nonconforming structural conditions pose a public
13 health hazard, existing public and private school cafeterias and
14 licensed health care facilities shall be deemed to be in compliance
15 with this part pending replacement or renovation.

16 (d) Except when a determination is made by the enforcement
17 agency that the nonconforming structural conditions pose a public
18 health hazard, existing food facilities that were in compliance with
19 the law in effect on June 30, 2007, shall be deemed to be in
20 compliance with the law pending replacement or renovation. If a
21 determination is made by the enforcement agency that a structural
22 condition poses a public health hazard, the food facility shall
23 remedy the deficiency to the satisfaction of the enforcement
24 agency.

25 (e) The plans shall be approved or rejected within 20 working
26 days after receipt by the enforcement agency and the applicant
27 shall be notified of the decision. Unless the plans are approved or
28 rejected within 20 working days, they shall be deemed approved.
29 The building department shall not issue a building permit for a
30 food facility until after it has received plan approval by the
31 enforcement agency. Nothing in this section shall require that plans
32 or specifications be prepared by someone other than the applicant.

33 SEC. 124. Section 116565 of the Health and Safety Code is
34 amended to read:

35 116565. (a) Each public water system serving 1,000 or more
36 service connections, and any public water system that treats water
37 on behalf of one or more public water systems for the purpose of
38 rendering it safe for human consumption, shall reimburse the
39 department for the actual cost incurred by the department for
40 conducting those activities mandated by this chapter relating to

1 the issuance of domestic water supply permits, inspections,
2 monitoring, surveillance, and water quality evaluation that relate
3 to that specific public water system. The amount of reimbursement
4 shall be sufficient to pay, but in no event shall exceed, the
5 department's actual cost in conducting these activities.

6 (b) Each public water system serving fewer than 1,000 service
7 connections shall pay an annual drinking water operating fee to
8 the department as set forth in this subdivision for costs incurred
9 by the department for conducting those activities mandated by this
10 chapter relating to inspections, monitoring, surveillance, and water
11 quality evaluation relating to public water systems. The total
12 amount of fees shall be sufficient to pay, but in no event shall
13 exceed, the department's actual cost in conducting these activities.
14 Notwithstanding adjustment of actual fees collected pursuant to
15 Section 100425 as authorized pursuant to subdivision (d) of Section
16 ~~106590~~, 116590, the amount that shall be paid annually by a public
17 water system pursuant to this section shall be as follows:

18 (1) Community water systems, six dollars (\$6) per service
19 connection, but not less than two hundred fifty dollars (\$250) per
20 water system, which may be increased by the department, as
21 provided for in subdivision (f), to ten dollars (\$10) per service
22 connection, but not less than two hundred fifty dollars (\$250) per
23 water system.

24 (2) Nontransient noncommunity water systems pursuant to
25 subdivision (k) of Section 116275, two dollars (\$2) per person
26 served, but not less than four hundred fifty-six dollars (\$456) per
27 water system, which may be increased by the department, as
28 provided for in subdivision (f), to three dollars (\$3) per person
29 served, but not less than four hundred fifty-six dollars (\$456) per
30 water system.

31 (3) Transient noncommunity water systems pursuant to
32 subdivision (o) of Section 116275, eight hundred dollars (\$800)
33 per water system, which may be increased by the department, as
34 provided for in subdivision (f), to one thousand three hundred
35 thirty-five dollars (\$1,335) per water system.

36 (4) Noncommunity water systems in possession of a current
37 exemption pursuant to former Section 116282 on January 1, 2012,
38 one hundred two dollars (\$102) per water system.

39 (c) For purposes of determining the fees provided for in
40 subdivision (a), the department shall maintain a record of its actual

1 costs for pursuing the activities specified in subdivision (a) relative
2 to each system required to pay the fees. The fee charged each
3 system shall reflect the department's actual cost, or in the case of
4 a local primacy agency the local primacy agency's actual cost, of
5 conducting the specified activities.

6 (d) The department shall submit an invoice for cost
7 reimbursement for the activities specified in subdivision (a) to the
8 public water systems no more than twice a year.

9 (1) The department shall submit one estimated cost invoice to
10 public water systems serving 1,000 or more service connections
11 and any public water system that treats water on behalf of one or
12 more public water systems for the purpose of rendering it safe for
13 human consumption. This invoice shall include the actual hours
14 expended during the first six months of the fiscal year. The hourly
15 cost rate used to determine the amount of the estimated cost invoice
16 shall be the rate for the previous fiscal year.

17 (2) The department shall submit a final invoice to the public
18 water system ~~prior to~~ *before* October 1 following the fiscal year
19 that the costs were incurred. The invoice shall indicate the total
20 hours expended during the fiscal year, the reasons for the
21 expenditure, the hourly cost rate of the department for the fiscal
22 year, the estimated cost invoice, and payments received. The
23 amount of the final invoice shall be determined using the total
24 hours expended during the fiscal year and the actual hourly cost
25 rate of the department for the fiscal year. The payment of the
26 estimated invoice, exclusive of late penalty, if any, shall be credited
27 toward the final invoice amount.

28 (3) Payment of the invoice issued pursuant to paragraphs (1)
29 and (2) shall be made within 90 days of the date of the invoice.
30 Failure to pay the amount of the invoice within 90 days shall result
31 in a 10-percent late penalty that shall be paid in addition to the
32 invoiced amount.

33 (e) Any public water system under the jurisdiction of a local
34 primacy agency shall pay the fees specified in this section to the
35 local primacy agency in lieu of the department. This section shall
36 not preclude a local health officer from imposing additional fees
37 pursuant to Section 101325.

38 (f) The department may increase the fees established in
39 subdivision (b) as follows:

1 (1) By February 1 of the fiscal year prior to the fiscal year for
2 which fees are proposed to be increased, the department shall
3 publish a list of fees for the following fiscal year and a report
4 showing the calculation of the amount of the fees.

5 (2) The department shall make the report and the list of fees
6 available to the public by submitting them to the Legislature and
7 posting them on the department's Internet Web site.

8 (3) The department shall establish the amount of fee increases
9 subject to the approval and appropriation by the Legislature.

10 SEC. 125. Section 120365 of the Health and Safety Code is
11 amended to read:

12 120365. (a) Immunization of a person shall not be required
13 for admission to a school or other institution listed in Section
14 120335 if the parent or guardian or adult who has assumed
15 responsibility for his or her care and custody in the case of a minor,
16 or the person seeking admission if an emancipated minor, files
17 with the governing authority a letter or affidavit that documents
18 which immunizations required by Section 120355 have been ~~given,~~
19 *given* and which immunizations have not been given on the basis
20 that they are contrary to his or her beliefs.

21 (b) On and after January 1, 2014, a form prescribed by the State
22 Department of Public Health shall accompany the letter or affidavit
23 filed pursuant to subdivision (a). The form shall include both of
24 the following:

25 (1) A signed attestation from the health care practitioner that
26 indicates that the health care practitioner provided the parent or
27 guardian of the person who is subject to the immunization
28 requirements of this chapter, the adult who has assumed
29 responsibility for the care and custody of the person, or the person
30 if an emancipated minor, with information regarding the benefits
31 and risks of the immunization and the health risks of the
32 communicable diseases listed in Section 120335 to the person and
33 to the community. This attestation shall be signed not more than
34 six months ~~prior to~~ *before* the date when the person first becomes
35 subject to the immunization requirement for which exemption is
36 being sought.

37 (2) A written statement signed by the parent or guardian of the
38 person who is subject to the immunization requirements of this
39 chapter, the adult who has assumed responsibility for the care and
40 custody of the person, or the person if an emancipated minor, that

1 indicates that the signer has received the information provided by
2 the health care practitioner pursuant to paragraph (1). This
3 statement shall be signed not more than six months ~~prior to~~ *before*
4 the date when the person first becomes subject to the immunization
5 requirements as a condition of admittance to a school or institution
6 pursuant to Section 120335.

7 (c) The following shall be accepted in lieu of the original form:

8 (1) A photocopy of the signed form.

9 (2) A letter signed by a health care practitioner that includes all
10 information and attestations included on the form.

11 (d) Issuance and revision of the form shall be exempt from the
12 rulemaking provisions of the Administrative Procedure Act
13 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
14 Division 3 of Title 2 of the Government Code).

15 (e) When there is good cause to believe that the person has been
16 exposed to one of the communicable diseases listed in subdivision
17 (a) of Section 120325, that person may be temporarily excluded
18 from the school or institution until the local health officer is
19 satisfied that the person is no longer at risk of developing the
20 disease.

21 (f) For purposes of this section, “health care practitioner” means
22 any of the following:

23 (1) A physician and surgeon, licensed pursuant to Section 2050
24 of the Business and Professions Code.

25 (2) A nurse practitioner who is authorized to furnish drugs
26 pursuant to Section 2836.1 of the Business and Professions Code.

27 (3) A physician assistant who is authorized to administer or
28 provide medication pursuant to Section 3502.1 of the Business
29 and Professions Code.

30 (4) An osteopathic physician and surgeon, as defined in the
31 Osteopathic Initiative Act.

32 (5) A naturopathic doctor who is authorized to furnish or order
33 drugs under a physician and surgeon’s supervision pursuant to
34 Section 3640.5 of the Business and Professions Code.

35 (6) A credentialed school nurse, as described in Section 49426
36 of the Education Code.

37 SEC. 126. Section 123327 of the Health and Safety Code is
38 amended to read:

39 123327. (a) The department shall provide written notice to a
40 retail food vendor if the department determines that the vendor

1 has committed an initial violation for which a pattern of the
2 violation must be established to impose a sanction. Notice shall
3 be provided no later than 30 days after the department determines
4 the first investigation that identified the violation is complete.

5 (b) The written notice shall be delivered to the vendor 30 days
6 before the department conducts a second investigation for purposes
7 of establishing a pattern of the violation to the vendor's most recent
8 business ownership address on file with the department or to the
9 vendor location upon identification of a violation during the vendor
10 monitoring, as defined by Section 40743 of Title 22 of the
11 California Code of Regulations.

12 (c) The written notice shall include a description of the initial
13 violation and may include information to assist the vendor to take
14 corrective action, including, but not limited to, a 60-day window
15 that includes the date of the violation.

16 (d) For purposes of this section, "violation" means a violation
17 set forth in Section 246.2 of Title 7 of the Code of Federal
18 Regulations.

19 (e) It is the intent of the Legislature in enacting this section to
20 clarify existing law.

21 SEC. 127. Section 123940 of the Health and Safety Code is
22 amended to read:

23 123940. (a) (1) Annually, the board of supervisors shall
24 appropriate a sum of money for services for handicapped children
25 of the county, including diagnosis, treatment, and therapy services
26 for physically handicapped children in public schools, equal to 25
27 percent of the actual expenditures for the county program under
28 this article for the 1990–91 fiscal year, except as specified in
29 paragraph (2).

30 (2) If the state certifies that a smaller amount is needed in order
31 for the county to pay 25 percent of costs of the county's program
32 from this source. The smaller amount certified by the state shall
33 be the amount that the county shall appropriate.

34 (b) In addition to the amount required by subdivision (a), the
35 county shall allocate an amount equal to the amount determined
36 pursuant to subdivision (a) for purposes of this article from
37 revenues allocated to the county pursuant to Chapter 6
38 (commencing with Section 17600) of Division 9 of the Welfare
39 and Institutions Code.

1 (c) (1) The state shall match county expenditures for this article
 2 from funding provided pursuant to subdivisions (a) and (b).
 3 (2) County expenditures shall be waived for payment of services
 4 for children who are eligible pursuant to paragraph (2) of
 5 subdivision (a) of Section 123870.
 6 (d) The county may appropriate and expend moneys in addition
 7 to those set forth in ~~subdivision~~ *subdivisions* (a) and (b) and the
 8 state shall match the expenditures, on a dollar-for-dollar basis, to
 9 the extent that state funds are available for this article.
 10 (e) County appropriations under subdivisions (a) and (b) shall
 11 include county financial participation in the nonfederal share of
 12 expenditures for services for children who are enrolled in the
 13 Medi-Cal program pursuant to Section 14005.26 of the Welfare
 14 and Institutions Code, and who are eligible for services under this
 15 article pursuant to paragraph (1) of subdivision (a) of Section
 16 123870, to the extent that federal financial participation is available
 17 at the enhanced federal reimbursement rate under Title XXI of the
 18 federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) and
 19 funds are appropriated for the California Children’s Services
 20 Program in the State Budget.
 21 (f) Nothing in this section shall require the county to expend
 22 more than the amount set forth in subdivision (a) plus the amount
 23 set forth in subdivision (b) nor shall it require the state to expend
 24 more than the amount of the match set forth in subdivision (c).
 25 (g) Notwithstanding Chapter 3.5 (commencing with Section
 26 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
 27 the department, without taking further regulatory action, shall
 28 implement this section by means of California Children’s Services
 29 numbered letters.
 30 SEC. 128. Section 123955 of the Health and Safety Code is
 31 amended to read:
 32 123955. (a) The state and the counties shall share in the cost
 33 of administration of the California Children’s Services Program
 34 at the local level.
 35 (b) (1) The director shall adopt regulations establishing
 36 minimum standards for the administration, staffing, and local
 37 implementation of this article subject to reimbursement by the
 38 state.
 39 (2) The standards shall allow necessary flexibility in the
 40 administration of county programs, taking into account the

1 variability of county needs and resources, and shall be developed
2 and revised jointly with state and county representatives.

3 (c) The director shall establish minimum standards for
4 administration, staffing and local operation of the program subject
5 to reimbursement by the state.

6 (d) Until July 1, 1992, reimbursable administrative costs, to be
7 paid by the state to counties, shall not exceed 4.1 percent of the
8 gross total expenditures for diagnosis, treatment, and therapy by
9 counties as specified in Section 123940.

10 (e) Beginning July 1, 1992, this subdivision shall apply with
11 respect to all of the following:

12 (1) Counties shall be reimbursed by the state for 50 percent of
13 the amount required to meet state administrative standards for that
14 portion of the county caseload under this article that is ineligible
15 for Medi-Cal to the extent funds are available in the State Budget
16 for the California Children's Services Program.

17 (2) Counties shall be reimbursed by the state for 50 percent of
18 the nonfederal share of the amount required to meet state
19 administrative standards for that portion of the county caseload
20 under this article that is enrolled in the Medi-Cal program pursuant
21 to Section 14005.26 of the Welfare and Institutions Code and who
22 are eligible for services under this article pursuant to subdivision
23 (a) of Section 123870, to the extent that federal financial
24 participation is available at the enhanced federal reimbursement
25 rate under Title XXI of the federal Social Security Act (42 U.S.C.
26 Sec. 1397aa et seq.) and funds are appropriated for the California
27 Children's Services Program in the State Budget.

28 (3) On or before September 15 of each year, each county
29 program implementing this article shall submit an application for
30 the subsequent fiscal year that provides information as required
31 by the state to determine if the county administrative staff and
32 budget meet state standards.

33 (4) The state shall determine the maximum amount of state
34 funds available for each county from state funds appropriated for
35 CCS county administration. If the amount appropriated for any
36 fiscal year in the Budget Act for county administration under this
37 article differs from the amounts approved by the department, each
38 county shall submit a revised application in a form and at the time
39 specified by the department.

1 (f) The department and counties shall maximize the use of
 2 federal funds for administration of the programs implemented
 3 pursuant to this article, including using state and county funds to
 4 match funds claimable under Title XIX or Title XXI of the federal
 5 Social Security Act (42 U.S.C. Sec. 1396 et seq.; 42 U.S.C. Sec.
 6 1397aa et seq.).

7 SEC. 129. Section 125286.20 of the Health and Safety Code
 8 is amended to read:

9 125286.20. Unless the context otherwise requires, the following
 10 definitions shall apply for purposes of this article:

11 (a) “Assay” means the amount of a particular constituent of a
 12 mixture or of the biological or pharmacological potency of a drug.

13 (b) “Ancillary infusion equipment and supplies” means the
 14 equipment and supplies required to infuse a blood clotting product
 15 into a human vein, including, but not limited to, syringes, needles,
 16 sterile gauze, field pads, gloves, alcohol swabs, numbing creams,
 17 tourniquets, medical tape, sharps or equivalent biohazard waste
 18 containers, and cold compression packs.

19 (c) “Bleeding disorder” means a medical condition characterized
 20 by a deficiency or absence of one or more essential blood clotting
 21 proteins in the human blood, often called “factors,” including all
 22 forms of hemophilia and other bleeding disorders that, without
 23 treatment, result in uncontrollable bleeding or abnormal blood
 24 clotting.

25 (d) “Blood clotting product” means an intravenously
 26 administered medicine manufactured from human plasma or
 27 recombinant biotechnology techniques, approved for distribution
 28 by the federal Food and Drug Administration, that is used for the
 29 treatment and prevention of symptoms associated with bleeding
 30 disorders. Blood clotting products include, but are not limited to,
 31 factor VII, factor VIIa, factor VIII, and factor IX products, von
 32 Willebrand factor products, bypass products for patients with
 33 inhibitors, and activated prothrombin complex concentrates.

34 (e) “Emergency” means care as defined in Section 1317.1.

35 (f) “Hemophilia” means a human bleeding disorder caused by
 36 a hereditary deficiency of the ~~factors~~ factor I, II, V, VIII, IX, XI,
 37 XII, or XIII blood clotting protein in human blood.

38 (g) “Hemophilia treatment center” means a facility for the
 39 treatment of bleeding disorders, including, but not limited to,
 40 hemophilia, that receives funding specifically for the treatment of

1 patients with bleeding disorders from federal government sources,
2 including, but not limited to, the federal Centers for Disease
3 Control and Prevention and the federal Health Resources and
4 Services Administration (HRSA) of the United States Department
5 of Health and Human Services.

6 (h) “Home use” means infusion or other use of a blood clotting
7 product in a place other than a state-recognized hemophilia
8 treatment center or other clinical setting. Places where home use
9 occurs include, without limitation, a home or other nonclinical
10 setting.

11 (i) “Patient” means a person needing a blood clotting product
12 for home use.

13 (j) (1) “Provider of blood clotting products for home use” means
14 all the following pharmacies, except as described in Section
15 125286.35, that dispense blood clotting factors for home use:

16 (A) Hospital pharmacies.

17 (B) Health system pharmacies.

18 (C) Pharmacies affiliated with hemophilia treatment centers.

19 (D) Specialty home care pharmacies.

20 (E) Retail pharmacies.

21 (2) The providers described in this subdivision shall include a
22 health care service plan and all its affiliated providers if the health
23 care service plan exclusively contracts with a single medical group
24 in a specified geographic area to provide professional services to
25 its enrollees.

26 SEC. 130. Section 128570 of the Health and Safety Code is
27 amended to read:

28 128570. (a) Persons participating in the program shall be
29 persons who agree in writing prior to completing an accredited
30 medical or osteopathic school based in the United States to serve
31 in an eligible practice setting, pursuant to subdivision (g) of Section
32 128565, for at least three years. The program shall be used only
33 for the purpose of promoting the education of medical doctors and
34 doctors of osteopathy and related administrative costs.

35 (b) A program participant shall commit to three years of
36 full-time professional practice once the participant has achieved
37 full licensure pursuant to Article 4 (commencing with Section
38 2080) of Chapter 5 of *Division 2 of*, or Section 2099.5 of, the
39 Business and Professions Code and after completing an accredited
40 residency program. The obligated professional service shall be in

1 direct patient care in an eligible practice setting pursuant to
 2 subdivision (g) of Section 128565.

3 (1) Leaves of absence either during medical school or service
 4 obligation shall be permitted for serious illness, pregnancy, or
 5 other natural causes. The selection committee shall develop the
 6 process for determining the maximum permissible length of an
 7 absence, the maximum permissible leaves of absences, and the
 8 process for reinstatement. Awarding of scholarship funds shall be
 9 deferred until the participant is back to full-time status.

10 (2) Full-time status shall be defined by the selection committee.
 11 The selection committee may establish exemptions from this
 12 requirement on a case-by-case basis.

13 (c) The maximum allowable amount per total scholarship shall
 14 be one hundred five thousand dollars (\$105,000). These moneys
 15 shall be distributed over the course of a standard medical school
 16 curriculum. The distribution of funds shall increase over the course
 17 of medical school, increasing to ensure that at least 45 percent of
 18 the total scholarship award is distributed upon matriculation in the
 19 final year of school.

20 (d) In the event the program participant does not complete
 21 medical school and the minimum three years of professional service
 22 pursuant to the contractual agreement between the foundation and
 23 the participant, the office shall recover the funds awarded plus the
 24 maximum allowable interest for failure to begin or complete the
 25 service obligation.

26 SEC. 131. Section 129725 of the Health and Safety Code is
 27 amended to read:

28 129725. (a) (1) “Hospital building” includes any building
 29 not specified in subdivision (b) that is used, or designed to be used,
 30 for a health facility of a type required to be licensed pursuant to
 31 Chapter 2 (commencing with Section 1250) of Division 2.

32 (2) Except as provided in paragraph (7) of subdivision (b),
 33 hospital building includes a correctional treatment center, as
 34 defined in subdivision (j) of Section 1250, the construction of
 35 which was completed on or after March 7, 1973.

36 (b) “Hospital building” does not include any of the following:

37 (1) Any building where outpatient clinical services of a health
 38 facility licensed pursuant to Section 1250 are provided that is
 39 separated from a building in which hospital services are provided.
 40 If any one or more outpatient clinical services in the building

1 provides services to inpatients, the building shall not be included
2 as a “hospital building” if those services provided to inpatients
3 represent no more than 25 percent of the total outpatient services
4 provided at the building. Hospitals shall maintain on an ongoing
5 basis, data on the patients receiving services in these buildings,
6 including the number of patients seen, categorized by their inpatient
7 or outpatient status. Hospitals shall submit this data annually to
8 the State Department of ~~Health Services~~. *Public Health*.

9 (2) ~~Any~~A building used, or designed to be used, for a skilled
10 nursing facility or intermediate care facility if the building is of
11 single-story, wood-frame or light steel frame construction.

12 (3) ~~Any~~A building of single-story, wood-frame or light steel
13 frame construction where only skilled nursing or intermediate care
14 services are provided if the building is separated from a building
15 housing other patients of the health facility receiving higher levels
16 of care.

17 (4) ~~Any~~A freestanding ~~structures~~ *structure* of a chemical
18 dependency recovery hospital exempted under subdivision (c) of
19 Section 1275.2.

20 (5) ~~Any~~A building licensed to be used as an intermediate care
21 facility/developmentally disabled habilitative with six beds or less
22 and ~~any~~ *an* intermediate care facility/developmentally disabled
23 habilitative of 7 to 15 beds that is a single-story, wood-frame or
24 light steel frame building.

25 (6) ~~Any~~A building subject to licensure as a correctional
26 treatment center, as defined in subdivision (j) of Section 1250, the
27 construction of which was completed ~~prior to~~ *before* March 7,
28 1973.

29 (7) (A) ~~Any~~A building that meets the definition of a
30 correctional treatment center, pursuant to subdivision (j) of Section
31 1250, for which the final design documents were completed or the
32 construction of which was ~~begun prior to~~ *initiated before* January
33 1, 1994, operated by or to be operated by the Department of
34 ~~Corrections, the Department of the Youth Authority,~~ *Corrections*
35 *and Rehabilitation*, or by a law enforcement agency of a city,
36 county, or a city and county.

37 (B) In the case of reconstruction, alteration, or addition to, the
38 facilities identified in this paragraph, and paragraph (6) or any
39 other building subject to licensure as a general acute care hospital,
40 acute psychiatric hospital, correctional treatment center, or nursing

1 facility, as defined in subdivisions (a), (b), (j), and (k) of Section
2 1250, operated or to be operated by the Department of ~~Corrections,~~
3 ~~the Department of the Youth Authority,~~ *Corrections and*
4 *Rehabilitation*, or by a law enforcement agency of a city, county,
5 or city and county, only the reconstruction, alteration, or addition,
6 itself, and not the building as a whole, nor any other aspect thereof,
7 shall be required to comply with this chapter or the regulations
8 adopted pursuant thereto.

9 (8) ~~Any~~A freestanding building used, or designed to be used,
10 as a congregate living health facility, as defined in subdivision (i)
11 of Section 1250.

12 (9) ~~Any~~A freestanding building used, or designed to be used,
13 as a hospice facility, as defined in subdivision (n) of Section 1250.

14 SEC. 132. Section 136000 of the Health and Safety Code is
15 amended to read:

16 136000. (a) (1) Effective July 1, 2012, there is hereby
17 transferred from the Department of Managed Health Care the
18 Office of Patient Advocate to be established within the California
19 Health and Human Services Agency, to provide assistance to, and
20 advocate on behalf of, individuals served by health care service
21 plans regulated by the Department of Managed Health Care,
22 insureds covered by health insurers regulated by the Department
23 of Insurance, and individuals who receive or are eligible for other
24 health care coverage in California, including coverage available
25 through the Medi-Cal program, the California Health Benefit
26 Exchange, the Healthy Families Program, or any other county or
27 state health care program. The goal of the office shall be to help
28 those individuals secure the health care services to which they are
29 entitled or for which they are eligible under the law.
30 Notwithstanding any provision of this division, each regulator and
31 health coverage program shall retain its respective authority,
32 including its authority to resolve complaints, grievances, and
33 appeals.

34 (2) The office shall be headed by a patient advocate appointed
35 by the Governor. The patient advocate shall serve at the pleasure
36 of the Governor.

37 (3) The provisions of this division affecting insureds covered
38 by health insurers regulated by the Department of Insurance and
39 individuals who receive or are eligible for coverage available
40 through the Medi-Cal program, the California Health Benefit

1 Exchange, the Healthy Families Program, or any other county or
2 state health care program shall commence on January 1, 2013,
3 except that for the period July 1, 2012, to January 1, 2013, the
4 office shall continue with any duties, responsibilities, or activities
5 of the office authorized as of July 1, 2011, which shall continue
6 to be authorized.

7 (b) (1) The duties of the office shall include, but not be limited
8 to, all of the following:

9 (A) Developing, in consultation with the Managed Risk Medical
10 Insurance Board, the State Department of Health Care Services,
11 the California Health Benefit Exchange, the Department of
12 Managed Health Care, and the Department of Insurance,
13 educational and informational guides for consumers describing
14 their rights and responsibilities, and informing them on effective
15 ways to exercise their rights to secure health care coverage. The
16 guides shall be easy to read and understand and shall be made
17 available in English and other threshold languages, using an
18 appropriate literacy level, and in a culturally competent manner.
19 The informational guides shall be made available to the public by
20 the office, including being made accessible on the office's Internet
21 Web site and through public outreach and educational programs.

22 (B) Compiling an annual publication, to be made available on
23 the office's Internet Web site, of a quality of care report card,
24 including, but not limited to, health care service plans.

25 (C) Rendering assistance to consumers regarding procedures,
26 rights, and responsibilities related to the filing of complaints,
27 grievances, and appeals, including appeals of coverage denials and
28 information about any external appeal process.

29 (D) Making referrals to the appropriate state agency regarding
30 studies, investigations, audits, or enforcement that may be
31 appropriate to protect the interests of consumers.

32 (E) Coordinating and working with other government and
33 nongovernment patient assistance programs and health care
34 ombudsperson programs.

35 (2) The office shall employ necessary staff. The office may
36 employ or contract with experts when necessary to carry out the
37 functions of the office. The patient advocate shall make an annual
38 budget request for the office which shall be identified in the annual
39 Budget Act.

1 (3) Until January 1, 2013, the office shall have access to records
2 of the Department of Managed Health Care, including, but not
3 limited to, information related to health care service plan or health
4 insurer audits, surveys, and enrollee or insured grievances.

5 (4) The patient advocate shall annually issue a public report on
6 the activities of the office, and shall appear before the appropriate
7 policy and fiscal committees of the Senate and Assembly, if
8 requested, to report and make recommendations on the activities
9 of the office.

10 (5) The office shall adopt standards for the organizations with
11 which it contracts pursuant to this section to ensure compliance
12 with the privacy and confidentiality laws of this state, including,
13 but not limited to, the Information Practices Act of 1977 (Chapter
14 1(commencing with Section 1798) of Division 3 of the Civil Code).
15 The office shall conduct privacy trainings as necessary, and
16 regularly verify that the organizations have measures in place to
17 ensure compliance with this provision.

18 (c) In enacting this act, the Legislature recognizes that, because
19 of the enactment of federal health care reform on March 23, 2010,
20 and the implementation of various provisions by January 1, 2014,
21 it is appropriate to transfer the Office of Patient Advocate and to
22 confer new responsibilities on the Office of Patient Advocate,
23 including assisting consumers in obtaining health care coverage
24 and obtaining health care through health coverage that is regulated
25 by multiple regulators, both state and federal. The new
26 responsibilities include assisting consumers in navigating both
27 public and private health care coverage and assisting consumers
28 in determining which regulator regulates the health care coverage
29 of a particular consumer. In order to assist in implementing federal
30 health care reform in California, commencing January 1, 2013,
31 the office, in addition to the duties set forth in subdivision (b),
32 shall also do all of the following:

33 (1) Receive and respond to all inquiries, complaints, and requests
34 for assistance from individuals concerning health care coverage
35 available in California.

36 (2) Provide, and assist in the provision of, outreach and
37 education about health care coverage options as set forth in
38 subparagraph (A) of paragraph (1) of subdivision (b), including,
39 but not limited to:

1 (A) Information regarding applying for coverage; the cost of
2 coverage; and renewal in, and transitions between, health coverage
3 programs.

4 (B) Information and assistance regarding public programs, such
5 as Medi-Cal, the Healthy Families Program, federal veterans health
6 benefits, and Medicare; and private coverage, including
7 employer-sponsored coverage, Exchange coverage; and other
8 sources of care if the consumer is not eligible for coverage, such
9 as county services, community clinics, discounted hospital care,
10 or charity care.

11 (3) Coordinate with other state and federal agencies engaged in
12 outreach and education regarding the implementation of federal
13 health care reform.

14 (4) Render assistance to, and advocate on behalf of, consumers
15 with problems related to health care services, including care and
16 service problems and claims or payment problems.

17 (5) Refer consumers to the appropriate regulator of their health
18 coverage programs for filing complaints, grievances, or claims, or
19 for payment problems.

20 (d) (1) Commencing January 1, 2013, the office shall track and
21 analyze data on problems and complaints by, and questions from,
22 consumers about health care coverage for the purpose of providing
23 public information about problems faced and information needed
24 by consumers in obtaining coverage and care. The data collected
25 shall include demographic data, source of coverage, regulator, and
26 resolution of complaints, including timeliness of resolution.

27 (2) The Department of Managed Health Care, the *State*
28 Department of Health Care Services, the Department of Insurance,
29 the Managed Risk Medical Insurance Board, the California Health
30 Benefit Exchange, and other public coverage programs shall
31 provide to the office data in the aggregate concerning consumer
32 complaints and grievances. For the purpose of publicly reporting
33 information about the problems faced by consumers in obtaining
34 care and coverage, the office shall analyze data on consumer
35 complaints and grievances resolved by these agencies, including
36 demographic data, source of coverage, insurer or plan, resolution
37 of complaints and other information intended to improve health
38 care and coverage for consumers. The office shall develop and
39 provide comprehensive and timely data and analysis based on the
40 information provided by other agencies.

1 (3) The office shall collect and report data to the United States
2 Secretary of Health and Human Services on complaints and
3 consumer assistance as required to comply with requirements of
4 the federal Patient Protection and Affordable Care Act (Public
5 Law 111-148).

6 (e) Commencing ~~in~~ January 1, 2013, in order to assist consumers
7 in understanding the impact of federal health care reform as well
8 as navigating and resolving questions and problems with health
9 care coverage and programs, the office shall ensure that either the
10 office or a state agency contracting with the office shall do the
11 following:

12 (1) Operate a toll-free telephone hotline number that can route
13 callers to the proper regulating body or public program for their
14 question, their health plan, or the consumer assistance program in
15 their area.

16 (2) Operate ~~a~~ an Internet Web site, other social media, and
17 up-to-date communication systems to give information regarding
18 the consumer assistance programs.

19 (f) (1) The office may contract with community-based consumer
20 assistance organizations to assist in any or all of the duties of
21 subdivision (c) in accordance with Section 19130 of the
22 Government Code or provide grants to community-based consumer
23 assistance organizations for portions of these purposes.

24 (2) Commencing ~~on~~ January 1, 2013, any local
25 community-based nonprofit consumer assistance program with
26 which the office contracts shall include in its mission the assistance
27 of, and duty to, health care consumers. Contracting consumer
28 assistance programs shall have experience in the following areas:

29 (A) Assisting consumers in navigating the local health care
30 system.

31 (B) Advising consumers regarding their health care coverage
32 options and helping consumers enroll in and retain health care
33 coverage.

34 (C) Assisting consumers with problems in accessing health care
35 services.

36 (D) Serving consumers with special needs, including, but not
37 limited to, consumers with limited-English language proficiency,
38 consumers requiring culturally competent services, low-income
39 consumers, consumers with disabilities, consumers with low

1 literacy rates, and consumers with multiple health conditions,
2 including behavioral health.

3 (E) Collecting and reporting data, including demographic data,
4 source of coverage, regulator, and resolution of complaints,
5 including timeliness of resolution.

6 (3) Commencing ~~on~~ January 1, 2013, the office shall develop
7 protocols, procedures, and training modules for organizations with
8 which it contracts.

9 (4) Commencing ~~on~~ January 1, 2013, the office shall adopt
10 standards for organizations with which it contracts regarding
11 confidentiality and conduct.

12 (5) Commencing ~~on~~ January 1, 2013, the office may contract
13 with consumer assistance programs to develop a series of
14 appropriate literacy level and culturally and linguistically
15 appropriate educational materials in all threshold languages for
16 consumers regarding health care coverage options and how to
17 resolve problems.

18 (g) ~~(f)~~ Commencing ~~on~~ January 1, 2013, the office shall
19 develop protocols and procedures for assisting in the resolution of
20 consumer complaints, including both of the following:

21 (1) A procedure for referral of complaints and grievances to the
22 appropriate regulator or health coverage program for resolution
23 by the relevant regulator or public program.

24 (2) A protocol or procedure for reporting to the appropriate
25 regulator and health coverage program regarding complaints and
26 grievances relevant to that agency that the office received and was
27 able to resolve without further action or referral.

28 (h) For purposes of this section, the following definitions ~~shall~~
29 apply:

30 (1) “Consumer” or “individual” includes the individual or his
31 or her parent, guardian, conservator, or authorized representative.

32 (2) “Exchange” means the California Health Benefit Exchange
33 established pursuant to Title 22 (commencing with Section 100500)
34 of the Government Code.

35 (3) “Health care” includes behavioral health, including both
36 mental health and substance abuse treatment.

37 (4) “Health care service plan” has the same meaning as that set
38 forth in subdivision (f) of Section 1345. Health care service plan
39 includes “specialized health care service plans,” including
40 behavioral health plans.

1 (5) “Health coverage program” includes the Medi-Cal program,
2 Healthy Families Program, tax subsidies and premium credits
3 under the Exchange, the Basic Health Program, if enacted, county
4 health coverage programs, and the Access for Infants and Mothers
5 Program.

6 (6) “Health insurance” has the same meaning as set forth in
7 Section 106 of the Insurance Code.

8 (7) “Health insurer” means an insurer that issues policies of
9 health insurance.

10 (8) “Office” means the Office of Patient Advocate.

11 (9) “Threshold languages” shall have the same meaning as for
12 Medi-Cal managed care.

13 SEC. 133. Section 676.75 of the Insurance Code is amended
14 to read:

15 676.75. (a) No admitted insurer, licensed to issue and issuing
16 homeowner’s or tenant’s policies, as described in Section 122,
17 shall (1) fail or refuse to accept an application for that insurance
18 or to issue that insurance to an applicant or (2) cancel that
19 insurance, solely on the basis that the applicant or policyholder is
20 engaged in foster home activities in a certified family home, as
21 defined in Section 1506 of the Health and Safety Code.

22 (b) Coverage under policies described in subdivision (a) with
23 respect to a foster child shall be the same as that provided for a
24 natural child. However, unless specifically provided in the policy,
25 there shall be no coverage expressly provided in the policy for any
26 bodily injury arising out of the operation or use of any motor
27 vehicle, aircraft, or watercraft owned or operated by, or rented or
28 loaned to, any foster parent.

29 (c) It is against public policy for a policy of homeowner’s or
30 tenant’s insurance subject to this section to provide liability
31 coverage for any of the following losses:

32 (1) An insurer shall not be liable, under a policy of insurance
33 subject to this section, to any governmental agency for damage
34 arising from occurrences peculiar to the foster care relationship
35 and the provision of foster care services.

36 (2) Alienation of affection of a foster child.

37 (3) Any loss arising out of licentious, immoral, or sexual
38 behavior on the part of a foster parent intended to lead to, or
39 culminating in, any sexual act.

1 (4) Any loss arising out of a dishonest, fraudulent, criminal, or
2 intentional act.

3 (d) There shall be no penalty for violations of this section prior
4 to January 1, 2013.

5 (e) Insurers may provide a special endorsement to a
6 ~~homeowners~~^{homeowner's} or ~~tenants~~^{tenant's} policy covering
7 claims related to foster care that are not excluded by subdivision

8 (c).

9 (f) Insurers may provide by a separate policy for some or all of
10 the claims related to foster care that are excluded by subdivision

11 (c).

12 SEC. 134. Section 922.41 of the Insurance Code is amended
13 to read:

14 922.41. (a) Credit shall be allowed a domestic insurer when
15 the reinsurance is ceded to an assuming insurer that has been
16 certified by the commissioner as a reinsurer in this state and secures
17 its obligations in accordance with the requirements of this section.
18 Credit shall be allowed at all times for which statutory financial
19 statement credit for reinsurance is claimed under this section. The
20 credit allowed shall be based upon the security held by or on behalf
21 of the ceding insurer in accordance with a rating assigned to the
22 certified reinsurer by the commissioner. The security shall be in
23 a form consistent with ~~the provisions of~~ this section, any
24 regulations promulgated by the commissioner, and Section 922.5.

25 (b) In order to be eligible for certification, the assuming insurer
26 shall meet the following requirements:

27 (1) The assuming insurer shall be domiciled and licensed to
28 transact insurance or reinsurance in a qualified jurisdiction, as
29 determined by the commissioner pursuant to subdivisions (f) and
30 (g).

31 (2) The assuming insurer shall maintain minimum capital and
32 surplus, or its equivalent, in an amount to be determined by the
33 commissioner, but no less than two hundred fifty million dollars
34 (\$250,000,000) calculated in accordance with paragraph (4) of
35 subdivision (f) of this section or Section 922.5. This requirement
36 may also be satisfied by an association including incorporated and
37 individual unincorporated underwriters having minimum capital
38 and surplus equivalents (net of liabilities) of at least two hundred
39 fifty million dollars (\$250,000,000) and a central fund containing

1 a balance of at least two hundred fifty million dollars
 2 (\$250,000,000).

3 (3) The assuming insurer shall maintain financial strength ratings
 4 from two or more rating agencies deemed acceptable by the
 5 commissioner. These ratings shall be based on interactive
 6 communication between the rating agency and the assuming insurer
 7 and shall not be based solely on publicly available information.
 8 These financial strength ratings will be one factor used by the
 9 commissioner in determining the rating that is assigned to the
 10 assuming insurer. Acceptable rating agencies include the following:

- 11 (A) Standard & Poor’s.
- 12 (B) Moody’s Investors Service.
- 13 (C) Fitch Ratings.
- 14 (D) A.M. Best Company.
- 15 (E) Any other nationally recognized statistical rating
 16 organization.

17 (4) The assuming insurer shall agree to submit to the jurisdiction
 18 of this state, appoint the commissioner or a designated attorney in
 19 this state as its agent for service of process in this state, and agree
 20 to provide security for 100 percent of the assuming insurer’s
 21 liabilities attributable to reinsurance ceded by United States ceding
 22 insurers if it resists enforcement of a final United States judgment.

23 (5) The assuming insurer shall agree to meet applicable
 24 information filing requirements as determined by the commissioner,
 25 both with respect to an initial application for certification and on
 26 an ongoing basis.

27 (6) The certified reinsurer shall comply with any other
 28 requirements deemed relevant by the commissioner.

29 (c) (1) If an applicant for certification has been certified as a
 30 reinsurer in ~~an NAIC~~ *a National Association of Insurance*
 31 *Commissioners (NAIC)* accredited jurisdiction, the commissioner
 32 may defer to that jurisdiction’s certification, and has the discretion
 33 to defer to the rating assigned by that jurisdiction if the assuming
 34 insurer submits a properly executed Form CR-1 (as published on
 35 the department’s Internet Web site), and such additional
 36 information as the commissioner requires. The commissioner,
 37 however, may perform an independent review and determination
 38 of any applicant. The assuming insurer shall then be considered
 39 to be a certified reinsurer in this state.

1 (2) If the commissioner defers to a certification determination
2 by another state, any change in the certified reinsurer's status or
3 rating in the other jurisdiction shall apply automatically in this
4 state as of the date it takes effect in the other jurisdiction unless
5 the commissioner otherwise determines. The certified reinsurer
6 shall notify the commissioner of any change in its status or rating
7 within 10 days after receiving notice of the change.

8 (3) The commissioner may withdraw recognition of the other
9 jurisdiction's rating at any time and assign a new rating in
10 accordance with subdivision (h).

11 (4) The commissioner may withdraw recognition of the other
12 jurisdiction's certification at any time, with written notice to the
13 certified reinsurer. Unless the commissioner suspends or revokes
14 the certified reinsurer's certification in accordance with this section
15 and Section 922.42, the certified reinsurer's certification shall
16 remain in good standing in this state for a period of three months,
17 which shall be extended if additional time is necessary to consider
18 the assuming insurer's application for certification in this state.

19 (d) An association, including incorporated and individual
20 unincorporated underwriters, may be a certified reinsurer. In order
21 to be eligible for certification, in addition to satisfying requirements
22 of subdivision (b), the reinsurer shall meet all of the following
23 requirements:

24 (1) The association shall satisfy its minimum capital and surplus
25 requirements through the capital and surplus equivalents (net of
26 liabilities) of the association and its members, which shall include
27 a joint central fund that may be applied to any unsatisfied
28 obligation of the association or any of its members, in an amount
29 determined by the commissioner to provide adequate protection.

30 (2) The incorporated members of the association shall not be
31 engaged in any business other than underwriting as a member of
32 the association and shall be subject to the same level of regulation
33 and solvency control by the association's domiciliary regulator as
34 are the unincorporated members.

35 (3) Within 90 days after its financial statements are due to be
36 filed with the association's domiciliary regulator, the association
37 shall provide to the commissioner an annual certification by the
38 association's domiciliary regulator of the solvency of each
39 underwriter member; or, if a certification is unavailable, financial

1 statements, prepared by independent public accountants, of each
 2 underwriter member of the association.

3 (e) (1) The commissioner shall post notice on the department’s
 4 Internet Web site promptly upon receipt of any application for
 5 certification, including instructions on how members of the public
 6 may respond to the application. The commissioner ~~may~~ shall not
 7 take final action on the application until at least 90 days after
 8 posting the notice required by this subdivision.

9 (2) The commissioner shall issue written notice to an assuming
 10 insurer that has made application and has been approved as a
 11 certified reinsurer. Included in ~~such~~ that notice shall be the rating
 12 assigned the certified reinsurer in accordance with subdivision (h).
 13 The commissioner shall publish a list of all certified reinsurers and
 14 their ratings.

15 (f) The certified reinsurer shall agree to meet applicable
 16 information filing requirements as determined by the commissioner,
 17 both with respect to an initial application for certification and on
 18 an ongoing basis. All information submitted by certified reinsurers
 19 that is not otherwise public information subject to disclosure shall
 20 be exempted from disclosure under Chapter 3.5 (commencing with
 21 Section 6250) of Division 7 of Title 1 of the Government Code,
 22 and shall be withheld from public disclosure. The applicable
 23 information filing requirements are as follows:

24 (1) Notification within 10 days of any regulatory actions taken
 25 against the certified reinsurer, any change in the provisions of its
 26 domiciliary license or any change in rating by an approved rating
 27 agency, including a statement describing those changes and the
 28 reasons for those changes.

29 (2) Annually, Form CR-F or CR-S, as applicable pursuant to
 30 the instructions ~~as~~ published on the department’s Internet Web
 31 site.

32 (3) Annually, the report of the independent auditor on the
 33 financial statements of the insurance enterprise, on the basis
 34 described in paragraph (4).

35 (4) Annually, audited financial statements, (audited United
 36 States Generally Accepted Accounting Principles basis, if available,
 37 audited International Financial Reporting Standards basis
 38 statements are allowed, but must include an audited footnote
 39 reconciling equity and net income to a United States Generally
 40 Accepted Accounting Principles basis, or, with the written

1 permission of the commissioner, audited International Financial
2 Reporting Standards statements with reconciliation to United States
3 Generally Accepted Accounting Principles certified by an officer
4 of the company), regulatory filings, and actuarial opinion (as filed
5 with the certified reinsurer's supervisor). Upon the initial
6 certification, audited financial statements for the last three years
7 filed with the certified reinsurer's supervisor.

8 (5) At least annually, an updated list of all disputed and overdue
9 reinsurance claims regarding reinsurance assumed from United
10 States domestic ceding insurers.

11 (6) A certification from the certified reinsurer's domestic
12 regulator that the certified reinsurer is in good standing and
13 maintains capital in excess of the jurisdiction's highest regulatory
14 action level.

15 (7) Any other information that the commissioner may reasonably
16 require.

17 (g) If the commissioner certifies a non-United States domiciled
18 insurer, the commissioner shall create and publish a list of qualified
19 jurisdictions, under which an assuming insurer licensed and
20 domiciled in ~~such~~ that jurisdiction is eligible to be considered for
21 certification by the commissioner as a certified reinsurer.

22 (1) In order to determine whether the domiciliary jurisdiction
23 of a non-United States assuming insurer is eligible to be recognized
24 as a qualified jurisdiction, the commissioner shall evaluate the
25 appropriateness and effectiveness of the reinsurance supervisory
26 system of the jurisdiction, both initially and on an ongoing basis,
27 and consider the rights, benefits, and the extent of reciprocal
28 recognition afforded by the non-United States jurisdiction to
29 reinsurers licensed and domiciled in the United States. The
30 commissioner shall determine the appropriate process for
31 evaluating the qualifications of those jurisdictions. Prior to its
32 listing, a qualified jurisdiction shall agree in writing to share
33 information and cooperate with the commissioner with respect to
34 all certified reinsurers domiciled within that jurisdiction. A
35 jurisdiction may not be recognized as a qualified jurisdiction if the
36 commissioner has determined that the jurisdiction does not
37 adequately and promptly enforce final United States judgments
38 and arbitration awards. Additional factors may be considered in
39 the discretion of the commissioner, including, but not limited to,
40 the following:

- 1 (A) The framework under which the assuming insurer is
- 2 regulated.
- 3 (B) The structure and authority of the domiciliary regulator with
- 4 regard to solvency regulation requirements and financial
- 5 surveillance.
- 6 (C) The substance of financial and operating standards for
- 7 assuming insurers in the domiciliary jurisdiction.
- 8 (D) The form and substance of financial reports required to be
- 9 filed or made publicly available by reinsurers in the domiciliary
- 10 jurisdiction and the accounting principles used.
- 11 (E) The domiciliary regulator’s willingness to cooperate with
- 12 United States regulators in general and the commissioner in
- 13 particular.
- 14 (F) The history of performance by assuming insurers in the
- 15 domiciliary jurisdiction.
- 16 (G) Any documented evidence of substantial problems with the
- 17 enforcement of final United States judgments in the domiciliary
- 18 jurisdiction.
- 19 (H) Any relevant international standards or guidance with
- 20 respect to mutual recognition of reinsurance supervision adopted
- 21 by the International Association of Insurance Supervisors or a
- 22 successor organization.
- 23 (I) Any other matters deemed relevant by the commissioner.
- 24 (2) The commissioner shall consider the list of qualified
- 25 jurisdictions published through the ~~National Association of~~
- 26 ~~Insurance Commissioners (NAIC)~~ NAIC committee process in
- 27 determining qualified jurisdictions. The commissioner may include
- 28 on the list published pursuant to this section, any jurisdiction on
- 29 the NAIC list of qualified jurisdictions, or on any equivalent list
- 30 of the United States Treasury.
- 31 (3) If the commissioner approves a jurisdiction as qualified that
- 32 does not appear on either the NAIC list of qualified jurisdictions,
- 33 or the United States Treasury list, the commissioner shall provide
- 34 thoroughly documented justification in accordance with criteria
- 35 to be developed under this section.
- 36 (4) United States jurisdictions that meet the requirements for
- 37 accreditation under the NAIC financial standards and accreditation
- 38 program shall be recognized as qualified jurisdictions.
- 39 (5) If a certified reinsurer’s domiciliary jurisdiction ceases to
- 40 be a qualified jurisdiction, the commissioner has the discretion to

1 suspend the reinsurer’s certification indefinitely, in lieu of
2 revocation.

3 (h) The commissioner shall assign a rating to each certified
4 reinsurer, giving due consideration to the financial strength ratings
5 that have been assigned by rating agencies deemed acceptable to
6 the commissioner pursuant to this section. The commissioner shall
7 publish a list of all certified reinsurers and their ratings.

8 (1) Each certified reinsurer shall be rated on a legal entity basis,
9 with due consideration being given to the group rating where
10 appropriate, except that an association including incorporated and
11 individual unincorporated underwriters that has been approved to
12 do business as a single certified reinsurer may be evaluated on the
13 basis of its group rating. Factors that may be considered as part of
14 the evaluation process include, but are not limited to, the following:

15 (A) The certified reinsurer’s financial strength rating from an
16 acceptable rating agency. The maximum rating that a certified
17 reinsurer may be assigned ~~will~~ shall correspond to its financial
18 strength rating as set forth in clauses (i) to (vi), inclusive. The
19 commissioner shall use the lowest financial strength rating received
20 from an approved rating agency in establishing the maximum
21 rating of a certified reinsurer. A failure to obtain or maintain at
22 least two financial strength ratings from acceptable rating agencies
23 ~~will~~ shall result in loss of eligibility for certification.

24 (i) Ratings category “Secure - 1” corresponds to A.M. Best
25 Company rating A++; Standard & Poor’s rating AAA; Moody’s
26 Investors Service rating Aaa; and Fitch Ratings rating AAA.

27 (ii) Ratings category “Secure - 2” corresponds to A.M. Best
28 Company rating A+; Standard & Poor’s rating AA+, AA, or AA-;
29 Moody’s Investors Service rating Aa1, Aa2, or Aa3; and Fitch
30 Ratings rating AA+, AA, or AA-.

31 (iii) Ratings category “Secure - 3” corresponds to A.M. Best
32 Company rating A; Standard & Poor’s rating A+ or A; Moody’s
33 Investors Service rating A1 or A2; and Fitch Ratings rating A+ or
34 A.

35 (iv) Ratings category “Secure - 4” corresponds to A.M. Best
36 Company rating A-; Standard & Poor’s rating A-; Moody’s
37 Investors Service rating A3; and Fitch Ratings rating A-.

38 (v) Ratings category “Secure - 5” corresponds to A.M. Best
39 Company rating B++ or B+; Standard & Poor’s rating BBB+,

1 BBB, or BBB-; Moody's Investors Service rating Baa1, Baa2, or
2 Baa3; and Fitch Ratings rating BBB+, BBB, or BBB-.

3 (vi) Ratings category "Vulnerable - 6" corresponds to A.M.
4 Best Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard
5 & Poor's rating BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R;
6 Moody's Investors Service rating Ba1, Ba2, Ba3, B1, B2, B3, Caa,
7 Ca, or C; and Fitch Ratings rating BB+, BB, BB-, B+, B, B-,
8 CCC+, CC, CCC-, or DD.

9 (B) The business practices of the certified reinsurer in dealing
10 with its ceding insurers, including its record of compliance with
11 reinsurance contractual terms and obligations.

12 (C) For certified reinsurers domiciled in the United States, a
13 review of the most recent applicable NAIC Annual Statement
14 Blank, either Schedule F (for property/casualty reinsurers) or
15 Schedule S (for life and health reinsurers).

16 (D) For certified reinsurers not domiciled in the United States,
17 a review annually of Form CR-F (for property/casualty reinsurers)
18 or Form CR-S (for life and health reinsurers) (as published on the
19 department's Internet Web site).

20 (E) The reputation of the certified reinsurer for prompt payment
21 of claims under reinsurance agreements, based on an analysis of
22 ceding insurers' Schedule F reporting of overdue reinsurance
23 recoverables, including the proportion of obligations that are more
24 than 90 days past due or are in dispute, with specific attention
25 given to obligations payable to companies that are in administrative
26 supervision or receivership.

27 (F) Regulatory actions against the certified reinsurer.

28 (G) The report of the independent auditor on the financial
29 statements of the insurance enterprise, on the basis described in
30 subparagraph (H).

31 (H) For certified reinsurers not domiciled in the United States,
32 audited financial statements, (audited United States Generally
33 Accepted Accounting Principles basis, if available, audited
34 International Financial Reporting Standards basis statements are
35 allowed, but must include an audited footnote reconciling equity
36 and net income to a United States Generally Accepted Accounting
37 Principles basis, or, with the written permission of the
38 commissioner, audited International Financial Reporting Standards
39 statements with reconciliation to United States Generally Accepted
40 Accounting Principles certified by an officer of the company),

1 regulatory filings, and actuarial opinion (as filed with the
2 non-United States jurisdiction supervisor). Upon the initial
3 application for certification, the commissioner shall consider
4 audited financial statements for the last three years filed with its
5 non-United States jurisdiction supervisor.

6 (I) The liquidation priority of obligations to a ceding insurer in
7 the certified reinsurer's domiciliary jurisdiction in the context of
8 an insolvency proceeding.

9 (J) A certified reinsurer's participation in any solvent scheme
10 of arrangement, or similar procedure, which involves United States
11 ceding insurers. The commissioner shall receive prior notice from
12 a certified reinsurer that proposes participation by the certified
13 reinsurer in a solvent scheme of arrangement.

14 (K) Any other information deemed relevant by the
15 commissioner.

16 (2) Based on the analysis conducted under subparagraph (E) of
17 paragraph (1) of a certified reinsurer's reputation for prompt
18 payment of claims, the commissioner may make appropriate
19 adjustments in the security the certified reinsurer is required to
20 post to protect its liabilities to United States ceding insurers,
21 provided that the commissioner shall, at a minimum, increase the
22 security the certified reinsurer is required to post by one rating
23 level under regulations promulgated by the commissioner, if the
24 commissioner finds either of the following:

25 (A) More than 15 percent of the certified reinsurer's ceding
26 insurance clients have overdue reinsurance recoverables on paid
27 losses of 90 days or more ~~which~~ *that* are not in dispute and ~~which~~
28 *that* exceed one hundred thousand dollars (\$100,000) for each
29 ceding insurer.

30 (B) The aggregate amount of reinsurance recoverables on paid
31 losses ~~which~~ *that* are not in dispute *and* that are overdue by 90
32 days or more exceeds fifty million dollars (\$50,000,000).

33 (3) The assuming insurer shall submit a properly executed Form
34 CR-1 (as published on the department's Internet Web site) as
35 evidence of its submission to the jurisdiction of this state,
36 appointment of the commissioner as an agent for service of process
37 in this state, and agreement to provide security for 100 percent of
38 the assuming insurer's liabilities attributable to reinsurance ceded
39 by United States ceding insurers if it resists enforcement of a final
40 United States judgment. The commissioner shall not certify any

1 assuming insurer that is domiciled in a jurisdiction that the
2 commissioner has determined does not adequately and promptly
3 enforce final United States judgments or arbitration awards.

4 (4) (A) In the case of a downgrade by a rating agency or other
5 disqualifying circumstance, the commissioner shall, upon written
6 notice, assign a new rating to the certified reinsurer in accordance
7 with the requirements of ~~subdivision (h)~~ *this subdivision*.

8 (B) The commissioner shall have the authority to suspend,
9 revoke, or otherwise modify a certified reinsurer's certification at
10 any time if the certified reinsurer fails to meet its obligations or
11 security requirements under this section, or if other financial or
12 operating results of the certified reinsurer, or documented
13 significant delays in payment by the certified reinsurer, lead the
14 commissioner to reconsider the certified reinsurer's ability or
15 willingness to meet its contractual obligations.

16 (C) If the rating of a certified reinsurer is upgraded by the
17 commissioner, the certified reinsurer may meet the security
18 requirements applicable to its new rating on a prospective basis,
19 but the commissioner shall require the certified reinsurer to post
20 security under the previously applicable security requirements as
21 to all contracts in force on or before the effective date of the
22 upgraded rating. If the rating of a certified reinsurer is downgraded
23 by the commissioner, the commissioner shall require the certified
24 reinsurer to meet the security requirements applicable to its new
25 rating for all business it has assumed as a certified reinsurer.

26 (D) Upon revocation of the certification of a certified reinsurer
27 by the commissioner, the assuming insurer shall be required to
28 post security in accordance with Section 922.5 in order for the
29 ceding insurer to continue to take credit for reinsurance ceded to
30 the assuming insurer. If funds continue to be held in trust in
31 accordance with subdivision (d) of Section 922.4, the commissioner
32 may allow additional credit equal to the ceding insurer's pro rata
33 share of those funds, discounted to reflect the risk of
34 uncollectibility and anticipated expenses of trust administration.
35 Notwithstanding the change of a certified reinsurer's rating or
36 revocation of its certification, a domestic insurer that has ceded
37 reinsurance to that certified reinsurer ~~may~~ *shall* not be denied credit
38 for reinsurance for a period of three months for all reinsurance
39 ceded to that certified reinsurer, unless the reinsurance is found
40 by the commissioner to be at high risk of uncollectibility.

1 (i) A certified reinsurer shall secure obligations assumed from
2 United States ceding insurers under this subdivision at a level
3 consistent with its rating. The amount of security required in order
4 for full credit to be allowed shall correspond with the following
5 requirements:

6 Ratings security required

7 Secure - 1: 0%

8 Secure - 2: 10%

9 Secure - 3: 20%

10 Secure - 4: 50%

11 Secure - 5: 75%

12 Vulnerable - 6: 100%

13 (1) In order for a domestic ceding insurer to qualify for full
14 financial statement credit for reinsurance ceded to a certified
15 reinsurer, the certified reinsurer shall maintain security in a form
16 acceptable to the commissioner and consistent with the provisions
17 of Section 922.5, or in a multibeneficiary trust in accordance with
18 subdivision (d) of Section 922.4, except as otherwise provided in
19 this subdivision. In order for a domestic insurer to qualify for full
20 financial statement credit, reinsurance contracts entered into or
21 renewed under this section shall include a proper funding clause
22 that requires the certified reinsurer to provide and maintain security
23 in an amount sufficient to avoid the imposition of any financial
24 statement penalty on the ceding insurer under this section for
25 reinsurance ceded to the certified reinsurer.

26 (2) If a certified reinsurer maintains a trust to fully secure its
27 obligations subject to subdivision (d) of Section 922.4, and chooses
28 to secure its obligations incurred as a certified reinsurer in the form
29 of a multibeneficiary trust, the certified reinsurer shall maintain
30 separate trust accounts for its obligations incurred under
31 reinsurance agreements issued or renewed as a certified reinsurer
32 with reduced security as permitted by this subdivision or
33 comparable laws of other United States jurisdictions and for its
34 obligations subject to subdivision (d) of Section 922.4. It shall be
35 a condition to the grant of certification under this section that the
36 certified reinsurer shall have bound itself, by the language of the
37 trust and agreement with the commissioner with principal
38 regulatory oversight of each of those trust accounts, to fund, upon
39 termination of any of those trust accounts, out of the remaining

1 surplus of those trusts any deficiency of any other of those trust
2 accounts.

3 (3) The minimum trustee surplus requirements provided in
4 subdivision (d) of Section 922.4 are not applicable with respect to
5 a multibeneficiary trust maintained by a certified reinsurer for the
6 purpose of securing obligations incurred under this subdivision,
7 except that the trust shall maintain a minimum trustee surplus of
8 ten million dollars (\$10,000,000).

9 (4) With respect to obligations incurred by a certified reinsurer
10 under this subdivision, if the security is insufficient, the
11 commissioner shall reduce the allowable credit by an amount
12 proportionate to the deficiency, and have the discretion to impose
13 further reductions in allowable credit upon finding that there is a
14 material risk that the certified reinsurer's obligations will not be
15 paid in full when due.

16 (5) For purposes of this subdivision, a certified reinsurer whose
17 certification has been terminated for any reason shall be treated
18 as a certified reinsurer required to secure 100 percent of its
19 obligations.

20 (A) As used in this subdivision, the term "terminated" means
21 revocation, suspension, voluntary surrender, and inactive status.

22 (B) If the commissioner continues to assign a higher rating as
23 permitted by other provisions of this section, this requirement shall
24 not apply to a certified reinsurer in inactive status or to a reinsurer
25 whose certification has been suspended.

26 (6) The commissioner shall require the certified reinsurer to
27 post 100-percent security in accordance with Section 922.5, for
28 the benefit of the ceding insurer or its estate, upon the entry of an
29 order of rehabilitation, liquidation, or conservation against the
30 ceding insurer.

31 (7) Affiliated reinsurance transactions shall receive the same
32 opportunity for reduced security requirements as all other
33 reinsurance transactions.

34 (8) In order to facilitate the prompt payment of claims, a certified
35 reinsurer shall not be required to post security for catastrophe
36 recoverables for a period of one year from the date of the first
37 instance of a liability reserve entry by the ceding company as a
38 result of a loss from a catastrophic occurrence that is likely to result
39 in significant insured losses, as recognized by the commissioner.
40 The one-year deferral period is contingent upon the certified

1 reinsurer continuing to pay claims in a timely manner, as
2 determined by the commissioner, in writing. Reinsurance
3 recoverables for only the following lines of business as reported
4 on the NAIC annual financial statement related specifically to the
5 catastrophic occurrence ~~will~~ *shall* be included in the deferral:

- 6 (A) Line 1: Fire.
- 7 (B) Line 2: Allied lines.
- 8 (C) Line 3: ~~Farmowners~~ *Farmowners'* multiple peril.
- 9 (D) Line 4: ~~Homeowners~~ *Homeowners'* multiple peril.
- 10 (E) Line 5: Commercial multiple peril.
- 11 (F) Line 9: Inland marine.
- 12 (G) Line 12: Earthquake.
- 13 (H) Line 21: Auto physical damage.
- 14 (9) Credit for reinsurance under this section shall apply only to
15 reinsurance contracts entered into or renewed on or after the
16 effective date of the certification of the assuming insurer. Any
17 reinsurance contract entered into prior to the effective date of the
18 certification of the assuming insurer that is subsequently amended
19 by mutual agreement of the parties to the reinsurance contract after
20 the effective date of the certification of the assuming insurer, or a
21 new reinsurance contract, covering any risk for which collateral
22 was provided previously, shall only be subject to this section with
23 respect to losses incurred and reserves reported from and after the
24 effective date of the amendment or new contract.
- 25 (10) Nothing in this section shall be construed to prohibit the
26 parties to a reinsurance agreement from agreeing to provisions
27 establishing security requirements that exceed the minimum
28 security requirements established for certified reinsurers under
29 this section.
- 30 (j) A certified reinsurer that ceases to assume new business in
31 this state may request to maintain its certification in inactive status
32 in order to continue to qualify for a reduction in security for its
33 in-force business. An inactive certified reinsurer shall continue to
34 comply with all applicable requirements of this section, and the
35 commissioner shall assign a rating that takes into account, if
36 relevant, the reasons why the reinsurer is not assuming new
37 business.
- 38 (k) Notwithstanding this section, credit for reinsurance or
39 deduction from liability by a domestic ceding insurer for cessions
40 to a certified reinsurer may be disallowed upon a finding by the

1 commissioner that the application of the literal provisions of this
2 section does not accomplish its intent, or either the financial
3 condition of the reinsurer or the collateral or other security provided
4 by the reinsurer does not, in substance, satisfy the credit for
5 reinsurance requirements in Section 922.4.

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

9 SEC. 135. Section 1063.1 of the Insurance Code is amended
10 to read:

11 1063.1. As used in this article:

12 (a) "Member insurer" means an insurer required to be a member
13 of the association in accordance with subdivision (a) of Section
14 1063, except and to the extent that the insurer is participating in
15 an insolvency program adopted by the United States government.

16 (b) "Insolvent insurer" means an insurer that was a member
17 insurer of the association, consistent with paragraph (11) of
18 subdivision (c), either at the time the policy was issued or when
19 the insured event occurred, and against which an order of
20 liquidation with a finding of insolvency has been entered by a court
21 of competent jurisdiction, or, in the case of the State Compensation
22 Insurance Fund, if a finding of insolvency is made by a duly
23 enacted legislative measure.

24 (c) (1) "Covered claims" means the obligations of an insolvent
25 insurer, including the obligation for unearned premiums, that satisfy
26 all of the following requirements:

27 (A) Imposed by law and within the coverage of an insurance
28 policy of the insolvent insurer.

29 (B) Which were unpaid by the insolvent insurer.

30 (C) Which are presented as a claim to the liquidator in the state
31 of domicile of the insolvent insurer or to the association on or
32 before the last date fixed for the filing of claims in the domiciliary
33 liquidating proceedings.

34 (D) Which were incurred prior to the date coverage under the
35 policy terminated and prior to, on, or within 30 days after the date
36 the liquidator was appointed.

37 (E) For which the assets of the insolvent insurer are insufficient
38 to discharge in full.

1 (F) In the case of a policy of workers' compensation insurance,
2 to provide workers' compensation benefits under the workers'
3 compensation law of this state.

4 (G) In the case of other classes of insurance if the claimant or
5 insured is a resident of this state at the time of the insured
6 occurrence, or the property from which the claim arises is
7 permanently located in this state.

8 (2) "Covered claims" also includes the obligations assumed by
9 an assuming insurer from a ceding insurer where the assuming
10 insurer subsequently becomes an insolvent insurer if, at the time
11 of the insolvency of the assuming insurer, the ceding insurer is no
12 longer admitted to transact business in this state. Both the assuming
13 insurer and the ceding insurer shall have been member insurers at
14 the time the assumption was made. "Covered claims" under this
15 paragraph shall be required to satisfy the requirements of
16 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
17 the requirement that the claims be against policies of the insolvent
18 insurer. The association shall have a right to recover any deposit,
19 bond, or other assets that may have been required to be posted by
20 the ceding company to the extent of covered claim payments and
21 shall be subrogated to any rights the policyholders may have
22 against the ceding insurer.

23 (3) "Covered claims" does not include obligations arising from
24 the following:

25 (A) Life, annuity, health, or disability insurance.

26 (B) Mortgage guaranty, financial guaranty, or other forms of
27 insurance offering protection against investment risks.

28 (C) Fidelity or surety insurance including fidelity or surety
29 bonds, or any other bonding obligations.

30 (D) Credit insurance.

31 (E) Title insurance.

32 (F) Ocean marine insurance or ocean marine coverage under
33 an insurance policy including claims arising from the following:
34 the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore
35 and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et
36 seq.), or any other similar federal statutory enactment, or an
37 endorsement or policy affording protection and indemnity
38 coverage.

39 (G) Any claims servicing agreement or insurance policy
40 providing retroactive insurance of a known loss or losses, except

1 a special excess workers' compensation policy issued pursuant to
2 subdivision (c) of Section 3702.8 of the Labor Code that covers
3 all or any part of workers' compensation liabilities of an employer
4 that is issued, or was previously issued, a certificate of consent to
5 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
6 Code.

7 (4) "Covered claims" does not include any obligations of the
8 insolvent insurer arising out of any reinsurance contracts, nor any
9 obligations incurred after the expiration date of the insurance policy
10 or after the insurance policy has been replaced by the insured or
11 canceled at the insured's request, or after the insurance policy has
12 been canceled by the liquidator, nor any obligations to a state or
13 to the federal government.

14 (5) "Covered claims" does not include any obligations to
15 insurers, insurance pools, or underwriting associations, nor their
16 claims for contribution, indemnity, or subrogation, equitable or
17 otherwise, except as otherwise provided in this chapter.

18 An insurer, insurance pool, or underwriting association may not
19 maintain, in its own name or in the name of its insured, a claim or
20 legal action against the insured of the insolvent insurer for
21 contribution, indemnity, or by way of subrogation, except insofar
22 as, and to the extent only, that the claim exceeds the policy limits
23 of the insolvent insurer's policy. In those claims or legal actions,
24 the insured of the insolvent insurer is entitled to a credit or setoff
25 in the amount of the policy limits of the insolvent insurer's policy,
26 or in the amount of the limits remaining, where those limits have
27 been diminished by the payment of other claims.

28 (6) "Covered claims," except in cases involving a claim for
29 workers' compensation benefits or for unearned premiums, does
30 not include a claim in an amount of one hundred dollars (\$100) or
31 less, nor that portion of a claim that is in excess of any applicable
32 limits provided in the insurance policy issued by the insolvent
33 insurer.

34 (7) "Covered claims" does not include that portion of a claim,
35 other than a claim for workers' compensation benefits, that is in
36 excess of five hundred thousand dollars (\$500,000).

37 (8) "Covered claims" does not include any amount awarded as
38 punitive or exemplary damages, nor any amount awarded by the
39 Workers' Compensation Appeals Board pursuant to Section 5814

1 or 5814.5 of the Labor Code because payment of compensation
2 was unreasonably delayed or refused by the insolvent insurer.

3 (9) “Covered claims” does not include (A) a claim to the extent
4 it is covered by any other insurance of a class covered by this
5 article available to the claimant or insured or (B) a claim by a
6 person other than the original claimant under the insurance policy
7 in his or her own name, his or her assignee as the person entitled
8 thereto under a premium finance agreement as defined in Section
9 673 and entered into prior to insolvency, his or her executor,
10 administrator, guardian, or other personal representative or trustee
11 in bankruptcy, and does not include a claim asserted by an assignee
12 or one claiming by right of subrogation, except as otherwise
13 provided in this chapter.

14 (10) “Covered claims” does not include any obligations arising
15 out of the issuance of an insurance policy written by the separate
16 division of the State Compensation Insurance Fund pursuant to
17 Sections 11802 and 11803.

18 (11) “Covered claims” does not include any obligations of the
19 insolvent insurer arising from a policy or contract of insurance
20 issued or renewed prior to the insolvent insurer’s admission to
21 transact insurance in the State of California.

22 (12) “Covered claims” does not include surplus deposits of
23 subscribers as defined in Section 1374.1.

24 (13) “Covered claims” shall also include obligations arising
25 under an insurance policy written to indemnify a permissibly
26 self-insured employer pursuant to subdivision (b) or (c) of Section
27 3700 of the Labor Code for its liability to pay workers’
28 compensation benefits in excess of a specific or aggregate retention;
29 ~~provided, however, that for.~~ *However, for* purposes of this article,
30 those claims shall not be considered workers’ compensation claims
31 and therefore are subject to the ~~per-claim~~ *per-claim* limit in
32 paragraph (7), and any payments and expenses related thereto shall
33 be allocated to category (c) for claims other than workers’
34 compensation, homeowners, and automobile, as provided in Section
35 1063.5.

36 These provisions shall apply to obligations arising under a policy
37 as described herein issued to a permissibly self-insured employer
38 or group of self-insured employers pursuant to Section 3700 of
39 the Labor Code and notwithstanding any other provision of this
40 code, those obligations shall be governed by this provision in the

1 event that the Self-Insurers' Security Fund is ordered to assume
2 the liabilities of a permissibly self-insured employer or group of
3 self-insured employers pursuant to Section 3701.5 of the Labor
4 Code. The provisions of this paragraph apply only to insurance
5 policies written to indemnify a permissibly self-insured employer
6 or group of self-insured employers under subdivision (b) or (c) of
7 Section 3700 of the Labor Code, for its liability to pay workers'
8 compensation benefits in excess of a specific or aggregate retention,
9 and this paragraph does not apply to special excess workers'
10 compensation insurance policies unless issued pursuant to authority
11 granted in subdivision (c) of Section 3702.8 of the Labor Code,
12 and as provided for in subparagraph (G) of paragraph (3). In
13 addition, this paragraph does not apply to any claims servicing
14 agreement or insurance policy providing retroactive insurance of
15 a known loss or losses as are excluded in subparagraph (G) of
16 paragraph (3).

17 Each permissibly self-insured employer or group of self-insured
18 employers, or the Self-Insurers' Security Fund, shall, to the extent
19 required by the Labor Code, be responsible for paying, adjusting,
20 and defending each claim arising under policies of insurance
21 covered under this section, unless the benefits paid on a claim
22 exceed the specific or aggregate retention, in which case:

23 (A) If the benefits paid on the claim exceed the specific or
24 aggregate retention, and the policy requires the insurer to defend
25 and adjust the claim, the California Insurance Guarantee
26 Association (CIGA) shall be solely responsible for adjusting and
27 defending the claim, and shall make all payments due under the
28 claim, subject to the limitations and exclusions of this article with
29 regard to covered claims. As to each claim subject to this
30 paragraph, notwithstanding any other provisions of this code or
31 the Labor Code, and regardless of whether the amount paid by
32 CIGA is adequate to discharge a claim obligation, neither the
33 self-insured employer, group of self-insured employers, nor the
34 Self-Insurers' Security Fund, shall have any obligation to pay
35 benefits over and above the specific or aggregate retention, except
36 as provided in this subdivision.

37 (B) If the benefits paid on the claim exceed the specific or
38 aggregate retention, and the policy does not require the insurer to
39 defend and adjust the claim, the permissibly self-insured employer
40 or group of self-insured employers, or the Self-Insurers' Security

1 Fund, shall not have any further payment obligations with respect
2 to the claim, but shall continue defending and adjusting the claim,
3 and shall have the right, but not the obligation, in any proceeding
4 to assert all applicable statutory limitations and exclusions as
5 contained in this article with regard to the covered claim. CIGA
6 shall have the right, but not the obligation, to intervene in any
7 proceeding where the self-insured employer, group of self-insured
8 employers, or the Self-Insurers' Security Fund is defending a claim
9 and shall be permitted to raise the appropriate statutory limitations
10 and exclusions as contained in this article with respect to covered
11 claims. Regardless of whether the self-insured employer or group
12 of self-insured employers, or the Self-Insurers' Security Fund,
13 asserts the applicable statutory limitations and exclusions, or
14 whether CIGA intervenes in a proceeding, CIGA shall be solely
15 responsible for paying all benefits due on the claim, subject to the
16 exclusions and limitations of this article with respect to covered
17 claims. As to each claim subject to this paragraph, notwithstanding
18 any other provision of the Insurance Code or the Labor Code and
19 regardless of whether the amount paid by CIGA is adequate to
20 discharge a claim obligation, neither the self-insured employer,
21 group of self-insured employers, nor the Self-Insurers' Security
22 Fund, shall have an obligation to pay benefits over and above the
23 specific or aggregate retention, except as provided in this
24 subdivision.

25 (C) In the event that the benefits paid on the covered claim
26 exceed the ~~per-claim~~ *per-claim* limit in paragraph (7), the
27 responsibility for paying, adjusting, and defending the claim shall
28 be returned to the permissibly self-insured employer or group of
29 employers, or the Self-Insurers' Security Fund.

30 These provisions shall apply to all pending and future
31 insolvencies. For purposes of this paragraph, a pending insolvency
32 is one involving a company that is currently receiving benefits
33 from the guarantee association.

34 (d) "Admitted to transact insurance in this state" means an
35 insurer possessing a valid certificate of authority issued by the
36 department.

37 (e) "Affiliate" means a person who directly or indirectly, through
38 one or more intermediaries, controls, is controlled by, or is under
39 common control with an insolvent insurer on December 31 of the

1 year next preceding the date the insurer becomes an insolvent
2 insurer.

3 (f) “Control” means the possession, direct or indirect, of the
4 power to direct or cause the direction of the management and
5 policies of a person, whether through the ownership of voting
6 securities, by contract other than a commercial contract for goods
7 or nonmanagement services, or otherwise, unless the power is the
8 result of an official position with or corporate office held by the
9 person. Control is presumed to exist if a person, directly or
10 indirectly, owns, controls, holds with the power to vote, or holds
11 proxies representing, 10 percent or more of the voting securities
12 of any other person. This presumption may be rebutted by showing
13 that control does not in fact exist.

14 (g) “Claimant” means an insured making a first party claim or
15 a person instituting a liability claim; ~~provided that~~. *However*, no
16 person who is an affiliate of the insolvent insurer may be a
17 claimant.

18 (h) “Ocean marine insurance” includes marine insurance as
19 defined in Section 103, except for inland marine insurance, as well
20 as any other form of insurance, regardless of the name, label, or
21 marketing designation of the insurance policy, that insures against
22 maritime perils or risks and other related perils or risks, that are
23 usually insured against by traditional marine insurance such as
24 hull and machinery, marine builders’ risks, and marine protection
25 and indemnity. Those perils and risks insured against include,
26 without limitation, loss, damage, or expense or legal liability of
27 the insured arising out of or incident to ownership, operation,
28 chartering, maintenance, use, repair, or construction of a vessel,
29 craft, or instrumentality in use in ocean or inland waterways,
30 including liability of the insured for personal injury, illness, or
31 death for loss or damage to the property of the insured or another
32 person.

33 (i) “Unearned premium” means that portion of a premium as
34 calculated by the liquidator that had not been earned because of
35 the cancellation of the insolvent insurer’s policy and is that
36 premium remaining for the unexpired term of the insolvent
37 insurer’s policy. “Unearned premium” does not include any amount
38 sought as return of a premium under a policy providing retroactive
39 insurance of a known loss or return of a premium under a
40 retrospectively rated policy or a policy subject to a contingent

1 surcharge or a policy in which the final determination of the
2 premium cost is computed after expiration of the policy and is
3 calculated on the basis of actual loss experience during the policy
4 period.

5 SEC. 136. Section 1754 of the Insurance Code is amended to
6 read:

7 1754. Transaction of travel insurance under the license of an
8 organization holding a limited lines travel insurance agent license
9 shall be subject to the following conditions:

10 (a) A limited lines travel insurance agent may authorize a travel
11 retailer to transact travel insurance on behalf of and under its
12 authority under the following conditions:

13 (1) The limited lines travel insurance agent is clearly identified
14 on marketing materials and fulfillment packages distributed by the
15 travel retailers to customers. The marketing materials and
16 fulfillment packages shall include the agent's name, business
17 address, email address, telephone number, license number, and
18 the availability of the department's toll-free consumer hotline.

19 (2) The limited lines travel insurance agent, at the time of
20 licensure and thereafter, maintains a register noting each travel
21 retailer that transacts travel insurance on the licensee's behalf. The
22 register shall be maintained and updated annually by the licensee
23 in a form prescribed by, or format acceptable to, the commissioner
24 and shall include the name and contact information of the travel
25 retailer and an officer or person who directs or controls the travel
26 retailer's operations, and the travel retailer's federal employer
27 identification number (FEIN). The licensee shall also certify that
28 the registered travel retailer complies with Section 1033 of Title
29 18 of the United States Code. The licensee shall submit the register
30 for review and inspection upon request by the department.

31 (3) The limited lines travel insurance agent has designated one
32 of its employees to be responsible for its compliance with the
33 insurance laws, rules, and regulations of the state. The limited lines
34 travel insurance agent and its designated responsible employees
35 shall hold property, casualty, life-only, and accident and health
36 agent licenses, to the extent required by this chapter, based upon
37 the types of insurance transacted by the licensee.

38 (4) The employee designated by the limited lines travel
39 insurance agent, pursuant to paragraph (3), and any of the
40 organization's partners, members, controlling persons, officers,

1 directors, and managers comply with the background check
2 requirements as required by the commissioner.

3 (5) The limited lines travel insurance agent has paid all
4 applicable licensing fees required under California law.

5 (6) The limited lines travel insurance agent uses all reasonable
6 means at its disposal to ensure compliance by the travel retailer
7 and the travel retailer's employees with their obligations under
8 this article. This includes requiring each employee of the travel
9 retailer whose duties include transacting travel insurance to receive
10 training. The training shall be provided whenever there is a material
11 change that requires a modification to the training materials, but
12 in no event less frequently than every three years. Training
13 materials used by or on behalf of the limited lines travel insurance
14 agent to train the employees of a travel retailer shall be submitted
15 to the department at the time the travel insurance agent applies for
16 a license under this article, and whenever modified thereafter. The
17 training materials, at a minimum, should contain instruction on
18 the types of insurance offered, ethical sales practices, and
19 disclosures to prospective insurance customers. Any changes to
20 previously submitted training materials shall be submitted to the
21 department with the changes highlighted 30 days prior to their use
22 by the limited lines travel insurance agent. Training materials and
23 changes to those materials submitted to the department pursuant
24 to this subdivision shall be deemed approved for use by the limited
25 lines travel insurance agent unless it is notified by the department
26 to the contrary. Failure by a limited lines travel insurance agent to
27 submit training materials or changes for departmental review or
28 use of unapproved or disapproved training materials shall constitute
29 grounds for denial of an application for a license, nonrenewal of
30 a license, or suspension of a license, or other action as deemed
31 appropriate by the commissioner.

32 (7) The limited lines travel insurance agent or the travel retailer
33 provides disclosure to the consumer, in either the marketing
34 materials or fulfillment packages, that is substantively similar to
35 the following:

36 This plan provides insurance coverage that only applies during
37 the covered trip. You may have coverage from other sources that
38 provides you with similar benefits but may be subject to different
39 restrictions depending upon your other coverages. You may wish
40 to compare the terms of this policy with your existing life, health,

1 home, and automobile insurance policies. If you have any questions
2 about your current coverage, call your insurer or insurance agent
3 or broker.

4 (8) The limited lines travel insurance agent or the travel retailer
5 makes all of the following disclosures to the prospective insured,
6 which shall be acknowledged in writing by the purchaser or
7 displayed by clear and conspicuous signs that are posted at every
8 location where contracts are executed, including, but not limited
9 to, the counter where the purchaser signs the service agreement,
10 or provided in writing to the purchaser:

11 (A) That purchasing travel insurance is not required in order to
12 purchase any other product or service offered by the travel retailer.

13 (B) If not individually licensed, that the travel retailer's
14 employee is not qualified or authorized to:

15 (i) Answer technical questions about the benefits, exclusions,
16 and conditions of any of the insurance offered by the travel retailer.

17 (ii) Evaluate the adequacy of the prospective insured's existing
18 insurance coverage.

19 (b) A travel retailer that meets the requirements set forth in this
20 section and whose activities are limited to offering and selling
21 travel insurance on behalf of a licensed limited lines travel
22 insurance agent is authorized to receive compensation.

23 (c) (1) If the commissioner determines that a travel retailer, or
24 a travel retailer's employee, has violated any provision of this
25 article or any other provision of this code, the commissioner may:

26 (A) Direct the limited lines travel insurance agent to implement
27 a corrective action plan with the travel retailer.

28 (B) Direct the limited lines travel insurance agent to revoke the
29 authorization of the travel retailer to transact travel insurance on
30 its behalf and under its license and to remove the travel retailer's
31 name from its register.

32 (2) If the commissioner determines that a travel retailer, or a
33 travel retailer's employee, has violated any provision in this article
34 or any other provision of this code, the commissioner, after notice
35 and hearing, may:

36 (A) Suspend or revoke the license of the limited lines travel
37 insurance agent as authorized under this code.

38 (B) Impose a monetary fine on the limited lines travel insurance
39 agent.

1 (3) A limited lines travel insurance agent who aids and abets a
 2 travel retailer in the transaction of travel insurance, as defined in
 3 this code, or aids and abets a travel retailer in any activity
 4 concerning travel insurance after being directed to revoke the travel
 5 retailer’s authorization, in addition to any other action authorized
 6 under this code, shall be subject to a monetary penalty pursuant
 7 to ~~paragraphs (2) and~~ *paragraph* (3) of subdivision (a) of Section
 8 12921.8.

9 (d) The conduct of employees of the travel retailer who have
 10 been designated to transact travel insurance on behalf of the
 11 licensed limited lines travel insurance agent shall be deemed the
 12 conduct of the licensed limited lines travel insurance agent for
 13 purposes of this article.

14 SEC. 137. Section 10113.71 of the Insurance Code is amended
 15 to read:

16 10113.71. (a) ~~Every~~ *Each* life insurance policy issued or
 17 delivered in this state shall contain a provision for a grace period
 18 of not less than 60 days from the premium due date. The 60-day
 19 grace period shall not run concurrently with the period of paid
 20 coverage. The provision shall provide that the policy shall remain
 21 in force during the grace period.

22 (b) (1) A notice of pending lapse and termination of a life
 23 insurance policy shall not be effective unless mailed by the insurer
 24 to the named policy owner, a designee named pursuant to Section
 25 10113.72 for an individual life insurance policy, and a known
 26 assignee or other person having an interest in the individual life
 27 insurance policy, at least 30 days prior to the effective date of
 28 termination if termination is for nonpayment of premium.

29 (2) This subdivision shall not apply to nonrenewal.

30 (3) Notice shall be given to the policy owner and to the designee
 31 by first-class United States mail within 30 days after a premium
 32 is due and unpaid. However, notices made to assignees pursuant
 33 to this section may be done electronically with *the* consent of the
 34 assignee.

35 (c) For purposes of this section, a life insurance policy includes,
 36 but is not limited to, an individual life insurance policy and a group
 37 life insurance policy, except where otherwise provided.

38 SEC. 138. Section 10124 of the Insurance Code is amended
 39 to read:

1 10124. (a) A self-insured employee welfare benefit plan
2 delivered or issued for delivery in this state more than 120 days
3 after the effective date of this section, ~~that~~ *which* provides that
4 coverage of a dependent child of an employee shall terminate upon
5 attainment of the limiting age for dependent children specified in
6 the policy or contract, shall also provide in substance that
7 attainment of the limiting age shall not operate to terminate the
8 coverage of the child while the child is and continues to be both
9 ~~(a)~~ (1) incapable of self-sustaining employment by reason of an
10 intellectual disability or physical handicap and ~~(b)~~ (2) chiefly
11 dependent upon the employee for support and maintenance,
12 provided proof of the incapacity and dependency is furnished to
13 the employer or employee organization providing the plan or
14 program of benefits by the employee within 31 days of the child's
15 attainment of the limiting age and subsequently as may be required
16 by the employer or employee organization, but not more frequently
17 than annually after the two-year period following the child's
18 attainment of the limiting age.

19 (b) As used in this section, "self-insured employee welfare
20 benefit plan" means a plan or program of benefits provided by an
21 employer or an employee organization, or both, for the purpose
22 of providing hospital, medical, surgical, nursing, or dental services,
23 or indemnification for the costs incurred for these services, to the
24 employer's employees or their dependents.

25 SEC. 139. Section 10271 of the Insurance Code is amended
26 to read:

27 10271. (a) Except as set forth in this section, this chapter shall
28 not apply to, or in any way affect, provisions in life insurance,
29 endowment, or annuity contracts, or contracts supplemental thereto,
30 that provide additional benefits in case of death or dismemberment
31 or loss of sight by accident, or that operate to safeguard those
32 contracts against lapse, as described in subdivision (a) of Section
33 10271.1, or give a special surrender benefit, as defined in
34 subdivision (b) of Section 10271.1, or a special benefit, in the
35 event that the owner, insured, or annuitant, as applicable, meets
36 the benefit triggers specified in the life insurance or annuity
37 contract or supplemental contract.

38 (b) (1) A provision or supplemental contract described in
39 subdivision (a) shall contain all of the provisions set forth in
40 paragraph (2). However, an insurer, at its option, may substitute

1 for one or more of the provisions a corresponding provision of
2 different wording approved by the commissioner that is not less
3 favorable in any respect to the owner, insured, or annuitant, as
4 applicable. The provisions required by paragraph (2) shall be
5 preceded individually by the appropriate caption, or, at the option
6 of the insurer, by the appropriate individual or group captions or
7 subcaptions as the commissioner may approve.

8 (2) With respect to the benefit standards described in
9 subdivisions (a) and (b) of Section 10271.1, the following
10 requirements apply to the supplemental contracts with these
11 benefits:

12 (A) Either the contract or supplemental contract shall provide
13 that the contract and the supplemental contract constitute the entire
14 insurance or annuity contract consistent with paragraph (7) of
15 subdivision (c) of Section 2534.3 of Title 10 of the California Code
16 of Regulations, and shall also provide that no agent has the
17 authority to change the contract or to waive any of its provisions.
18 This requirement applies without regard to whether the contract
19 is a variable or nonvariable contract, or a group or individual
20 contract. This provision shall be preceded individually by a caption
21 stating “ENTIRE CONTRACT; CHANGES:” or other appropriate
22 caption as the commissioner may approve.

23 (B) Either the contract or supplemental contract shall provide
24 for reinstatement consistent with paragraph (3) of subdivision (c)
25 of Section 2534.3 of Title 10 of the California Code of Regulations.
26 This requirement applies without regard to whether the contract
27 is a variable or nonvariable contract, or a group or individual
28 contract. This provision shall be preceded individually by a caption
29 stating “REINSTATEMENT:” or other appropriate caption as the
30 commissioner may approve.

31 (C) Supplemental contracts subject to underwriting shall include
32 an incontestability statement that provides that the insurer shall
33 not contest the supplemental contract after it has been in force
34 during the lifetime of the insured for two years from its date of
35 issue, and may only be contested based on a statement made in
36 the application for the supplemental contract, if the statement is
37 attached to the contract. The statement upon which the contest is
38 made shall be material to the risk accepted or the hazard assumed
39 by the insurer. This provision shall be preceded individually by a

1 caption stating “INCONTESTABLE:” or other appropriate caption
2 as the commissioner may approve.

3 (D) A provision or supplemental contract described in
4 subdivision (a) shall also include:

5 (i) NOTICE OF CLAIM: The insurer may require written notice
6 of claim no less than 20 days after an occurrence covered by the
7 provision or supplemental contract, or commencement of any loss
8 covered by the provision or supplemental contract. Notice given
9 by or on behalf of the insured or the beneficiary, as applicable to
10 the insurer at the insurer’s address or telephone number, or to any
11 authorized agent of the insurer, with information sufficient to
12 identify the insured, shall be deemed notice to the insurer.

13 (ii) CLAIM FORMS: The insurer, upon receipt of a notice of
14 claim, shall furnish to the claimant such forms as are usually
15 furnished by it for filing a proof of occurrence or a proof of loss.
16 If the forms are not furnished within 15 days after giving notice,
17 the claimant shall be deemed to have complied with the
18 requirements of the provision or supplemental contract as to proof
19 of occurrence or proof of loss upon submitting, within the time
20 fixed in the provision or supplemental contract for filing proof of
21 occurrence or proof of loss, written proof covering the character
22 and the extent of the occurrence or loss.

23 (iii) PROOF OF LOSS: The insurer may require that the insured
24 provide written proof of occurrence or proof of loss no less than
25 90 days after the termination of the period for which the insurer
26 is liable, and, in the case of claim for any other occurrence or loss,
27 within 90 days after the date of the occurrence or loss. Failure to
28 furnish proof within the time required shall not invalidate or reduce
29 the claim if it was not reasonably possible to give proof within the
30 time, provided proof is furnished as soon as reasonably possible
31 and, except in the absence of legal capacity, no later than one year
32 from the time proof is otherwise required.

33 (iv) PHYSICAL EXAMINATIONS: The insurer, at its own
34 expense, shall have the right and opportunity to examine the person
35 of the insured when and as often as the insurer may reasonably
36 require during the pendency of a claim.

37 (c) The commissioner shall review contracts and supplemental
38 contracts to ensure that the language can be readily understood
39 and interpreted, and shall not approve any contract or supplemental
40 contract for insurance or delivery in this state if the commissioner

1 finds that the contract or supplemental contract does any of the
2 following:

3 (1) Contains any provision, label, description of its contents,
4 title, heading, backing, or other indication of its provisions that is
5 unintelligible, uncertain, ambiguous, or abstruse, or likely to
6 mislead a person to whom the contract or supplemental contract
7 is offered, delivered, or issued.

8 (2) Constitutes fraud, unfair trade practices, and insurance
9 economically unsound to the owner, insured, or annuitant, as
10 applicable.

11 (d) A provision or supplemental contract described in
12 subdivision (a) shall not contain any title, description, or any other
13 indication that would describe or imply that the policy or
14 supplemental contract provides long-term care coverage.

15 (e) Commencing two years from the date of the issuance of the
16 provision or supplemental contract, no claim for loss incurred or
17 disability, as defined in the provision or supplemental contract,
18 may be reduced or denied on the grounds that a disease or physical
19 condition not excluded from coverage by name or specific
20 description effective on the date of loss had existed prior to the
21 effective date on the coverage of the provision or supplemental
22 contract.

23 (f) With regard to benefits set forth in Section 10271.1, the
24 provisions and supplemental contracts shall specify any applicable
25 exclusions, which shall be limited to the following:

26 (1) Total disability caused or substantially contributed to by any
27 attempt at suicide or intentionally self-inflicted injury, while sane
28 or insane.

29 (2) Total disability caused or substantially contributed to by
30 war or an act of war, as defined in the exclusion provisions of the
31 contract.

32 (3) Total disability caused or substantially contributed to by
33 active participation in a riot, insurrection, or terrorist activity.

34 (4) Total disability caused or substantially contributed to by
35 committing or attempting to commit a felony.

36 (5) Total disability caused or substantially contributed to by
37 voluntary intake of either:

38 (A) Any drug, unless prescribed or administered by a physician
39 and taken in accordance with the physician's instructions.

1 (B) Poison, gas, or fumes, unless they are the direct result of an
2 occupational accident.

3 (6) Total disability occurring after the policy anniversary or
4 supplemental contract anniversary, as applicable and as defined
5 in the policy or supplemental contract, on which the insured attains
6 a specified age of no less than 65 years.

7 (7) Total disability in consequence of the insured being
8 intoxicated, as defined by the jurisdiction where the total disability
9 occurred.

10 (8) Total disability caused or materially contributed to by
11 engaging in an illegal occupation.

12 (g) If the commissioner notifies the insurer, in writing, that the
13 filed form does not comply with the requirements of law and
14 specifies the reasons for his or her opinion, it is unlawful for an
15 insurer to issue any policy in that form.

16 SEC. 140. Section 11665 of the Insurance Code is amended
17 to read:

18 11665. (a) An insurer who issues a workers' compensation
19 insurance policy to a roofing contractor holding a C-39 license
20 from the ~~Contractors~~ Contractors' State License Board shall
21 perform an annual payroll audit for the contractor. This audit shall
22 include an in-person visit to the place of business of the roofing
23 contractor to verify whether the number of employees reported by
24 the contractor is accurate. The insurer may impose a surcharge on
25 each policyholder audited under this subdivision in an amount
26 necessary to recoup the reasonable costs of conducting the annual
27 payroll audits.

28 (b) The commissioner shall direct the rating organization
29 designated as his or her statistical agent to compile pertinent
30 statistical data on those holding C-39 licenses, as reported by the
31 appropriate state entity, on an annual basis and provide a report to
32 him or her each year. The data shall track the total annual payroll
33 and loss data reported on those holding C-39 licenses in accordance
34 with the standard workers' compensation insurance classifications
35 applicable to roofing operations. The data shall include the number
36 of employers, total payroll, total losses, and the losses per one
37 hundred dollars (\$100) of payroll by the employers' annual payroll
38 intervals as follows:

39

40

1 to 4,999

1	5,000 to	9,999
2	10,000 to	14,999
3	15,000 to	19,999
4	20,000 to	24,999
5	25,000 to	29,999
6	30,000 to	39,999
7	40,000 to	49,999
8	50,000 to	74,999
9	75,000 to	99,999
10	100,000 to	199,999
11	200,000 to	299,999
12	300,000 to	399,999
13	400,000 to	499,999
14	500,000 to	599,999
15	600,000 to	699,999
16	700,000 to	799,999
17	800,000 to	899,999
18	900,000 to	999,999
19	1,000,000 to	1,099,999
20	1,100,000 to	1,199,999
21	1,200,000 to	1,299,999
22	1,300,000 to	1,399,999
23	1,400,000 to	1,499,999
24	1,500,000 or more	

25
 26
 27 ~~The~~
 28 *The* report shall also be provided to the Legislature by the
 29 commissioner, in compliance with Section 9795 of the Government
 30 Code.

31 SEC. 141. Section 12694.1 of the Insurance Code is amended
 32 to read:

33 12694.1. (a) Pursuant to Sections 14005.26 and 14005.27 of
 34 the Welfare and Institutions Code, subscribers enrolled in the
 35 Healthy Families Program pursuant to this part shall, no sooner
 36 than January 1, 2013, transition to the Medi-Cal program pursuant
 37 to Sections 14005.26 and 14005.27 of the Welfare and Institutions
 38 Code to the extent they are otherwise eligible. AIM-linked infants,
 39 as defined in Section 12695.03, with incomes above 250 percent
 40 of the federal poverty level are exempt from this transition.

1 (b) The board shall coordinate with the State Department of
2 Health Care Services to implement Sections 14005.26 and
3 14005.27 of the Welfare and Institutions Code.

4 (c) The board's actions to coordinate with the State Department
5 of Health Care Services to implement Sections 14005.26 and
6 14005.27 of the Welfare and Institutions Code, as specified in
7 subdivision (b), shall include, but not be limited to, all of the
8 following:

9 (1) Notwithstanding Section 12693.74, disenrollment of
10 subscribers in the manner, and at the times, specified in Section
11 14005.27 of the Welfare and Institutions Code. The board may
12 retain a subscriber in the program for longer than 12 months if
13 needed to ensure a smooth transition to the Medi-Cal program.

14 (2) In coordination with the State Department of Health Care
15 Services, provision of reasonable notice to applicants concerning
16 disenrollment of subscribers consistent with Section 14005.27 of
17 the Welfare and Institutions Code.

18 (3) Notwithstanding Section 12693.51 ~~of the Insurance Code~~,
19 transfers of subscribers from one participating plan to another at
20 the times and under the conditions prescribed by the board, without
21 the obligation that the board provide an annual opportunity for
22 subscribers to transfer from one participating plan to another.

23 (d) Nothing in subdivision (e) of Section 12693.43 shall be
24 construed to require any refund or adjustment of family
25 contributions if an applicant has paid for three months of required
26 family contributions in advance and the subscriber for whom the
27 applicant has paid these family contributions is disenrolled pursuant
28 to this section, or for any other reason, without receiving a fourth
29 consecutive month of coverage.

30 (e) (1) Notwithstanding Chapter 3.5 (commencing with Section
31 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
32 the board shall, without taking any further regulatory action,
33 implement, interpret, or make specific this section by means of
34 business rules, program bulletins, program correspondence to
35 subscribers and contractors, letters, or similar instructions.

36 (2) The board may adopt and readopt emergency regulations
37 implementing this section. The adoption and readoption, by the
38 board, of regulations implementing this section shall be deemed
39 an emergency and necessary to avoid serious harm to the public
40 peace, health, safety, or general welfare for purposes of Sections

1 11346.1 and 11349.6 of the Government Code, and the board is
2 hereby exempted from the requirement that it describe facts
3 showing the need for immediate action and from review by the
4 Office of Administrative Law.

5 (f) The Healthy Families Program, pursuant to this part, shall
6 cease to enroll new subscribers no sooner than the date transition
7 begins pursuant to subdivision (a), and any transition of children
8 shall be in compliance with the implementation plan or plans as
9 contained in Section 14005.27 of the Welfare and Institutions
10 Code.

11 SEC. 142. Section 980 of the Labor Code is amended to read:

12 980. (a) As used in this chapter, “social media” means an
13 electronic service or account, or electronic content, including, but
14 not limited to, videos, still photographs, blogs, video blogs,
15 podcasts, instant and text messages, ~~email~~ *e-mail*, online services
16 or accounts, or Internet Web site profiles or locations.

17 (b) An employer shall not require or request an employee or
18 applicant for employment to do any of the following:

19 (1) Disclose a username or password for the purpose of
20 accessing personal social media.

21 (2) Access personal social media in the presence of the
22 employer.

23 (3) Divulge any personal social media, except as provided in
24 subdivision (c).

25 (c) Nothing in this section shall affect an employer’s existing
26 rights and obligations to request an employee to divulge personal
27 social media reasonably believed to be relevant to an investigation
28 of allegations of employee misconduct or employee violation of
29 applicable laws and regulations, provided that the social media is
30 used solely for purposes of that investigation or a related
31 proceeding.

32 (d) Nothing in this section precludes an employer from requiring
33 or requesting an employee to disclose a username, password, or
34 other method for the purpose of accessing an employer-issued
35 electronic device.

36 (e) An employer shall not discharge, discipline, threaten to
37 discharge or discipline, or otherwise retaliate against an employee
38 or applicant for not complying with a request or demand by the
39 employer that violates this section. However, this section does not
40 prohibit an employer from terminating or otherwise taking an

1 adverse action against an employee or applicant if otherwise
2 permitted by law.

3 SEC. 143. Section 4709 of the Labor Code is amended to read:

4 4709. (a) Notwithstanding any other law, a dependent of a
5 peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31,
6 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39,
7 830.4, 830.5, or 830.6 of the Penal Code, or a Sheriff's Special
8 Officer of the County of Orange, who is killed in the performance
9 of duty or who dies or is totally disabled as a result of an accident
10 or an injury caused by external violence or physical force, incurred
11 in the performance of duty, when the death, accident, or injury is
12 compensable under this division or Division 4.5 (commencing
13 with Section 6100) shall be entitled to a scholarship at any
14 qualifying institution described in subdivision (l) of Section
15 69432.7 of the Education Code. The scholarship shall be in an
16 amount equal to the amount provided a student who has been
17 awarded a Cal Grant scholarship as specified in Chapter 1.7
18 (commencing with Section 69430) of Part 42 of Division 5 of Title
19 3 of the Education Code.

20 (b) A dependent of an officer or employee of the Department
21 of Corrections and Rehabilitation or the Department of Corrections
22 and Rehabilitation, Division of Juvenile Justice, described in
23 Section 20403 of the Government Code, who is killed in the
24 performance of duty, or who dies or is totally disabled as a result
25 of an accident or an injury incurred in the performance of duty,
26 when the death, accident, or injury is caused by the direct action
27 of an inmate, and is compensable under this division or Division
28 4.5 (commencing with Section 6100), shall also be entitled to a
29 scholarship specified in this section.

30 (c) Notwithstanding any other law, a dependent of a firefighter
31 employed by a county, city, city and county, district, or other
32 political subdivision of the state, who is killed in the performance
33 of duty or who dies or is totally disabled as a result of an accident
34 or injury incurred in the performance of duty, when the death,
35 accident, or injury is compensable under this division or Division
36 4.5 (commencing with Section 6100), shall also be entitled to a
37 scholarship specified in this section.

38 (d) Nothing in this section shall be interpreted to allow the
39 admittance of the dependent into a college or university unless the

1 dependent is otherwise qualified to gain admittance to the college
2 or university.

3 (e) The scholarship provided for by this section shall be paid
4 out of funds annually appropriated in the Budget Act to the Student
5 Aid Commission established by Article 2 (commencing with
6 Section 69510) of Chapter 2 of Part 42 of Division 5 of Title 3 of
7 the Education Code.

8 (f) The receipt of a scholarship provided for by this section shall
9 not preclude a dependent from receiving a Cal Grant award
10 pursuant to Chapter 1.7 (commencing with Section 69430) of Part
11 42 of Division 5 of Title 3 of the Education Code, any other grant,
12 or any fee waivers that may be provided by an institution of higher
13 education. The receipt of a Cal Grant award pursuant to Chapter
14 1.7 (commencing with Section 69430) of Part 42 of Division 5 of
15 Title 3 of the Education Code, any other grant, or any fee waivers
16 that may be provided by an institution of higher education shall
17 not preclude a dependent from receiving a scholarship provided
18 for by this section.

19 (g) As used in this section, “dependent” means the children
20 (natural or adopted) or spouse, at the time of the death or injury,
21 of the peace officer, law enforcement officer, or firefighter.

22 (h) Eligibility for a scholarship under this section shall be limited
23 to a person who demonstrates financial need as determined by the
24 Student Aid Commission pursuant to Article 1.5 (commencing
25 with Section 69503) of Chapter 2 of Part 42 of Division 5 of Title
26 3 of the Education Code. For purposes of determining financial
27 need, the proceeds of death benefits received by the dependent,
28 including, but not limited to, a continuation of income received
29 from the Public Employees’ Retirement System, the proceeds from
30 the federal Public Safety Officers’ Benefits Act, life insurance
31 policies, proceeds from Sections 4702 and 4703.5, any private
32 scholarship where receipt is predicated upon the recipient being
33 the survivor of a deceased public safety officer, the scholarship
34 awarded pursuant to Section 68120 of the Education Code, and
35 any interest received from these benefits, shall not be considered.

36 SEC. 144. Section 5502 of the Labor Code is amended to read:

37 5502. (a) Except as provided in subdivisions (b) and (d), the
38 hearing shall be held not less than 10 days, and not more than 60
39 days, after the date a declaration of readiness to proceed, on a form
40 prescribed by the appeals board, is filed. If a claim form has been

1 filed for an injury occurring on or after January 1, 1990, and before
2 January 1, 1994, an application for adjudication shall accompany
3 the declaration of readiness to proceed.

4 (b) The administrative director shall establish a priority calendar
5 for issues requiring an expedited hearing and decision. A hearing
6 shall be held and a determination as to the rights of the parties
7 shall be made and filed within 30 days after the declaration of
8 readiness to proceed is filed if the issues in dispute are any of the
9 following, provided that ~~when~~ *if* an expedited hearing is requested
10 pursuant to paragraph (2), no other issue may be heard until the
11 medical provider network dispute is resolved:

12 ~~(A)~~

13 (1) The employee's entitlement to medical treatment pursuant
14 to Section 4600, except for treatment issues determined pursuant
15 to Sections 4610 and 4610.5.

16 ~~(B)~~

17 (2) Whether the injured employee is required to obtain treatment
18 within a medical provider network.

19 ~~(C)~~

20 (3) A medical treatment appointment or medical-legal
21 examination.

22 ~~(D)~~

23 (4) The employee's entitlement to, or the amount of, temporary
24 disability indemnity payments.

25 ~~(4)~~

26 (5) The employee's entitlement to compensation from one or
27 more responsible employers when two or more employers dispute
28 liability as among themselves.

29 ~~(5)~~

30 (6) Any other issues requiring an expedited hearing and
31 determination as prescribed in rules and regulations of the
32 administrative director.

33 (c) The administrative director shall establish a priority
34 conference calendar for cases in which the employee is represented
35 by an attorney and the issues in dispute are employment or injury
36 arising out of employment or in the course of employment. The
37 conference shall be conducted by a workers' compensation
38 administrative law judge within 30 days after the declaration of
39 readiness to proceed. If the dispute cannot be resolved at the
40 conference, a trial shall be set as expeditiously as possible, unless

1 good cause is shown why discovery is not complete, in which case
2 status conferences shall be held at regular intervals. The case shall
3 be set for trial when discovery is complete, or when the workers'
4 compensation administrative law judge determines that the parties
5 have had sufficient time in which to complete reasonable discovery.
6 A determination as to the rights of the parties shall be made and
7 filed within 30 days after the trial.

8 (d) (1) In all cases, a mandatory settlement conference, except
9 a lien conference or a mandatory settlement lien conference, shall
10 be conducted not less than 10 days, and not more than 30 days,
11 after the filing of a declaration of readiness to proceed. If the
12 dispute is not resolved, the regular hearing, except a lien trial, shall
13 be held within 75 days after the declaration of readiness to proceed
14 is filed.

15 (2) The settlement conference shall be conducted by a workers'
16 compensation administrative law judge or by a referee who is
17 eligible to be a workers' compensation administrative law judge
18 or eligible to be an arbitrator under Section 5270.5. At the
19 mandatory settlement conference, the referee or workers'
20 compensation administrative law judge shall have the authority to
21 resolve the dispute, including the authority to approve a
22 compromise and release or issue a stipulated finding and award,
23 and if the dispute cannot be resolved, to frame the issues and
24 stipulations for trial. The appeals board shall adopt any regulations
25 needed to implement this subdivision. The presiding workers'
26 compensation administrative law judge shall supervise settlement
27 conference referees in the performance of their judicial functions
28 under this subdivision.

29 (3) If the claim is not resolved at the mandatory settlement
30 conference, the parties shall file a pretrial conference statement
31 noting the specific issues in dispute, each party's proposed
32 permanent disability rating, and listing the exhibits, and disclosing
33 witnesses. Discovery shall close on the date of the mandatory
34 settlement conference. Evidence not disclosed or obtained
35 thereafter shall not be admissible unless the proponent of the
36 evidence can demonstrate that it was not available or could not
37 have been discovered by the exercise of due diligence prior to the
38 settlement conference.

39 (e) In cases involving the Director of Industrial Relations in his
40 or her capacity as administrator of the Uninsured Employers Fund,

1 this section shall not apply unless proof of service, as specified in
2 paragraph (1) of subdivision (d) of Section 3716, has been filed
3 with the appeals board and provided to the Director of Industrial
4 Relations, valid jurisdiction has been established over the employer,
5 and the fund has been joined.

6 (f) Except as provided in subdivision (a) and in Section 4065,
7 the provisions of this section shall apply irrespective of the date
8 of injury.

9 SEC. 145. Section 136.2 of the Penal Code is amended to read:

10 136.2. (a) Except as provided in subdivision (c), upon a good
11 cause belief that harm to, or intimidation or dissuasion of, a victim
12 or witness has occurred or is reasonably likely to occur, a court
13 with jurisdiction over a criminal matter may issue orders, including,
14 but not limited to, the following:

15 (1) An order issued pursuant to Section 6320 of the Family
16 Code.

17 (2) An order that a defendant shall not violate any provision of
18 Section 136.1.

19 (3) An order that a person before the court other than a
20 defendant, including, but not limited to, a subpoenaed witness or
21 other person entering the courtroom of the court, shall not violate
22 any provisions of Section 136.1.

23 (4) An order that a person described in this section shall have
24 no communication whatsoever with a specified witness or a victim,
25 except through an attorney under reasonable restrictions that the
26 court may impose.

27 (5) An order calling for a hearing to determine if an order as
28 described in paragraphs (1) to (4), inclusive, should be issued.

29 (6) (A) An order that a particular law enforcement agency
30 within the jurisdiction of the court provide protection for a victim
31 or a witness, or both, or for immediate family members of a victim
32 or a witness who reside in the same household as the victim or
33 witness or within reasonable proximity of the victim's or witness'
34 household, as determined by the court. The order shall not be made
35 without the consent of the law enforcement agency except for
36 limited and specified periods of time and upon an express finding
37 by the court of a clear and present danger of harm to the victim or
38 witness or immediate family members of the victim or witness.

1 (B) For purposes of this paragraph, “immediate family
2 members” include the spouse, children, or parents of the victim
3 or witness.

4 (7) (A) An order protecting victims of violent crime from all
5 contact by the defendant, or contact, with the intent to annoy,
6 harass, threaten, or commit acts of violence, by the defendant. The
7 court or its designee shall transmit orders made under this
8 paragraph to law enforcement personnel within one business day
9 of the issuance, modification, extension, or termination of the
10 order, pursuant to subdivision (a) of Section 6380 of the Family
11 Code. It is the responsibility of the court to transmit the
12 modification, extension, or termination orders made under this
13 paragraph to the same agency that entered the original protective
14 order into the Domestic Violence Restraining Order System.

15 (B) (i) If a court does not issue an order pursuant to
16 subparagraph (A) in a case in which the defendant is charged with
17 a crime of domestic violence as defined in Section 13700, the court
18 on its own motion shall consider issuing a protective order upon
19 a good cause belief that harm to, or intimidation or dissuasion of,
20 a victim or witness has occurred or is reasonably likely to occur,
21 that provides as follows:

22 (I) The defendant shall not own, possess, purchase, receive, or
23 attempt to purchase or receive, a firearm while the protective order
24 is in effect.

25 (II) The defendant shall relinquish any firearms that he or she
26 owns or possesses pursuant to Section 527.9 of the Code of Civil
27 Procedure.

28 (ii) Every person who owns, possesses, purchases, or receives,
29 or attempts to purchase or receive, a firearm while this protective
30 order is in effect is punishable pursuant to Section 29825.

31 (C) An order issued, modified, extended, or terminated by a
32 court pursuant to this paragraph shall be issued on forms adopted
33 by the Judicial Council of California and that have been approved
34 by the Department of Justice pursuant to subdivision (i) of Section
35 6380 of the Family Code. However, the fact that an order issued
36 by a court pursuant to this section was not issued on forms adopted
37 by the Judicial Council and approved by the Department of Justice
38 shall not, in and of itself, make the order unenforceable.

39 (D) A protective order under this paragraph may require the
40 defendant to be placed on electronic monitoring if the local

1 government, with the concurrence of the county sheriff or the chief
2 probation officer with jurisdiction, adopts a policy to authorize
3 electronic monitoring of defendants and specifies the agency with
4 jurisdiction for this purpose. If the court determines that the
5 defendant has the ability to pay for the monitoring program, the
6 court shall order the defendant to pay for the monitoring. If the
7 court determines that the defendant does not have the ability to
8 pay for the electronic monitoring, the court may order electronic
9 monitoring to be paid for by the local government that adopted
10 the policy to authorize electronic monitoring. The duration of
11 electronic monitoring shall not exceed one year from the date the
12 order is issued. At no time shall the electronic monitoring be in
13 place if the protective order is not in place.

14 (b) A person violating an order made pursuant to paragraphs
15 (1) to (7), inclusive, of subdivision (a) may be punished for any
16 substantive offense described in Section 136.1, or for a contempt
17 of the court making the order. A finding of contempt shall not be
18 a bar to prosecution for a violation of Section 136.1. However, a
19 person so held in contempt shall be entitled to credit for punishment
20 imposed therein against a sentence imposed upon conviction of
21 an offense described in Section 136.1. A conviction or acquittal
22 for a substantive offense under Section 136.1 shall be a bar to a
23 subsequent punishment for contempt arising out of the same act.

24 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
25 protective order issued pursuant to Chapter 2 (commencing with
26 Section 6250) of Part 3 of Division 10 of the Family Code or
27 Section 646.91 of ~~the Penal Code~~ *this code* shall have precedence
28 in enforcement over any other restraining or protective order,
29 provided *that* the emergency protective order meets all of the
30 following requirements:

31 (A) The emergency protective order is issued to protect one or
32 more individuals who are already protected persons under another
33 restraining or protective order.

34 (B) The emergency protective order restrains the individual who
35 is the restrained person in the other restraining or protective order
36 specified in subparagraph (A).

37 (C) The provisions of the emergency protective order are more
38 restrictive in relation to the restrained person than are the provisions
39 of the other restraining or protective order specified in
40 subparagraph (A).

1 (2) An emergency protective order that meets the requirements
2 of paragraph (1) shall have precedence in enforcement over the
3 provisions of any other restraining or protective order only with
4 respect to those provisions of the emergency protective order that
5 are more restrictive in relation to the restrained person.

6 (d) (1) A person subject to a protective order issued under this
7 section shall not own, possess, purchase, receive, or attempt to
8 purchase or receive a firearm while the protective order is in effect.

9 (2) The court shall order a person subject to a protective order
10 issued under this section to relinquish any firearms he or she owns
11 or possesses pursuant to Section 527.9 of the Code of Civil
12 Procedure.

13 (3) A person who owns, possesses, purchases or receives, or
14 attempts to purchase or receive a firearm while the protective order
15 is in effect is punishable pursuant to Section 29825.

16 (e) (1) In all cases where the defendant is charged with a crime
17 of domestic violence, as defined in Section 13700, the court shall
18 consider issuing the above-described orders on its own motion.
19 All interested parties shall receive a copy of those orders. In order
20 to facilitate this, the court's records of all criminal cases involving
21 domestic violence shall be marked to clearly alert the court to this
22 issue.

23 (2) In those cases in which a complaint, information, or
24 indictment charging a crime of domestic violence, as defined in
25 Section 13700, has been issued, a restraining order or protective
26 order against the defendant issued by the criminal court in that
27 case has precedence in enforcement over a civil court order against
28 the defendant, unless a court issues an emergency protective order
29 pursuant to Chapter 2 (commencing with Section 6250) of Part 3
30 of Division 10 of the Family Code or Section 646.91 of ~~the Penal~~
31 ~~Code~~ *this code*, in which case the emergency protective order shall
32 have precedence in enforcement over any other restraining or
33 protective order, provided *that* the emergency protective order
34 meets the following requirements:

35 (A) The emergency protective order is issued to protect one or
36 more individuals who are already protected persons under another
37 restraining or protective order.

38 (B) The emergency protective order restrains the individual who
39 is the restrained person in the other restraining or protective order
40 specified in subparagraph (A).

1 (C) The provisions of the emergency protective order are more
2 restrictive in relation to the restrained person than are the provisions
3 of the other restraining or protective order specified in
4 subparagraph (A).

5 (3) Custody and visitation with respect to the defendant and his
6 or her minor children may be ordered by a family or juvenile court
7 consistent with the protocol established pursuant to subdivision
8 (f), but if ordered after a criminal protective order has been issued
9 pursuant to this section, the custody and visitation order shall make
10 reference to, and acknowledge the precedence of enforcement of,
11 an appropriate criminal protective order. On or before July 1, 2006,
12 the Judicial Council shall modify the criminal and civil court forms
13 consistent with this subdivision.

14 (f) On or before January 1, 2003, the Judicial Council shall
15 promulgate a protocol, for adoption by each local court in
16 substantially similar terms, to provide for the timely coordination
17 of all orders against the same defendant and in favor of the same
18 named victim or victims. The protocol shall include, but shall not
19 be limited to, mechanisms for assuring appropriate communication
20 and information sharing between criminal, family, and juvenile
21 courts concerning orders and cases that involve the same parties,
22 and shall permit a family or juvenile court order to coexist with a
23 criminal court protective order subject to the following conditions:

24 (1) An order that permits contact between the restrained person
25 and his or her children shall provide for the safe exchange of the
26 children and shall not contain language either printed or
27 handwritten that violates a “no contact order” issued by a criminal
28 court.

29 (2) Safety of all parties shall be the courts’ paramount concern.
30 The family or juvenile court shall specify the time, day, place, and
31 manner of transfer of the child, as provided in Section 3100 of the
32 Family Code.

33 (g) On or before January 1, 2003, the Judicial Council shall
34 modify the criminal and civil court protective order forms
35 consistent with this section.

36 (h) In any case in which a complaint, information, or indictment
37 charging a crime of domestic violence, as defined in Section 13700,
38 has been filed, the court may consider, in determining whether
39 good cause exists to issue an order under paragraph (1) of

1 subdivision (a), the underlying nature of the offense charged, and
2 the information provided to the court pursuant to Section 273.75.

3 (i) (1) In all cases in which a criminal defendant has been
4 convicted of a crime of domestic violence as defined in Section
5 13700, the court, at the time of sentencing, shall consider issuing
6 an order restraining the defendant from any contact with the victim.
7 The order may be valid for up to 10 years, as determined by the
8 court. This protective order may be issued by the court regardless
9 of whether the defendant is sentenced to the state prison or a county
10 jail, or whether imposition of sentence is suspended and the
11 defendant is placed on probation. It is the intent of the Legislature
12 in enacting this subdivision that the duration of any restraining
13 order issued by the court be based upon the seriousness of the facts
14 before the court, the probability of future violations, and the safety
15 of the victim and his or her immediate family.

16 (2) An order under this subdivision may include provisions for
17 electronic monitoring if the local government, upon receiving the
18 concurrence of the county sheriff or the chief probation officer
19 with jurisdiction, adopts a policy authorizing electronic monitoring
20 of defendants and specifies the agency with jurisdiction for this
21 purpose. If the court determines that the defendant has the ability
22 to pay for the monitoring program, the court shall order the
23 defendant to pay for the monitoring. If the court determines that
24 the defendant does not have the ability to pay for the electronic
25 monitoring, the court may order the electronic monitoring to be
26 paid for by the local government that adopted the policy authorizing
27 electronic monitoring. The duration of the electronic monitoring
28 shall not exceed one year from the date the order is issued.

29 (j) For purposes of this section, “local government” means the
30 county that has jurisdiction over the protective order.

31 SEC. 146. Section 289.6 of the Penal Code is amended to read:

32 289.6. (a) (1) An employee or officer of a public entity health
33 facility, or an employee, officer, or agent of a private person or
34 entity that provides a health facility or staff for a health facility
35 under contract with a public entity, who engages in sexual activity
36 with a consenting adult who is confined in a health facility is guilty
37 of a public offense. As used in this paragraph, “health facility”
38 means a health facility as defined in subdivisions (b), (e), (g), (h),
39 and (j) of, and subparagraph (C) of paragraph (2) of subdivision

1 (i) of, Section 1250 of the Health and Safety Code, in which the
2 victim has been confined involuntarily.

3 (2) An employee or officer of a public entity detention facility,
4 or an employee, officer, *or* agent of a private person or entity that
5 provides a detention facility or staff for a detention facility, a
6 person or agent of a public or private entity under contract with a
7 detention facility, a volunteer of a private or public entity detention
8 facility, or a peace officer who engages in sexual activity with a
9 consenting adult who is confined in a detention facility is guilty
10 of a public offense.

11 (3) An employee with a department, board, or authority under
12 the ~~California~~ Department of Corrections and Rehabilitation or a
13 facility under contract with a department, board, or authority under
14 the ~~California~~ Department of Corrections and Rehabilitation, who,
15 during the course of his or her employment directly provides
16 treatment, care, control, or supervision of inmates, wards, or
17 parolees, and who engages in sexual activity with a consenting
18 adult who is an inmate, ward, or parolee, is guilty of a public
19 offense.

20 (b) As used in this section, the term “public entity” means the
21 state, *the* federal government, a city, a county, a city and county,
22 a joint county jail district, or any entity created as a result of a joint
23 powers agreement between two or more public entities.

24 (c) As used in this section, the term “detention facility” means:

25 (1) A prison, jail, camp, or other correctional facility used for
26 the confinement of adults or both adults and minors.

27 (2) A building or facility used for the confinement of adults or
28 adults and minors pursuant to a contract with a public entity.

29 (3) A room that is used for holding persons for interviews,
30 interrogations, or investigations and that is separate from a jail or
31 located in the administrative area of a law enforcement facility.

32 (4) A vehicle used to transport confined persons during their
33 period of confinement, including transporting a person after he or
34 she has been arrested but has not been booked.

35 (5) A court holding facility located within or adjacent to a court
36 building that is used for the confinement of persons for the purpose
37 of court appearances.

38 (d) As used in this section, “sexual activity” means:

39 (1) Sexual intercourse.

40 (2) Sodomy, as defined in subdivision (a) of Section 286.

1 (3) Oral copulation, as defined in subdivision (a) of Section
2 288a.

3 (4) Sexual penetration, as defined in subdivision (k) of Section
4 289.

5 (5) The rubbing or touching of the breasts or sexual organs of
6 another, or of oneself in the presence of and with knowledge of
7 another, with the intent of arousing, appealing to, or gratifying the
8 lust, passions, or sexual desires of oneself or another.

9 (e) Consent by a confined person or parolee to sexual activity
10 proscribed by this section is not a defense to a criminal prosecution
11 for violation of this section.

12 (f) This section does not apply to sexual activity between
13 consenting adults that occurs during an overnight conjugal visit
14 that takes place pursuant to a court order or with the written
15 approval of an authorized representative of the public entity that
16 operates or contracts for the operation of the detention facility
17 where the conjugal visit takes place, to physical contact or
18 penetration made pursuant to a lawful search, or bona fide medical
19 examinations or treatments, including clinical treatments.

20 (g) Any violation of paragraph (1) of subdivision (a), or a
21 violation of paragraph (2) or (3) of subdivision (a) as described in
22 paragraph (5) of subdivision (d), is a misdemeanor.

23 (h) Any violation of paragraph (2) or (3) of subdivision (a), as
24 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall
25 be punished by imprisonment in a county jail not exceeding one
26 year, or in the state prison, or by a fine of not more than ten
27 thousand dollars (\$10,000) or by both that fine and imprisonment.

28 (i) Any person previously convicted of a violation of this section
29 shall, upon a subsequent violation, be guilty of a felony.

30 (j) Anyone who is convicted of a felony violation of this section
31 who is employed by a department, board, or authority within the
32 ~~Youth and Adult Correctional Agency~~ *Department of Corrections*
33 *and Rehabilitation* shall be terminated in accordance with the State
34 Civil Service Act (Part 2 (commencing with Section 18500) of
35 Division 5 of Title 2 of the Government Code). Anyone who has
36 been convicted of a felony violation of this section shall not be
37 eligible to be hired or reinstated by a department, board, or
38 authority within the ~~Youth and Adult Correctional Agency~~
39 *Department of Corrections and Rehabilitation*.

40 SEC. 147. Section 496a of the Penal Code is amended to read:

1 496a. (a) Every person who, ~~being~~ *is* a dealer in or collector
2 of junk, metals or secondhand materials, or the agent, employee,
3 or representative of such dealer or collector, *and who* buys or
4 receives any wire, cable, copper, lead, solder, mercury, iron or
5 brass which he or she knows or reasonably should know is
6 ordinarily used by or ordinarily belongs to a railroad or other
7 transportation, telephone, telegraph, gas, water or electric light
8 company, or *a* county, city and county or other political
9 subdivision of this state engaged in furnishing public utility service,
10 without using due diligence to ascertain that the person selling or
11 delivering the same has a legal right to do so, is guilty of criminally
12 receiving that property, and shall be punished by imprisonment in
13 a county jail for not more than one year, or by imprisonment
14 pursuant to subdivision (h) of Section 1170, or by a fine of not
15 more than one thousand dollars (\$1,000), or by both that fine and
16 imprisonment.

17 (b) Any person ~~buying or receiving~~ *who buys or receives*
18 material pursuant to subdivision (a) shall obtain evidence of his
19 or her identity from the seller including, but not limited to, that
20 person's full name, signature, address, driver's license number,
21 *and* vehicle license number, and the license number of the vehicle
22 delivering the material.

23 (c) The record of the transaction shall include an appropriate
24 description of the material purchased and the record shall be
25 maintained pursuant to Section 21607 of the Business and
26 Professions Code.

27 SEC. 148. Section 781 of the Penal Code is amended to read:

28 781. Except as provided in Section 923, when a public offense
29 is committed in part in one jurisdictional territory and in part in
30 another, jurisdictional territory, or the acts or effects thereof
31 constituting or requisite to the consummation of the offense occur
32 in two or more jurisdictional territories, the jurisdiction for the
33 offense is in any competent court within either jurisdictional
34 territory.

35 SEC. 149. Section 830.41 of the Penal Code is amended to
36 read:

37 830.41. Notwithstanding any other provision of law, the City
38 of Tulelake, California, is authorized to enter into a mutual aid
39 agreement with the City of Malin, Oregon, for the purpose of
40 permitting their police departments to provide mutual aid to each

1 other when necessary. Before the effective date of the agreement,
2 the agreement shall be reviewed and approved by the
3 Commissioner of the California Highway Patrol.

4 SEC. 150. Section 830.55 of the Penal Code is amended to
5 read:

6 830.55. (a) (1) As used in this section, a correctional officer
7 is a peace officer, employed by a city, county, or city and county
8 ~~which~~ *that* operates a facility described in Section 2910.5 of this
9 code or Section 1753.3 of the Welfare and Institutions Code or
10 facilities operated by counties pursuant to Section 6241 or 6242
11 of this code under contract with the Department of Corrections
12 and Rehabilitation or the Division of Juvenile ~~Facilities~~ *Justice*
13 within the department, who has the authority and responsibility
14 for maintaining custody of specified state prison inmates or wards,
15 and who performs tasks related to the operation of a detention
16 facility used for the detention of persons who have violated parole
17 or are awaiting parole back into the community or, upon court
18 order, either for their own safekeeping or for the specific purpose
19 of serving a sentence therein.

20 (2) As used in this section, a correctional officer is also a peace
21 officer, employed by a city, county, or city and county ~~which~~ *that*
22 operates a facility described in Section 4115.55, who has the
23 authority and responsibility for maintaining custody of inmates
24 sentenced to or housed in that facility, and who performs tasks
25 related to the operation of that facility.

26 (b) A correctional officer shall have no right to carry or possess
27 firearms in the performance of his or her prescribed duties, except,
28 under the direction of the superintendent of the facility, while
29 engaged in transporting prisoners, guarding hospitalized prisoners,
30 or suppressing riots, lynchings, escapes, or rescues in or about a
31 detention facility established pursuant to Section 2910.5 or 4115.55
32 of this code or Section 1753.3 of the Welfare and Institutions Code.

33 (c) Each person described in this section as a correctional officer,
34 within 90 days following the date of the initial assignment to that
35 position, shall satisfactorily complete the training course specified
36 in Section 832. In addition, each person designated as a correctional
37 officer, within one year following the date of the initial assignment
38 as an officer, shall have satisfactorily met the minimum selection
39 and training standards prescribed by the Board of State and
40 Community Corrections pursuant to Section 6035. Persons

1 designated as correctional officers, before the expiration of the
2 90-day and one-year periods described in this subdivision, who
3 have not yet completed the required training, may perform the
4 duties of a correctional officer only while under the direct
5 supervision of a correctional officer who has completed the training
6 required in this section, and shall not carry or possess firearms in
7 the performance of their prescribed duties.

8 (d) This section shall not be construed to confer any authority
9 upon a correctional officer except while on duty.

10 (e) A correctional officer may use reasonable force in
11 establishing and maintaining custody of persons delivered to him
12 or her by a law enforcement officer, may make arrests for
13 misdemeanors and felonies within the local detention facility
14 pursuant to a duly issued warrant, and may make warrantless arrests
15 pursuant to Section 836.5 only during the duration of his or her
16 job.

17 SEC. 151. Section 1001.20 of the Penal Code is amended to
18 read:

19 1001.20. As used in this chapter:

20 (a) “Cognitive Developmental Disability” means any of the
21 following:

22 (1) “Intellectual disability” means a condition of significantly
23 subaverage general intellectual functioning existing concurrently
24 with deficits in adaptive behavior and manifested during the
25 developmental period.

26 (2) “Autism” means a diagnosed condition of markedly
27 abnormal or impaired development in social interaction, in
28 communication, or in both, with a markedly restricted repertoire
29 of activity and interests.

30 (3) Disabling conditions found to be closely related to
31 intellectual disability or autism, or that require treatment similar
32 to that required for individuals with intellectual disability or autism,
33 and that would qualify an individual for services provided under
34 the Lanterman Developmental Disabilities Services Act.

35 (b) “Diversion-related treatment and habilitation” means, but
36 is not limited to, specialized services or special adaptations of
37 generic services, directed toward the alleviation of cognitive
38 developmental disability or toward social, personal, physical, or
39 economic habilitation or rehabilitation of an individual with a
40 cognitive developmental disability, and includes, but is not limited

1 to, diagnosis, evaluation, treatment, personal care, day care,
2 domiciliary care, special living arrangements, physical,
3 occupational, and speech therapy, training, education, sheltered
4 employment, mental health services, recreation, counseling of the
5 individual with this disability and of his or her family, protective
6 and other social and sociolegal services, information and referral
7 services, follow-along services, and transportation services
8 necessary to ~~assure~~ *ensure* delivery of services to persons with
9 cognitive developmental disabilities.

10 (c) “Regional center” means a regional center for the
11 developmentally disabled established under the Lanterman
12 Developmental Disabilities Services Act that is organized as a
13 private nonprofit community agency to plan, purchase, and
14 coordinate the delivery of services that cannot be provided by state
15 agencies to developmentally disabled persons residing in a
16 particular geographic catchment area, and that is licensed and
17 funded by the State Department of Developmental Services.

18 (d) “Director of a regional center” means the executive director
19 of a regional center for the developmentally disabled or his or her
20 designee.

21 (e) “Agency” means the prosecutor, the probation department,
22 and the regional center involved in a particular defendant’s case.

23 (f) “Dual agency diversion” means a treatment and habilitation
24 program developed with court approval by the regional center,
25 administered jointly by the regional center and by the probation
26 department, that is individually tailored to the needs of the
27 defendant as derived from the defendant’s individual program plan
28 pursuant to Section 4646 of the Welfare and Institutions Code,
29 and that includes, but is not limited to, treatment specifically
30 addressed to the criminal offense charged, for a specified period
31 of time as prescribed in Section 1001.28.

32 (g) “Single agency diversion” means a treatment and habilitation
33 program developed with court approval by the regional center,
34 administered solely by the regional center without involvement
35 by the probation department, that is individually tailored to the
36 needs of the defendant as derived from the defendant’s individual
37 program plan pursuant to Section 4646 of the Welfare and
38 Institutions Code, and that includes, but is not limited to, treatment
39 specifically addressed to the criminal offense charged, for a
40 specified period of time as prescribed in Section 1001.28.

1 SEC. 152. Section 1170 of the Penal Code, as amended by
2 Section 2 of Chapter 828 of the Statutes of 2012, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he
34 or she had committed his or her crime prior to July 1, 1977. In
35 sentencing the convicted person, the court shall apply the
36 sentencing rules of the Judicial Council. The court, unless it
37 determines that there are circumstances in mitigation of the
38 punishment prescribed, shall also impose any other term that it is
39 required by law to impose as an additional term. Nothing in this
40 article shall affect any provision of law that imposes the death

1 penalty, that authorizes or restricts the granting of probation or
2 suspending the execution or imposition of sentence, or expressly
3 provides for imprisonment in the state prison for life, except as
4 provided in paragraph (2) of subdivision (d). In any case in which
5 the amount of preimprisonment credit under Section 2900.5 or any
6 other provision of law is equal to or exceeds any sentence imposed
7 pursuant to this chapter, the entire sentence shall be deemed to
8 have been served and the defendant shall not be actually delivered
9 to the custody of the secretary. The court shall advise the defendant
10 that he or she shall serve a period of parole and order the defendant
11 to report to the parole office closest to the defendant's last legal
12 residence, unless the in-custody credits equal the total sentence,
13 including both confinement time and the period of parole. The
14 sentence shall be deemed a separate prior prison term under Section
15 667.5, and a copy of the judgment and other necessary
16 documentation shall be forwarded to the secretary.

17 (b) When a judgment of imprisonment is to be imposed and the
18 statute specifies three possible terms, the court shall order
19 imposition of the middle term, unless there are circumstances in
20 aggravation or mitigation of the crime. At least four days prior to
21 the time set for imposition of judgment, either party or the victim,
22 or the family of the victim if the victim is deceased, may submit
23 a statement in aggravation or mitigation to dispute facts in the
24 record or the probation officer's report, or to present additional
25 facts. In determining whether there are circumstances that justify
26 imposition of the upper or lower term, the court may consider the
27 record in the case, the probation officer's report, other reports,
28 including reports received pursuant to Section 1203.03, and
29 statements in aggravation or mitigation submitted by the
30 prosecution, the defendant, or the victim, or the family of the victim
31 if the victim is deceased, and any further evidence introduced at
32 the sentencing hearing. The court shall set forth on the record the
33 facts and reasons for imposing the upper or lower term. The court
34 may not impose an upper term by using the fact of any
35 enhancement upon which sentence is imposed under any provision
36 of law. A term of imprisonment shall not be specified if imposition
37 of sentence is suspended.

38 (c) The court shall state the reasons for its sentence choice on
39 the record at the time of sentencing. The court shall also inform
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section
2 3000.

3 (d) (1) When a defendant subject to this section or subdivision
4 (b) of Section 1168 has been sentenced to be imprisoned in the
5 state prison and has been committed to the custody of the secretary,
6 the court may, within 120 days of the date of commitment on its
7 own motion, or at any time upon the recommendation of the
8 secretary or the Board of Parole Hearings, recall the sentence and
9 commitment previously ordered and resentence the defendant in
10 the same manner as if he or she had not previously been sentenced,
11 provided the new sentence, if any, is no greater than the initial
12 sentence. The court resentencing under this subdivision shall apply
13 the sentencing rules of the Judicial Council so as to eliminate
14 disparity of sentences and to promote uniformity of sentencing.
15 Credit shall be given for time served.

16 (2) (A) (i) When a defendant who was under 18 years of age
17 at the time of the commission of the offense for which the
18 defendant was sentenced to imprisonment for life without the
19 possibility of parole has served at least 15 years of that sentence,
20 the defendant may submit to the sentencing court a petition for
21 recall and resentencing.

22 (ii) Notwithstanding clause (i), this paragraph shall not apply
23 to defendants sentenced to life without parole for an offense where
24 the defendant tortured, as described in Section 206, his or her
25 victim or the victim was a public safety official, including any law
26 enforcement personnel mentioned in Chapter 4.5 (commencing
27 with Section 830) of Title 3, or any firefighter as described in
28 Section 245.1, as well as any other officer in any segment of law
29 enforcement who is employed by the federal government, the state,
30 or any of its political subdivisions.

31 (B) The defendant shall file the original petition with the
32 sentencing court. A copy of the petition shall be served on the
33 agency that prosecuted the case. The petition shall include the
34 defendant's statement that he or she was under 18 years of age at
35 the time of the crime and was sentenced to life in prison without
36 the possibility of parole, the defendant's statement describing his
37 or her remorse and work towards rehabilitation, and the defendant's
38 statement that one of the following is true:

39 (i) The defendant was convicted pursuant to felony murder or
40 aiding and abetting murder provisions of law.

1 (ii) The defendant does not have juvenile felony adjudications
2 for assault or other felony crimes with a significant potential for
3 personal harm to victims prior to the offense for which the sentence
4 is being considered for recall.

5 (iii) The defendant committed the offense with at least one adult
6 codefendant.

7 (iv) The defendant has performed acts that tend to indicate
8 rehabilitation or the potential for rehabilitation, including, but not
9 limited to, availing himself or herself of rehabilitative, educational,
10 or vocational programs, if those programs have been available at
11 his or her classification level and facility, using self-study for
12 self-improvement, or showing evidence of remorse.

13 (C) If any of the information required in subparagraph (B) is
14 missing from the petition, or if proof of service on the prosecuting
15 agency is not provided, the court shall return the petition to the
16 defendant and advise the defendant that the matter cannot be
17 considered without the missing information.

18 (D) A reply to the petition, if any, shall be filed with the court
19 within 60 days of the date on which the prosecuting agency was
20 served with the petition, unless a continuance is granted for good
21 cause.

22 (E) If the court finds by a preponderance of the evidence that
23 the statements in the petition are true, the court shall hold a hearing
24 to consider whether to recall the sentence and commitment
25 previously ordered and to resentence the defendant in the same
26 manner as if the defendant had not previously been sentenced,
27 provided that the new sentence, if any, is not greater than the initial
28 sentence. Victims, or victim family members if the victim is
29 deceased, shall retain the rights to participate in the hearing.

30 (F) The factors that the court may consider when determining
31 whether to recall and resentence include, but are not limited to,
32 the following:

33 (i) The defendant was convicted pursuant to felony murder or
34 aiding and abetting murder provisions of law.

35 (ii) The defendant does not have juvenile felony adjudications
36 for assault or other felony crimes with a significant potential for
37 personal harm to victims prior to the offense for which the sentence
38 is being considered for recall.

39 (iii) The defendant committed the offense with at least one adult
40 codefendant.

1 (iv) Prior to the offense for which the sentence is being
2 considered for recall, the defendant had insufficient adult support
3 or supervision and had suffered from psychological or physical
4 trauma, or significant stress.

5 (v) The defendant suffers from cognitive limitations due to
6 mental illness, developmental disabilities, or other factors that did
7 not constitute a defense, but influenced the defendant's
8 involvement in the offense.

9 (vi) The defendant has performed acts that tend to indicate
10 rehabilitation or the potential for rehabilitation, including, but not
11 limited to, availing himself or herself of rehabilitative, educational,
12 or vocational programs, if those programs have been available at
13 his or her classification level and facility, using self-study for
14 self-improvement, or showing evidence of remorse.

15 (vii) The defendant has maintained family ties or connections
16 with others through letter writing, calls, or visits, or has eliminated
17 contact with individuals outside of prison who are currently
18 involved with crime.

19 (viii) The defendant has had no disciplinary actions for violent
20 activities in the last five years in which the defendant was
21 determined to be the aggressor.

22 (G) The court shall have the discretion to recall the sentence
23 and commitment previously ordered and to resentence the
24 defendant in the same manner as if the defendant had not
25 previously been sentenced, provided that the new sentence, if any,
26 is not greater than the initial sentence. The discretion of the court
27 shall be exercised in consideration of the criteria in subparagraph
28 (B). Victims, or victim family members if the victim is deceased,
29 shall be notified of the resentencing hearing and shall retain their
30 rights to participate in the hearing.

31 (H) If the sentence is not recalled, the defendant may submit
32 another petition for recall and resentencing to the sentencing court
33 when the defendant has been committed to the custody of the
34 department for at least 20 years. If recall and resentencing is not
35 granted under that petition, the defendant may file another petition
36 after having served 24 years. The final petition may be submitted,
37 and the response to that petition shall be determined, during the
38 25th year of the defendant's sentence.

39 (I) In addition to the criteria in subparagraph (F), the court may
40 consider any other criteria that the court deems relevant to its

1 decision, so long as the court identifies them on the record,
2 provides a statement of reasons for adopting them, and states why
3 the defendant does or does not satisfy the criteria.

4 (J) This subdivision shall have retroactive application.

5 (e) (1) Notwithstanding any other law and consistent with
6 paragraph (1) of subdivision (a), if the secretary or the Board of
7 Parole Hearings or both determine that a prisoner satisfies the
8 criteria set forth in paragraph (2), the secretary or the board may
9 recommend to the court that the prisoner's sentence be recalled.

10 (2) The court shall have the discretion to resentence or recall if
11 the court finds that the facts described in subparagraphs (A) and
12 (B) or subparagraphs (B) and (C) exist:

13 (A) The prisoner is terminally ill with an incurable condition
14 caused by an illness or disease that would produce death within
15 six months, as determined by a physician employed by the
16 department.

17 (B) The conditions under which the prisoner would be released
18 or receive treatment do not pose a threat to public safety.

19 (C) The prisoner is permanently medically incapacitated with
20 a medical condition that renders him or her permanently unable
21 to perform activities of basic daily living, and results in the prisoner
22 requiring 24-hour total care, including, but not limited to, coma,
23 persistent vegetative state, brain death, ventilator-dependency, loss
24 of control of muscular or neurological function, and that
25 incapacitation did not exist at the time of the original sentencing.

26 The Board of Parole Hearings shall make findings pursuant to
27 this subdivision before making a recommendation for resentence
28 or recall to the court. This subdivision does not apply to a prisoner
29 sentenced to death or a term of life without the possibility of parole.

30 (3) Within 10 days of receipt of a positive recommendation by
31 the secretary or the board, the court shall hold a hearing to consider
32 whether the prisoner's sentence should be recalled.

33 (4) Any physician employed by the department who determines
34 that a prisoner has six months or less to live shall notify the chief
35 medical officer of the prognosis. If the chief medical officer
36 concurs with the prognosis, he or she shall notify the warden.
37 Within 48 hours of receiving notification, the warden or the
38 warden's representative shall notify the prisoner of the recall and
39 resentencing procedures, and shall arrange for the prisoner to
40 designate a family member or other outside agent to be notified

1 as to the prisoner's medical condition and prognosis, and as to the
2 recall and resentencing procedures. If the inmate is deemed
3 mentally unfit, the warden or the warden's representative shall
4 contact the inmate's emergency contact and provide the information
5 described in paragraph (2).

6 (5) The warden or the warden's representative shall provide the
7 prisoner and his or her family member, agent, or emergency
8 contact, as described in paragraph (4), updated information
9 throughout the recall and resentencing process with regard to the
10 prisoner's medical condition and the status of the prisoner's recall
11 and resentencing proceedings.

12 (6) Notwithstanding any other provisions of this section, the
13 prisoner or his or her family member or designee may
14 independently request consideration for recall and resentencing
15 by contacting the chief medical officer at the prison or the
16 secretary. Upon receipt of the request, the chief medical officer
17 and the warden or the warden's representative shall follow the
18 procedures described in paragraph (4). If the secretary determines
19 that the prisoner satisfies the criteria set forth in paragraph (2), the
20 secretary or board may recommend to the court that the prisoner's
21 sentence be recalled. The secretary shall submit a recommendation
22 for release within 30 days in the case of inmates sentenced to
23 determinate terms and, in the case of inmates sentenced to
24 indeterminate terms, the secretary shall make a recommendation
25 to the Board of Parole Hearings with respect to the inmates who
26 have applied under this section. The board shall consider this
27 information and make an independent judgment pursuant to
28 paragraph (2) and make findings related thereto before rejecting
29 the request or making a recommendation to the court. This action
30 shall be taken at the next lawfully noticed board meeting.

31 (7) Any recommendation for recall submitted to the court by
32 the secretary or the Board of Parole Hearings shall include one or
33 more medical evaluations, a postrelease plan, and findings pursuant
34 to paragraph (2).

35 (8) If possible, the matter shall be heard before the same judge
36 of the court who sentenced the prisoner.

37 (9) If the court grants the recall and resentencing application,
38 the prisoner shall be released by the department within 48 hours
39 of receipt of the court's order, unless a longer time period is agreed
40 to by the inmate. At the time of release, the warden or the warden's

1 representative shall ensure that the prisoner has each of the
2 following in his or her possession: a discharge medical summary,
3 full medical records, state identification, parole medications, and
4 all property belonging to the prisoner. After discharge, any
5 additional records shall be sent to the prisoner's forwarding
6 address.

7 (10) The secretary shall issue a directive to medical and
8 correctional staff employed by the department that details the
9 guidelines and procedures for initiating a recall and resentencing
10 procedure. The directive shall clearly state that any prisoner who
11 is given a prognosis of six months or less to live is eligible for
12 recall and resentencing consideration, and that recall and
13 resentencing procedures shall be initiated upon that prognosis.

14 (f) Notwithstanding any other provision of this section, for
15 purposes of paragraph (3) of subdivision (h), any allegation that
16 a defendant is eligible for state prison due to a prior or current
17 conviction, sentence enhancement, or because he or she is required
18 to register as a sex offender shall not be subject to dismissal
19 pursuant to Section 1385.

20 (g) A sentence to state prison for a determinate term for which
21 only one term is specified, is a sentence to state prison under this
22 section.

23 (h) (1) Except as provided in paragraph (3), a felony punishable
24 pursuant to this subdivision where the term is not specified in the
25 underlying offense shall be punishable by a term of imprisonment
26 in a county jail for 16 months, or two or three years.

27 (2) Except as provided in paragraph (3), a felony punishable
28 pursuant to this subdivision shall be punishable by imprisonment
29 in a county jail for the term described in the underlying offense.

30 (3) Notwithstanding paragraphs (1) and (2), where the defendant
31 (A) has a prior or current felony conviction for a serious felony
32 described in subdivision (c) of Section 1192.7 or a prior or current
33 conviction for a violent felony described in subdivision (c) of
34 Section 667.5, (B) has a prior felony conviction in another
35 jurisdiction for an offense that has all the elements of a serious
36 felony described in subdivision (c) of Section 1192.7 or a violent
37 felony described in subdivision (c) of Section 667.5, (C) is required
38 to register as a sex offender pursuant to Chapter 5.5 (commencing
39 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
40 and as part of the sentence an enhancement pursuant to Section

1 186.11 is imposed, an executed sentence for a felony punishable
2 pursuant to this subdivision shall be served in state prison.

3 (4) ~~Nothing in this~~ *This* subdivision ~~shall be construed to~~ *does*
4 *not* prevent other dispositions authorized by law, including pretrial
5 diversion, deferred entry of judgment, or an order granting
6 probation pursuant to Section 1203.1.

7 (5) The court, when imposing a sentence pursuant to paragraph
8 (1) or (2) of this subdivision, may commit the defendant to county
9 jail as follows:

10 (A) For a full term in custody as determined in accordance with
11 the applicable sentencing law.

12 (B) (i) For a term as determined in accordance with the
13 applicable sentencing law, but suspend execution of a concluding
14 portion of the term selected in the court's discretion, during which
15 time the defendant shall be supervised by the county probation
16 officer in accordance with the terms, conditions, and procedures
17 generally applicable to persons placed on probation, for the
18 remaining unserved portion of the sentence imposed by the court.
19 The period of supervision shall be mandatory, and may not be
20 earlier terminated except by court order. Any proceeding to revoke
21 or modify mandatory supervision under this subparagraph shall
22 be conducted pursuant to either subdivisions (a) and (b) of Section
23 1203.2 or Section 1203.3. During the period when the defendant
24 is under such supervision, unless in actual custody related to the
25 sentence imposed by the court, the defendant shall be entitled to
26 only actual time credit against the term of imprisonment imposed
27 by the court. Any time period ~~which~~ *that* is suspended because a
28 person has absconded shall not be credited toward the period of
29 supervision.

30 (ii) The portion of a defendant's sentenced term during which
31 time he or she is supervised by the county probation officer
32 pursuant to this subparagraph shall be known as mandatory
33 supervision.

34 (6) The sentencing changes made by the act that added this
35 subdivision shall be applied prospectively to any person sentenced
36 on or after October 1, 2011.

37 (i) This section shall become operative on January 1, 2014.

38 SEC. 153. Section 1203.097 of the Penal Code is amended to
39 read:

1 1203.097. (a) If a person is granted probation for a crime in
2 which the victim is a person defined in Section 6211 of the Family
3 Code, the terms of probation shall include all of the following:

4 (1) A minimum period of probation of 36 months, which may
5 include a period of summary probation as appropriate.

6 (2) A criminal court protective order protecting the victim from
7 further acts of violence, threats, stalking, sexual abuse, and
8 harassment, and, if appropriate, containing residence exclusion or
9 stay-away conditions.

10 (3) Notice to the victim of the disposition of the case.

11 (4) Booking the defendant within one week of sentencing if the
12 defendant has not already been booked.

13 (5) (A) A minimum payment by the defendant of five hundred
14 dollars (\$500) to be disbursed as specified in this paragraph. If,
15 after a hearing in open court, the court finds that the defendant
16 does not have the ability to pay, the court may reduce or waive
17 this fee. If the court exercises its discretion to reduce or waive the
18 fee, it shall state the reason on the record.

19 (B) Two-thirds of the moneys deposited with the county
20 treasurer pursuant to this section shall be retained by counties and
21 deposited in the domestic violence programs special fund created
22 pursuant to Section 18305 of the Welfare and Institutions Code,
23 to be expended for the purposes of Chapter 5 (commencing with
24 Section 18290) of Part 6 of Division 9 of the Welfare and
25 Institutions Code. The remainder shall be transferred, once a month,
26 to the Controller for deposit in equal amounts in the Domestic
27 Violence Restraining Order Reimbursement Fund and in the
28 Domestic Violence Training and Education Fund, which are hereby
29 created, in an amount equal to one-third of funds collected during
30 the preceding month. Moneys deposited into these funds pursuant
31 to this section shall be available upon appropriation by the
32 Legislature and shall be distributed each fiscal year as follows:

33 (i) Funds from the Domestic Violence Restraining Order
34 Reimbursement Fund shall be distributed to local law enforcement
35 or other criminal justice agencies for state-mandated local costs
36 resulting from the notification requirements set forth in subdivision

37 (b) of Section 6380 of the Family Code, based on the annual
38 notification from the Department of Justice of the number of
39 restraining orders issued and registered in the state domestic
40 violence restraining order registry maintained by the Department

1 of Justice, for the development and maintenance of the domestic
2 violence restraining order databank system.

3 (ii) Funds from the Domestic Violence Training and Education
4 Fund shall support a statewide training and education program to
5 increase public awareness of domestic violence and to improve
6 the scope and quality of services provided to the victims of
7 domestic violence. Grants to support this program shall be awarded
8 on a competitive basis and be administered by the State Department
9 of Public Health, in consultation with the statewide domestic
10 violence coalition, which is eligible to receive funding under this
11 section.

12 (6) Successful completion of a batterer's program, as defined
13 in subdivision (c), or if none is available, another appropriate
14 counseling program designated by the court, for a period not less
15 than one year with periodic progress reports by the program to the
16 court every three months or less and weekly sessions of a minimum
17 of two hours class time duration. The defendant shall attend
18 consecutive weekly sessions, unless granted an excused absence
19 for good cause by the program for no more than three individual
20 sessions during the entire program, and shall complete the program
21 within 18 months, unless, after a hearing, the court finds good
22 cause to modify the requirements of consecutive attendance or
23 completion within 18 months.

24 (7) (A) (i) The court shall order the defendant to comply with
25 all probation requirements, including the requirements to attend
26 counseling, keep all program appointments, and pay program fees
27 based upon the ability to pay.

28 (ii) The terms of probation for offenders shall not be lifted until
29 all reasonable fees due to the counseling program have been paid
30 in full, but in no case shall probation be extended beyond the term
31 provided in subdivision (a) of Section 1203.1. If the court finds
32 that the defendant does not have the ability to pay the fees based
33 on the defendant's changed circumstances, the court may reduce
34 or waive the fees.

35 (B) Upon request by the batterer's program, the court shall
36 provide the defendant's arrest report, prior incidents of violence,
37 and treatment history to the program.

38 (8) The court also shall order the defendant to perform a
39 specified amount of appropriate community service, as designated
40 by the court. The defendant shall present the court with proof of

1 completion of community service and the court shall determine if
2 the community service has been satisfactorily completed. If
3 sufficient staff and resources are available, the community service
4 shall be performed under the jurisdiction of the local agency
5 overseeing a community service program.

6 (9) If the program finds that the defendant is unsuitable, the
7 program shall immediately contact the probation department or
8 the court. The probation department or court shall either recalendar
9 the case for hearing or refer the defendant to an appropriate
10 alternative batterer's program.

11 (10) (A) Upon recommendation of the program, a court shall
12 require a defendant to participate in additional sessions throughout
13 the probationary period, unless it finds that it is not in the interests
14 of justice to do so, states its reasons on the record, and enters them
15 into the minutes. In deciding whether the defendant would benefit
16 from more sessions, the court shall consider whether any of the
17 following conditions exists:

18 (i) The defendant has been violence free for a minimum of six
19 months.

20 (ii) The defendant has cooperated and participated in the
21 batterer's program.

22 (iii) The defendant demonstrates an understanding of and
23 practices positive conflict resolution skills.

24 (iv) The defendant blames, degrades, or has committed acts that
25 dehumanize the victim or puts at risk the victim's safety, including,
26 but not limited to, molesting, stalking, striking, attacking,
27 threatening, sexually assaulting, or battering the victim.

28 (v) The defendant demonstrates an understanding that the use
29 of coercion or violent behavior to maintain dominance is
30 unacceptable in an intimate relationship.

31 (vi) The defendant has made threats to harm anyone in any
32 manner.

33 (vii) The defendant has complied with applicable requirements
34 under paragraph (6) of subdivision (c) or subparagraph (C) to
35 receive alcohol counseling, drug counseling, or both.

36 (viii) The defendant demonstrates acceptance of responsibility
37 for the abusive behavior perpetrated against the victim.

38 (B) The program shall immediately report any violation of the
39 terms of the protective order, including any new acts of violence
40 or failure to comply with the program requirements, to the court,

1 the prosecutor, and, if formal probation has been ordered, to the
2 probation department. The probationer shall file proof of
3 enrollment in a batterer's program with the court within 30 days
4 of conviction.

5 (C) Concurrent with other requirements under this section, in
6 addition to, and not in lieu of, the batterer's program, and unless
7 prohibited by the referring court, the probation department or the
8 court may make provisions for a defendant to use his or her
9 resources to enroll in a chemical dependency program or to enter
10 voluntarily a licensed chemical dependency recovery hospital or
11 residential treatment program that has a valid license issued by the
12 state to provide alcohol or drug services to receive program
13 participation credit, as determined by the court. The probation
14 department shall document evidence of this hospital or residential
15 treatment participation in the defendant's program file.

16 (11) The conditions of probation may include, in lieu of a fine,
17 but not in lieu of the fund payment required under paragraph (5),
18 one or more of the following requirements:

19 (A) That the defendant make payments to a battered women's
20 shelter, up to a maximum of five thousand dollars (\$5,000).

21 (B) That the defendant reimburse the victim for reasonable
22 expenses that the court finds are the direct result of the defendant's
23 offense.

24 For any order to pay a fine, to make payments to a battered
25 women's shelter, or to pay restitution as a condition of probation
26 under this subdivision, the court shall make a determination of the
27 defendant's ability to pay. Determination of a defendant's ability
28 to pay may include his or her future earning capacity. A defendant
29 shall bear the burden of demonstrating lack of his or her ability to
30 pay. Express findings by the court as to the factors bearing on the
31 amount of the fine shall not be required. In no event shall any order
32 to make payments to a battered women's shelter be made if it
33 would impair the ability of the defendant to pay direct restitution
34 to the victim or court-ordered child support. When the injury to a
35 married person is caused, in whole or in part, by the criminal acts
36 of his or her spouse in violation of this section, the community
37 property shall not be used to discharge the liability of the offending
38 spouse for restitution to the injured spouse, as required by Section
39 1203.04, as operative on or before August 2, 1995, or Section

1 1202.4, or to a shelter for costs with regard to the injured spouse,
2 until all separate property of the offending spouse is exhausted.

3 (12) If it appears to the prosecuting attorney, the court, or the
4 probation department that the defendant is performing
5 unsatisfactorily in the assigned program, is not benefiting from
6 counseling, or has engaged in criminal conduct, upon request of
7 the probation officer, the prosecuting attorney, or on its own
8 motion, the court, as a priority calendar item, shall hold a hearing
9 to determine whether further sentencing should proceed. The court
10 may consider factors, including, but not limited to, any violence
11 by the defendant against the former or a new victim while on
12 probation and noncompliance with any other specific condition of
13 probation. If the court finds that the defendant is not performing
14 satisfactorily in the assigned program, is not benefiting from the
15 program, has not complied with a condition of probation, or has
16 engaged in criminal conduct, the court shall terminate the
17 defendant's participation in the program and shall proceed with
18 further sentencing.

19 (b) If a person is granted formal probation for a crime in which
20 the victim is a person defined in Section 6211 of the Family Code,
21 in addition to the terms specified in subdivision (a), all of the
22 following shall apply:

23 (1) The probation department shall make an investigation and
24 take into consideration the defendant's age, medical history,
25 employment and service records, educational background,
26 community and family ties, prior incidents of violence, police
27 report, treatment history, if any, demonstrable motivation, and
28 other mitigating factors in determining which batterer's program
29 would be appropriate for the defendant. This information shall be
30 provided to the batterer's program if it is requested. The probation
31 department shall also determine which community programs the
32 defendant would benefit from and which of those programs would
33 accept the defendant. The probation department shall report its
34 findings and recommendations to the court.

35 (2) The court shall advise the defendant that the failure to report
36 to the probation department for the initial investigation, as directed
37 by the court, or the failure to enroll in a specified program, as
38 directed by the court or the probation department, shall result in
39 possible further incarceration. The court, in the interests of justice,
40 may relieve the defendant from the prohibition set forth in this

1 subdivision based upon the defendant's mistake or excusable
2 neglect. Application for this relief shall be filed within 20 court
3 days of the missed deadline. This time limitation may not be
4 extended. A copy of any application for relief shall be served on
5 the office of the prosecuting attorney.

6 (3) After the court orders the defendant to a batterer's program,
7 the probation department shall conduct an initial assessment of
8 the defendant, including, but not limited to, all of the following:

9 (A) Social, economic, and family background.

10 (B) Education.

11 (C) Vocational achievements.

12 (D) Criminal history.

13 (E) Medical history.

14 (F) Substance abuse history.

15 (G) Consultation with the probation officer.

16 (H) Verbal consultation with the victim, only if the victim
17 desires to participate.

18 (I) Assessment of the future probability of the defendant
19 committing murder.

20 (4) The probation department shall attempt to notify the victim
21 regarding the requirements for the defendant's participation in the
22 batterer's program, as well as regarding available victim resources.
23 The victim also shall be informed that attendance in any program
24 does not guarantee that an abuser will not be violent.

25 (c) The court or the probation department shall refer defendants
26 only to batterer's programs that follow standards outlined in
27 paragraph (1), which may include, but are not limited to, lectures,
28 classes, group discussions, and counseling. The probation
29 department shall design and implement an approval and renewal
30 process for batterer's programs and shall solicit input from criminal
31 justice agencies and domestic violence victim advocacy programs.

32 (1) The goal of a batterer's program under this section shall be
33 to stop domestic violence. A batterer's program shall consist of
34 the following components:

35 (A) Strategies to hold the defendant accountable for the violence
36 in a relationship, including, but not limited to, providing the
37 defendant with a written statement that the defendant shall be held
38 accountable for acts or threats of domestic violence.

39 (B) A requirement that the defendant participate in ongoing
40 same-gender group sessions.

1 (C) An initial intake that provides written definitions to the
2 defendant of physical, emotional, sexual, economic, and verbal
3 abuse, and the techniques for stopping these types of abuse.

4 (D) Procedures to inform the victim regarding the requirements
5 for the defendant's participation in the intervention program as
6 well as regarding available victim resources. The victim also shall
7 be informed that attendance in any program does not guarantee
8 that an abuser will not be violent.

9 (E) A requirement that the defendant attend group sessions free
10 of chemical influence.

11 (F) Educational programming that examines, at a minimum,
12 gender roles, socialization, the nature of violence, the dynamics
13 of power and control, and the effects of abuse on children and
14 others.

15 (G) A requirement that excludes any couple counseling or family
16 counseling, or both.

17 (H) Procedures that give the program the right to assess whether
18 or not the defendant would benefit from the program and to refuse
19 to enroll the defendant if it is determined that the defendant would
20 not benefit from the program, so long as the refusal is not because
21 of the defendant's inability to pay. If possible, the program shall
22 suggest an appropriate alternative program.

23 (I) Program staff who, to the extent possible, have specific
24 knowledge regarding, but not limited to, spousal abuse, child abuse,
25 sexual abuse, substance abuse, the dynamics of violence and abuse,
26 the law, and procedures of the legal system.

27 (J) Program staff who are encouraged to utilize the expertise,
28 training, and assistance of local domestic violence centers.

29 (K) A requirement that the defendant enter into a written
30 agreement with the program, which shall include an outline of the
31 contents of the program, the attendance requirements, the
32 requirement to attend group sessions free of chemical influence,
33 and a statement that the defendant may be removed from the
34 program if it is determined that the defendant is not benefiting
35 from the program or is disruptive to the program.

36 (L) A requirement that the defendant sign a confidentiality
37 statement prohibiting disclosure of any information obtained
38 through participating in the program or during group sessions
39 regarding other participants in the program.

1 (M) Program content that provides cultural and ethnic
2 sensitivity.

3 (N) A requirement of a written referral from the court or
4 probation department prior to permitting the defendant to enroll
5 in the program. The written referral shall state the number of
6 minimum sessions required by the court.

7 (O) Procedures for submitting to the probation department all
8 of the following uniform written responses:

9 (i) Proof of enrollment, to be submitted to the court and the
10 probation department and to include the fee determined to be
11 charged to the defendant, based upon the ability to pay, for each
12 session.

13 (ii) Periodic progress reports that include attendance, fee
14 payment history, and program compliance.

15 (iii) Final evaluation that includes the program's evaluation of
16 the defendant's progress, using the criteria set forth in subparagraph
17 (A) of paragraph (10) of subdivision (a) and recommendation for
18 either successful or unsuccessful termination or continuation in
19 the program.

20 (P) A sliding fee schedule based on the defendant's ability to
21 pay. The batterer's program shall develop and utilize a sliding fee
22 scale that recognizes both the defendant's ability to pay and the
23 necessity of programs to meet overhead expenses. An indigent
24 defendant may negotiate a deferred payment schedule, but shall
25 pay a nominal fee, if the defendant has the ability to pay the
26 nominal fee. Upon a hearing and a finding by the court that the
27 defendant does not have the financial ability to pay the nominal
28 fee, the court shall waive this fee. The payment of the fee shall be
29 made a condition of probation if the court determines the defendant
30 has the present ability to pay the fee. The fee shall be paid during
31 the term of probation unless the program sets other conditions.
32 The acceptance policies shall be in accordance with the scaled fee
33 system.

34 (2) The court shall refer persons only to batterer's programs
35 that have been approved by the probation department pursuant to
36 paragraph (5). The probation department shall do both of the
37 following:

38 (A) Provide for the issuance of a provisional approval, provided
39 that the applicant is in substantial compliance with applicable laws
40 and regulations and an urgent need for approval exists. A

1 provisional approval shall be considered an authorization to provide
2 services and shall not be considered a vested right.

3 (B) If the probation department determines that a program is
4 not in compliance with standards set by the department, the
5 department shall provide written notice of the noncompliant areas
6 to the program. The program shall submit a written plan of
7 corrections within 14 days from the date of the written notice on
8 noncompliance. A plan of correction shall include, but not be
9 limited to, a description of each corrective action and timeframe
10 for implementation. The department shall review and approve all
11 or any part of the plan of correction and notify the program of
12 approval or disapproval in writing. If the program fails to submit
13 a plan of correction or fails to implement the approved plan of
14 correction, the department shall consider whether to revoke or
15 suspend approval and, upon revoking or suspending approval, shall
16 have the option to cease referrals of defendants under this section.

17 (3) No program, regardless of its source of funding, shall be
18 approved unless it meets all of the following standards:

19 (A) The establishment of guidelines and criteria for education
20 services, including standards of services that may include lectures,
21 classes, and group discussions.

22 (B) Supervision of the defendant for the purpose of evaluating
23 the person's progress in the program.

24 (C) Adequate reporting requirements to ensure that all persons
25 who, after being ordered to attend and complete a program, may
26 be identified for either failure to enroll in, or failure to successfully
27 complete, the program or for the successful completion of the
28 program as ordered. The program shall notify the court and the
29 probation department, in writing, within the period of time and in
30 the manner specified by the court of any person who fails to
31 complete the program. Notification shall be given if the program
32 determines that the defendant is performing unsatisfactorily or if
33 the defendant is not benefiting from the education, treatment, or
34 counseling.

35 (D) No victim shall be compelled to participate in a program
36 or counseling, and no program may condition a defendant's
37 enrollment on participation by the victim.

38 (4) In making referrals of indigent defendants to approved
39 batterer's programs, the probation department shall apportion these
40 referrals evenly among the approved programs.

1 (5) The probation department shall have the sole authority to
2 approve a batterer's program for probation. The program shall be
3 required to obtain only one approval but shall renew that approval
4 annually.

5 (A) The procedure for the approval of a new or existing program
6 shall include all of the following:

7 (i) The completion of a written application containing necessary
8 and pertinent information describing the applicant program.

9 (ii) The demonstration by the program that it possesses adequate
10 administrative and operational capability to operate a batterer's
11 treatment program. The program shall provide documentation to
12 prove that the program has conducted batterer's programs for at
13 least one year prior to application. This requirement may be waived
14 under subparagraph (A) of paragraph (2) if there is no existing
15 batterer's program in the city, county, or city and county.

16 (iii) The onsite review of the program, including monitoring of
17 a session to determine that the program adheres to applicable
18 statutes and regulations.

19 (iv) The payment of the approval fee.

20 (B) The probation department shall fix a fee for approval not
21 to exceed two hundred fifty dollars (\$250) and for approval renewal
22 not to exceed two hundred fifty dollars (\$250) every year in an
23 amount sufficient to cover its costs in administering the approval
24 process under this section. No fee shall be charged for the approval
25 of local governmental entities.

26 (C) The probation department has the sole authority to approve
27 the issuance, denial, suspension, or revocation of approval and to
28 cease new enrollments or referrals to a batterer's program under
29 this section. The probation department shall review information
30 relative to a program's performance or failure to adhere to
31 standards, or both. The probation department may suspend or
32 revoke an approval issued under this subdivision or deny an
33 application to renew an approval or to modify the terms and
34 conditions of approval, based on grounds established by probation,
35 including, but not limited to, either of the following:

36 (i) Violation of this section by any person holding approval or
37 by a program employee in a program under this section.

38 (ii) Misrepresentation of any material fact in obtaining the
39 approval.

1 (6) For defendants who are chronic users or serious abusers of
2 drugs or alcohol, standard components in the program shall include
3 concurrent counseling for substance abuse and violent behavior,
4 and in appropriate cases, detoxification and abstinence from the
5 abused substance.

6 (7) The program shall conduct an exit conference that assesses
7 the defendant's progress during his or her participation in the
8 batterer's program.

9 (d) An act or omission relating to the approval of a batterer's
10 treatment ~~programs~~ *program* under paragraph (5) of subdivision
11 (c) is a discretionary act pursuant to Section 820.2 of the
12 Government Code.

13 SEC. 154. Section 1230 of the Penal Code is amended to read:

14 1230. (a) Each county is hereby authorized to establish in each
15 county treasury a Community Corrections Performance Incentives
16 Fund (CCPIF), to receive all amounts allocated to that county for
17 purposes of implementing this chapter.

18 (b) In any fiscal year for which a county receives moneys to be
19 expended for the implementation of this chapter, the moneys,
20 including any interest, shall be made available to the CPO of that
21 county, within 30 days of the deposit of those moneys into the
22 fund, for the implementation of the community corrections program
23 authorized by this chapter.

24 (1) The community corrections program shall be developed and
25 implemented by probation and advised by a local Community
26 Corrections Partnership.

27 (2) The local Community Corrections Partnership shall be
28 chaired by the CPO and comprised of the following membership:

29 (A) The presiding judge of the superior court, or his or her
30 designee.

31 (B) A county supervisor or the chief administrative officer for
32 the county or a designee of the board of supervisors.

33 (C) The district attorney.

34 (D) The public defender.

35 (E) The sheriff.

36 (F) A chief of police.

37 (G) The head of the county department of social services.

38 (H) The head of the county department of mental health.

39 (I) The head of the county department of employment.

1 (J) The head of the county alcohol and substance abuse ~~programs~~
2 *program*.

3 (K) The head of the county office of education.

4 (L) A representative from a community-based organization with
5 experience in successfully providing rehabilitative services to
6 persons who have been convicted of a criminal offense.

7 (M) An individual who represents the interests of victims.

8 (3) Funds allocated to probation pursuant to this act shall be
9 used to provide supervision and rehabilitative services for adult
10 felony offenders subject to probation, and shall be spent on
11 evidence-based community corrections practices and programs,
12 as defined in subdivision (d) of Section 1229, which may include,
13 but are not limited to, the following:

14 (A) Implementing and expanding evidence-based risk and needs
15 assessments.

16 (B) Implementing and expanding intermediate sanctions that
17 include, but are not limited to, electronic monitoring, mandatory
18 community service, home detention, day reporting, restorative
19 justice programs, work furlough programs, and incarceration in
20 county jail for up to 90 days.

21 (C) Providing more intensive probation supervision.

22 (D) Expanding the availability of evidence-based rehabilitation
23 programs including, but not limited to, drug and alcohol treatment,
24 mental health treatment, anger management, cognitive behavior
25 programs, and job training and employment services.

26 (E) Evaluating the effectiveness of rehabilitation and supervision
27 programs and ensuring program fidelity.

28 (4) The CPO shall have discretion to spend funds on any of the
29 above practices and programs consistent with this act but, at a
30 minimum, shall devote at least 5 percent of all funding received
31 to evaluate the effectiveness of those programs and practices
32 implemented with the funds provided pursuant to this chapter. A
33 CPO may petition the Administrative Office of the Courts to have
34 this restriction waived, and the Administrative Office of the Courts
35 shall have the authority to grant such a petition, if the CPO can
36 demonstrate that the department is already devoting sufficient
37 funds to the evaluation of these programs and practices.

38 (5) Each probation department receiving funds under this chapter
39 shall maintain a complete and accurate accounting of all funds
40 received pursuant to this chapter.

1 SEC. 155. The heading of Title 4.5 (commencing with Section
2 13600) of Part 4 of the Penal Code, as amended by Section 7 of
3 Chapter 136 of the Statutes of 2011, is repealed.

4

5 ~~TITLE 4.5. CORRECTIONS STANDARD AUTHORITY~~

6

7 SEC. 156. Section 1370.1 of the Penal Code is amended to
8 read:

9 1370.1. (a) (1) (A) If the defendant is found mentally
10 competent, the criminal process shall resume, the trial on the
11 offense charged shall proceed, and judgment may be pronounced.

12 (B) If the defendant is found mentally incompetent and is
13 developmentally disabled, the trial or judgment shall be suspended
14 until the defendant becomes mentally competent.

15 (i) Except as provided in clause (ii) or (iii), the court shall
16 consider a recommendation for placement, which recommendation
17 shall be made to the court by the director of a regional center or
18 designee. In the meantime, the court shall order that the mentally
19 incompetent defendant be delivered by the sheriff or other person
20 designated by the court to a state hospital or developmental center
21 for the care and treatment of the developmentally disabled or any
22 other available residential facility approved by the director of a
23 regional center for the developmentally disabled established under
24 Division 4.5 (commencing with Section 4500) of the Welfare and
25 Institutions Code as will promote the defendant’s speedy attainment
26 of mental competence, or be placed on outpatient status pursuant
27 to the provisions of Section 1370.4 and Title 15 (commencing with
28 Section 1600) of Part 2.

29 (ii) However, if the action against the defendant who has been
30 found mentally incompetent is on a complaint charging a felony
31 offense specified in Section 290, the prosecutor shall determine
32 whether the defendant previously has been found mentally
33 incompetent to stand trial pursuant to this chapter on a charge of
34 a Section 290 offense, or whether the defendant is currently the
35 subject of a pending Section 1368 proceeding arising out of a
36 charge of a Section 290 offense. If either determination is made,
37 the prosecutor shall so notify the court and defendant in writing.
38 After this notification, and opportunity for hearing, the court shall
39 order that the defendant be delivered by the sheriff to a state
40 hospital or other secure treatment facility for the care and treatment

1 of the developmentally disabled unless the court makes specific
2 findings on the record that an alternative placement would provide
3 more appropriate treatment for the defendant and would not pose
4 a danger to the health and safety of others.

5 (iii) If the action against the defendant who has been found
6 mentally incompetent is on a complaint charging a felony offense
7 specified in Section 290 and the defendant has been denied bail
8 pursuant to subdivision (b) of Section 12 of Article I of the
9 California Constitution because the court has found, based upon
10 clear and convincing evidence, a substantial likelihood that the
11 person's release would result in great bodily harm to others, the
12 court shall order that the defendant be delivered by the sheriff to
13 a state hospital for the care and treatment of the developmentally
14 disabled unless the court makes specific findings on the record
15 that an alternative placement would provide more appropriate
16 treatment for the defendant and would not pose a danger to the
17 health and safety of others.

18 (iv) The clerk of the court shall notify the Department of Justice
19 in writing of any finding of mental incompetence with respect to
20 a defendant who is subject to clause (ii) or (iii) for inclusion in his
21 or her state summary criminal history information.

22 (C) Upon becoming competent, the court shall order that the
23 defendant be returned to the committing court pursuant to the
24 procedures set forth in paragraph (2) of subdivision (a) of Section
25 1372 or by another person designated by the court. The court shall
26 further determine conditions under which the person may be absent
27 from the placement for medical treatment, social visits, and other
28 similar activities. Required levels of supervision and security for
29 these activities shall be specified.

30 (D) The court shall transmit a copy of its order to the regional
31 center director or designee and to the Director of Developmental
32 Services.

33 (E) A defendant charged with a violent felony may not be placed
34 in a facility or delivered to a state hospital, developmental center,
35 or residential facility pursuant to this subdivision unless the facility,
36 state hospital, developmental center, or residential facility has a
37 secured perimeter or a locked and controlled treatment facility,
38 and the judge determines that the public safety will be protected.

39 (F) For purposes of this paragraph, "violent felony" means an
40 offense specified in subdivision (c) of Section 667.5.

1 (G) A defendant charged with a violent felony may be placed
2 on outpatient status, as specified in Section 1370.4 or 1600, only
3 if the court finds that the placement will not pose a danger to the
4 health or safety of others.

5 (H) As used in this section, “developmental disability” means
6 a disability that originates before an individual attains 18 years of
7 age, continues, or can be expected to continue, indefinitely and
8 constitutes a substantial handicap for the individual, and shall not
9 include other handicapping conditions that are solely physical in
10 nature. As defined by the Director of Developmental Services, in
11 consultation with the Superintendent of Public Instruction, this
12 term shall include intellectual disability, cerebral palsy, epilepsy,
13 and autism. This term shall also include handicapping conditions
14 found to be closely related to intellectual disability or to require
15 treatment similar to that required for individuals with an intellectual
16 disability, but shall not include other handicapping conditions that
17 are solely physical in nature.

18 (2) Prior to making the order directing that the defendant be
19 confined in a state hospital, developmental center, or other
20 residential facility, or be placed on outpatient status, the court shall
21 order the regional center director or designee to evaluate the
22 defendant and to submit to the court within 15 judicial days of the
23 order a written recommendation as to whether the defendant should
24 be committed to a state hospital or developmental center or to any
25 other available residential facility approved by the regional center
26 director. A person shall not be admitted to a state hospital,
27 developmental center, or other residential facility or accepted for
28 outpatient status under Section 1370.4 without having been
29 evaluated by the regional center director or designee.

30 (3) When the court orders that the defendant be confined in a
31 state hospital or other secure treatment facility pursuant to clause
32 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall
33 provide copies of the following documents which shall be taken
34 with the defendant to the state hospital or other secure treatment
35 facility where the defendant is to be confined:

36 (A) State summary criminal history information.

37 (B) Any arrest reports prepared by the police department or
38 other law enforcement agency.

39 (C) Records of a finding of mental incompetence pursuant to
40 this chapter arising out of a complaint charging a felony offense

1 specified in Section 290 or a pending Section 1368 proceeding
2 arising out of a charge of a Section 290 offense.

3 (4) When the defendant is committed to a residential facility
4 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
5 court makes the findings specified in clause (ii) or (iii) of
6 subparagraph (B) of paragraph (1) to assign the defendant to a
7 facility other than a state hospital or other secure treatment facility,
8 the court shall order that notice be given to the appropriate law
9 enforcement agency or agencies having local jurisdiction at the
10 site of the placement facility of a finding of mental incompetence
11 pursuant to this chapter arising out of a charge of a Section 290
12 offense.

13 (5) (A) If the defendant is committed or transferred to a state
14 hospital or developmental center pursuant to this section, the court
15 may, upon receiving the written recommendation of the executive
16 director of the state hospital or developmental center and the
17 regional center director that the defendant be transferred to a
18 residential facility approved by the regional center director, order
19 the defendant transferred to that facility. If the defendant is
20 committed or transferred to a residential facility approved by the
21 regional center director, the court may, upon receiving the written
22 recommendation of the regional center director, transfer the
23 defendant to a state hospital or developmental center or to another
24 residential facility approved by the regional center director.

25 In the event of dismissal of the criminal charges before the
26 defendant recovers competence, the person shall be subject to the
27 applicable provisions of the Lanterman-Petris-Short Act (Part 1
28 commencing with Section 5000) of Division 5 of the Welfare and
29 Institutions Code) or to commitment or detention pursuant to a
30 petition filed pursuant to Section 6502 of the Welfare and
31 Institutions Code.

32 The defendant or prosecuting attorney may contest either kind
33 of order of transfer by filing a petition with the court for a hearing,
34 which shall be held if the court determines that sufficient grounds
35 exist. At the hearing, the prosecuting attorney or the defendant
36 may present evidence bearing on the order of transfer. The court
37 shall use the same standards as used in conducting probation
38 revocation hearings pursuant to Section 1203.2.

39 Prior to making an order for transfer under this section, the court
40 shall notify the defendant, the attorney of record for the defendant,

1 the prosecuting attorney, and the regional center director or
2 designee.

3 (B) If the defendant is committed to a state hospital or secure
4 treatment facility pursuant to clause (ii) or (iii) of subparagraph
5 (B) of paragraph (1) and is subsequently transferred to another
6 facility, copies of the documents specified in paragraph (3) shall
7 be taken with the defendant to the new facility. The transferring
8 facility shall also notify the appropriate law enforcement agency
9 or agencies having local jurisdiction at the site of the new facility
10 that the defendant is a person subject to clause (ii) or (iii) of
11 subparagraph (B) of paragraph (1).

12 (b) (1) Within 90 days of admission of a person committed
13 pursuant to subdivision (a), the executive director or designee of
14 the state hospital, developmental center, or other facility to which
15 the defendant is committed, or the outpatient supervisor where the
16 defendant is placed on outpatient status, shall make a written report
17 to the committing court and the regional center director or a
18 designee concerning the defendant's progress toward becoming
19 mentally competent. If the defendant has not become mentally
20 competent, but the report discloses a substantial likelihood the
21 defendant will become mentally competent within the next 90
22 days, the court may order that the defendant shall remain in the
23 state hospital, developmental center, or other facility or on
24 outpatient status for that period of time. Within 150 days of an
25 admission made pursuant to subdivision (a) or if the defendant
26 becomes mentally competent, the executive director or designee
27 of the hospital or developmental center or person in charge of the
28 facility or the outpatient supervisor shall report to the court and
29 the regional center director or his or her designee regarding the
30 defendant's progress toward becoming mentally competent. The
31 court shall provide to the prosecutor and defense counsel copies
32 of all reports under this section. If the report indicates that there
33 is no substantial likelihood that the defendant has become mentally
34 competent, the committing court shall order the defendant to be
35 returned to the court for proceedings pursuant to paragraph (2) of
36 subdivision (c). The court shall transmit a copy of its order to the
37 regional center director or designee and to the executive director
38 of the developmental center.

39 (2) A defendant who has been committed or has been on
40 outpatient status for 18 months, and is still hospitalized or on

1 outpatient status, shall be returned to the committing court where
2 a hearing shall be held pursuant to the procedures set forth in
3 Section 1369. The court shall transmit a copy of its order to the
4 regional center director or designee and the executive director of
5 the developmental center.

6 (3) If it is determined by the court that no treatment for the
7 defendant's mental impairment is being conducted, the defendant
8 shall be returned to the committing court. A copy of this order
9 shall be sent to the regional center director or designee and to the
10 executive director of the developmental center.

11 (4) At each review by the court specified in this subdivision,
12 the court shall determine if the security level of housing and
13 treatment is appropriate and may make an order in accordance
14 with its determination.

15 (c) (1) (A) At the end of three years from the date of
16 commitment or a period of commitment equal to the maximum
17 term of imprisonment provided by law for the most serious offense
18 charged in the information, indictment, or misdemeanor complaint,
19 whichever is shorter, a defendant who has not become mentally
20 competent shall be returned to the committing court.

21 (B) The court shall notify the regional center director or designee
22 and the executive director of the developmental center of that
23 return and of any resulting court orders.

24 (2) In the event of dismissal of the criminal charges before the
25 defendant becomes mentally competent, the defendant shall be
26 subject to the applicable provisions of the Lanterman-Petris-Short
27 Act (Part 1 (commencing with Section 5000) of Division 5 of the
28 Welfare and Institutions Code), or to commitment and detention
29 pursuant to a petition filed pursuant to Section 6502 of the Welfare
30 and Institutions Code. If it is found that the person is not subject
31 to commitment or detention pursuant to the applicable provision
32 of the Lanterman-Petris-Short Act (Part 1 (commencing with
33 Section 5000) of Division 5 of the Welfare and Institutions Code)
34 or to commitment or detention pursuant to a petition filed pursuant
35 to Section 6502 of the Welfare and Institutions Code, the individual
36 shall not be subject to further confinement pursuant to this article
37 and the criminal action remains subject to dismissal pursuant to
38 Section 1385. The court shall notify the regional center director
39 and the executive director of the developmental center of any
40 dismissal.

1 (d) Notwithstanding any other provision of this section, the
 2 criminal action remains subject to dismissal pursuant to Section
 3 1385. If at any time prior to the maximum period of time allowed
 4 for proceedings under this article, the regional center director
 5 concludes that the behavior of the defendant related to the
 6 defendant’s criminal offense has been eliminated during time spent
 7 in court-ordered programs, the court may, upon recommendation
 8 of the regional center director, dismiss the criminal charges. The
 9 court shall transmit a copy of any order of dismissal to the regional
 10 center director and to the executive director of the developmental
 11 center.

12 (e) For the purpose of this section, “secure treatment facility”
 13 shall not include, except for state mental hospitals, state
 14 developmental centers, and correctional treatment facilities, a
 15 facility licensed pursuant to Chapter 2 (commencing with Section
 16 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
 17 3.2 (commencing with Section 1569) of, Division 2 of the Health
 18 and Safety Code, or a community board and care facility.

19 SEC. 157. Section 2602 of the Penal Code is amended to read:

20 2602. (a) Except as provided in subdivision (b), no person
 21 sentenced to imprisonment or housed in a state prison shall be
 22 administered any psychiatric medication without his or her prior
 23 informed consent.

24 (b) If a psychiatrist determines that an inmate should be treated
 25 with psychiatric medication, but the inmate does not consent, the
 26 inmate may be involuntarily treated with the medication. Treatment
 27 may be given on either a nonemergency basis as provided in
 28 subdivision (c), or on an emergency or interim basis as provided
 29 in subdivision (d).

30 (c) The Department of Corrections and Rehabilitation may seek
 31 to initiate involuntary medication on a nonemergency basis only
 32 if all of the following conditions have been met:

33 (1) A psychiatrist has determined that the inmate has a serious
 34 mental disorder.

35 (2) A psychiatrist has determined that, as a result of that mental
 36 disorder, the inmate is gravely disabled and does not have the
 37 capacity to refuse treatment with psychiatric medications or is a
 38 danger to self or others.

39 (3) A psychiatrist has prescribed one or more psychiatric
 40 medications for the treatment of the inmate’s disorder, has

1 considered the risks, benefits, and treatment alternatives to
2 involuntary medication, and has determined that the treatment
3 alternatives to involuntary medication are unlikely to meet the
4 needs of the patient.

5 (4) The inmate has been advised of the risks and benefits of,
6 and treatment alternatives to, the psychiatric medication and refuses
7 or is unable to consent to the administration of the medication.

8 (5) The inmate is provided a hearing before an administrative
9 law judge.

10 (6) The inmate is provided counsel at least 21 days prior to the
11 hearing, unless emergency or interim medication is being
12 administered pursuant to subdivision (d), in which case the inmate
13 would receive expedited access to counsel. The hearing shall be
14 held not more than 30 days after the filing of the notice with the
15 Office of Administrative Hearings, unless counsel for the inmate
16 agrees to extend the date of the hearing.

17 (7) The inmate and counsel are provided with written notice of
18 the hearing at least 21 days prior to the hearing, unless emergency
19 or interim medication is being administered pursuant to subdivision
20 (d), in which case the inmate would receive an expedited hearing.
21 The written notice shall do all of the following:

22 (A) Set forth the diagnosis, the factual basis for the diagnosis,
23 the basis upon which psychiatric medication is recommended, the
24 expected benefits of the medication, any potential side effects and
25 risks to the inmate from the medication, and any alternatives to
26 treatment with the medication.

27 (B) Advise the inmate of the right to be present at the hearing,
28 the right to be represented by counsel at all stages of the
29 proceedings, the right to present evidence, and the right to
30 cross-examine witnesses. Counsel for the inmate shall have access
31 to all medical records and files of the inmate, but shall not have
32 access to the confidential section of the inmate's central file which
33 contains materials unrelated to medical treatment.

34 (C) Inform the inmate of his or her right to contest the finding
35 of an administrative law judge authorizing treatment with
36 involuntary medication by filing a petition for writ of
37 administrative mandamus pursuant to Section 1094.5 of the Code
38 of Civil Procedure, and his or her right to file a petition for writ
39 of habeas corpus with respect to any decision of the Department
40 of Corrections and Rehabilitation to continue treatment with

1 involuntary medication after the administrative law judge has
2 authorized treatment with involuntary medication.

3 (8) An administrative law judge determines by clear and
4 convincing evidence that the inmate has a mental illness or
5 disorder, that as a result of that illness the inmate is gravely
6 disabled and lacks the capacity to consent to or refuse treatment
7 with psychiatric medications or is a danger to self or others if not
8 medicated, that there is no less intrusive alternative to involuntary
9 medication, and that the medication is in the inmate's best medical
10 interest. Failure of the department to provide timely or adequate
11 notice pursuant to this section shall be excused only upon a
12 showing of good cause and the absence of prejudice to the inmate.
13 In making this determination, the administrative law judge may
14 consider factors, including, but not limited to, the ability of the
15 inmate's counsel to adequately prepare the case and to confer with
16 the inmate, the continuity of care, and, if applicable, the need for
17 protection of the inmate or institutional staff that would be
18 compromised by a procedural default.

19 (9) The historical course of the inmate's mental disorder, as
20 determined by available relevant information about the course of
21 the inmate's mental disorder, shall be considered when it has direct
22 bearing on the determination of whether the inmate is a danger to
23 self or others, or is gravely disabled and incompetent to refuse
24 medication as the result of a mental disorder.

25 (10) An inmate is entitled to file one motion for reconsideration
26 following a determination that he or she may receive involuntary
27 medication, and may seek a hearing to present new evidence, upon
28 good cause shown.

29 (d) ~~Nothing in this~~ *This section is intended to does not* prohibit
30 a physician from taking appropriate action in an emergency. An
31 emergency exists when there is a sudden and marked change in
32 an inmate's mental condition so that action is immediately
33 necessary for the preservation of life or the prevention of serious
34 bodily harm to the inmate or others, and it is impractical, due to
35 the seriousness of the emergency, to first obtain informed consent.
36 If psychiatric medication is administered during an emergency,
37 the medication shall only be that which is required to treat the
38 emergency condition and shall be administered for only so long
39 as the emergency continues to exist. If the Department of
40 Corrections and Rehabilitation's clinicians identify a situation that

1 jeopardizes the inmate's health or well-being as the result of a
2 serious mental illness, and necessitates the continuation of
3 medication beyond the initial 72 hours pending the full mental
4 health hearing, the department shall give notice to the inmate and
5 his or her counsel of the department's intention to seek an ex parte
6 order to allow the continuance of medication pending the full
7 hearing. The notice shall be served upon the inmate and counsel
8 at the same time the inmate is given the written notice that the
9 involuntary medication proceedings are being initiated and is
10 appointed counsel as provided in subdivision (c). The order may
11 be issued ex parte upon a showing that in the absence of the
12 medication the emergency conditions are likely to recur. The
13 request for an ex parte order shall be supported by an affidavit
14 from the psychiatrist showing specific facts. The inmate and the
15 inmate's appointed counsel shall have two business days to respond
16 to the department's ex parte request to continue interim medication,
17 and may present facts supported by an affidavit in opposition to
18 the department's request. An administrative law judge shall review
19 the ex parte request and shall have three business days to determine
20 the merits of the department's request for an ex parte order. If an
21 order is issued, the psychiatrist may continue the administration
22 of the medication until the hearing described in paragraph (5) of
23 subdivision (c) is held.

24 (1) The Department of Corrections and Rehabilitation shall file
25 with the Office of Administrative Hearings, and serve on the inmate
26 and his or her counsel, the written notice described in paragraph
27 (7) of subdivision (c) within 72 hours of commencing medication
28 pursuant to this subdivision, unless either of the following occurs:

29 (A) The inmate gives informed consent to continue the
30 medication.

31 (B) A psychiatrist determines that the psychiatric medication
32 is not necessary and administration of the medication is
33 discontinued.

34 (2) If medication is being administered pursuant to this
35 subdivision, the hearing described in paragraph (5) of subdivision
36 (c) shall commence within 21 days of the filing and service of the
37 notice, unless counsel for an inmate agrees to a different period
38 of time.

39 (3) With the exception of the timeline provisions specified in
40 paragraphs (1) and (2) for providing notice and commencement

1 of the hearing pursuant to the conditions specified in this
2 subdivision, the inmate shall be entitled to and be given the same
3 due process protections as specified in subdivision (c). The
4 department shall prove the same elements supporting the
5 involuntary administration of psychiatric medication and the
6 administrative law judge shall be required to make the same
7 findings described in subdivision (c).

8 (e) The determination that an inmate may receive involuntary
9 medication shall be valid for one year from the date of the
10 determination, regardless of whether the inmate subsequently gives
11 his or her informed consent.

12 (f) If a determination has been made to involuntarily medicate
13 an inmate pursuant to subdivision (c) or (d), the medication shall
14 be discontinued one year after the date of that determination, unless
15 the inmate gives his or her informed consent to the administration
16 of the medication, or unless a new determination is made pursuant
17 to the procedures set forth in subdivision (g).

18 (g) To renew an existing order allowing involuntary medication,
19 the department shall file with the Office of Administrative
20 Hearings, and shall serve on the inmate and his or her counsel, a
21 written notice indicating the department's intent to renew the
22 existing involuntary medication order.

23 (1) The request to renew the order shall be filed and served no
24 later than 21 days prior to the expiration of the current order
25 authorizing involuntary medication.

26 (2) The inmate shall be entitled to, and shall be given, the same
27 due process protections as specified in subdivision (c).

28 (3) Renewal orders shall be valid for one year from the date of
29 the hearing.

30 (4) An order renewing an existing order shall be granted based
31 on clear and convincing evidence that the inmate has a serious
32 mental disorder that requires treatment with psychiatric medication,
33 and that, but for the medication, the inmate would revert to the
34 behavior that was the basis for the prior order authorizing
35 involuntary medication, coupled with evidence that the inmate
36 lacks insight regarding his or her need for the medication, such
37 that it is unlikely that the inmate would be able to manage his or
38 her own medication and treatment regimen. No new acts need be
39 alleged or proven.

1 (5) If the department wishes to add a basis to an existing order,
2 the department shall give the inmate and the inmate's counsel
3 notice in advance of the hearing via a renewal notice or
4 supplemental petition. Within the renewal notice or supplemental
5 petition, ~~as described in subdivision (g)~~, the department shall
6 specify what additional basis is being alleged and what qualifying
7 conduct within the past year supports that additional basis. The
8 department shall prove the additional basis and conduct by clear
9 and convincing evidence at a hearing as specified in subdivision
10 (c).

11 (6) The hearing on any petition to renew an order for involuntary
12 medication shall be conducted prior to the expiration of the current
13 order.

14 (h) Pursuant to Section 5058, the Department of Corrections
15 and Rehabilitation shall adopt regulations to fully implement this
16 section.

17 (i) In the event of a conflict between the provisions of this
18 section and the Administrative Procedure Act (Chapter 4.5
19 (commencing with Section 11400) of Part 1 of Division 3 of the
20 Government Code), this section shall control.

21 SEC. 158. Section 3000.08 of the Penal Code, as amended by
22 Section 35 of Chapter 43 of the Statutes of 2012, is amended to
23 read:

24 3000.08. (a) Persons released from state prison prior to or on
25 or after July 1, 2013, after serving a prison term or, whose sentence
26 has been deemed served pursuant to Section 2900.5, for any of the
27 following crimes shall be subject to parole supervision by the
28 Department of Corrections and Rehabilitation and the jurisdiction
29 of the court in the county where the parolee is released or resides
30 for the purpose of hearing petitions to revoke parole and impose
31 a term of custody:

32 (1) A serious felony as described in subdivision (c) of Section
33 1192.7.

34 (2) A violent felony as described in subdivision (c) of Section
35 667.5.

36 (3) A crime for which the person was sentenced pursuant to
37 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
38 of subdivision (c) of Section 1170.12.

39 (4) Any crime where the person eligible for release from prison
40 is classified as a High Risk Sex Offender.

1 (5) Any crime where the person is required, as a condition of
2 parole, to undergo treatment by the *State Department of Mental*
3 ~~Health~~ *State Hospitals* pursuant to Section 2962.

4 (b) Notwithstanding any other provision of law, all other
5 offenders released from prison shall be placed on postrelease
6 supervision pursuant to Title 2.05 (commencing with Section
7 3450).

8 (c) At any time during the period of parole of a person subject
9 to this section, if any parole agent or peace officer has probable
10 cause to believe that the parolee is violating any term or condition
11 of his or her parole, the agent or officer may, without warrant or
12 other process and at any time until the final disposition of the case,
13 arrest the person and bring him or her before the court, or the court
14 may, in its discretion, issue a warrant for that person's arrest
15 pursuant to Section 1203.2.

16 (d) Upon review of the alleged violation and a finding of good
17 cause that the parolee has committed a violation of law or violated
18 his or her conditions of parole, the supervising parole agency may
19 impose additional and appropriate conditions of supervision,
20 including rehabilitation and treatment services and appropriate
21 incentives for compliance, and impose immediate, structured, and
22 intermediate sanctions for parole violations, including flash
23 incarceration in a county jail. Periods of "flash incarceration," as
24 defined in subdivision (e), are encouraged as one method of
25 punishment for violations of a parolee's conditions of parole.
26 Nothing in this section is intended to preclude referrals to a reentry
27 court pursuant to Section 3015.

28 (e) "Flash incarceration" is a period of detention in county jail
29 due to a violation of a parolee's conditions of parole. The length
30 of the detention period can range between one and 10 consecutive
31 days. Shorter, but if necessary more frequent, periods of detention
32 for violations of a parolee's conditions of parole shall appropriately
33 punish a parolee while preventing the disruption in a work or home
34 establishment that typically arises from longer periods of detention.

35 (f) If the supervising parole agency has determined, following
36 application of its assessment processes, that intermediate sanctions
37 up to and including flash incarceration are not appropriate, the
38 supervising parole agency shall, pursuant to Section 1203.2,
39 petition the court in the county in which the parolee is being
40 supervised to revoke parole. At any point during the process

1 initiated pursuant to this section, a parolee may waive, in writing,
2 his or her right to counsel, admit the parole violation, waive a court
3 hearing, and accept the proposed parole modification or revocation.
4 The petition shall include a written report that contains additional
5 information regarding the petition, including the relevant terms
6 and conditions of parole, the circumstances of the alleged
7 underlying violation, the history and background of the parolee,
8 and any recommendations. The Judicial Council shall adopt forms
9 and rules of court to establish uniform statewide procedures to
10 implement this subdivision, including the minimum contents of
11 supervision agency reports. Upon a finding that the person has
12 violated the conditions of parole, the court shall have authority to
13 do any of the following:

14 (1) Return the person to parole supervision with modifications
15 of conditions, if appropriate, including a period of incarceration
16 in *a* county jail.

17 (2) Revoke parole and order the person to confinement in ~~the~~
18 *a* county jail.

19 (3) Refer the person to a reentry court pursuant to Section 3015
20 or other evidence-based program in the court's discretion.

21 (g) Confinement pursuant to paragraphs (1) and (2) of
22 subdivision (f) shall not exceed a period of 180 days in ~~the~~ *a* county
23 jail.

24 (h) Notwithstanding any other provision of law, in any case
25 where Section 3000.1 or paragraph (4) of subdivision (b) of Section
26 3000 applies to a person who is on parole and the court determines
27 that the person has committed a violation of law or violated his or
28 her conditions of parole, the person on parole shall be remanded
29 to the custody of the Department of Corrections and Rehabilitation
30 and the jurisdiction of the Board of Parole Hearings for the purpose
31 of future parole consideration.

32 (i) Notwithstanding subdivision (a), any of the following persons
33 released from state prison shall be subject to the jurisdiction of,
34 and parole supervision by, the Department of Corrections and
35 Rehabilitation for a period of parole up to three years or the parole
36 term the person was subject to at the time of the commission of
37 the offense, whichever is greater:

38 (1) The person is required to register as a sex offender pursuant
39 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
40 1, and was subject to a period of parole exceeding three years at

1 the time he or she committed a felony for which ~~they were~~ *he or*
2 *she was* convicted and subsequently sentenced to state prison.

3 (2) The person was subject to parole for life pursuant to Section
4 3000.1 at the time of the commission of the offense that resulted
5 in a conviction and state prison sentence.

6 (j) Parolees subject to this section who have a pending
7 adjudication for a parole violation on July 1, 2013, shall be subject
8 to the jurisdiction of the Board of Parole Hearings. Parole
9 revocation proceedings conducted by the Board of Parole Hearings
10 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be
11 subject to the jurisdiction of the Board of Parole Hearings.

12 (k) Except as described in subdivision (c), any person who is
13 convicted of a felony that requires community supervision and
14 who still has a period of state parole to serve shall discharge from
15 state parole at the time of release to community supervision.

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

17 SEC. 159. Section 3060.7 of the Penal Code, as added by
18 Section 48 of Chapter 43 of the Statutes of 2012, is amended to
19 read:

20 3060.7. (a) (1) Notwithstanding any other law, the supervising
21 parole agency shall notify any person released on parole or
22 postrelease community supervision pursuant to Title 2.05
23 (commencing with Section 3450) of Part 3 who has been classified
24 by the Department of Corrections *and Rehabilitation* as included
25 within the highest control or risk classification that he or she shall
26 be required to report to his or her assigned parole officer or
27 designated local supervising agency within two days of release
28 from the state prison.

29 (2) This section shall not prohibit the supervising parole agency
30 or local supervising agency from requiring any person released on
31 parole or postrelease community supervision to report to his or
32 her assigned parole officer within a time period that is less than
33 two days from the time of release.

34 (b) The supervising parole agency, within 24 hours of a parolee's
35 failure to report as required by this section, shall issue a written
36 order suspending the parole of that parolee, pending a hearing
37 before the Board of Parole Hearings or the court, as applicable,
38 and shall request that a warrant be issued for the parolee's arrest
39 pursuant to subdivision (c) of Section 3000.08.

1 (c) Upon the issuance of an arrest warrant for a parolee who
2 has been classified within the highest control or risk classification,
3 the assigned parole officer shall continue to carry the parolee on
4 his or her regular caseload and shall continue to search for the
5 parolee's whereabouts.

6 (d) With regard to any inmate subject to this section, the
7 Department of Corrections and Rehabilitation shall release an
8 inmate sentenced prior to ~~the effective date of this section~~ *June*
9 *27, 2012*, one or two days before his or her scheduled release date
10 if the inmate's release date falls on the day before a holiday or
11 weekend.

12 (e) With regard to any inmate subject to this section, the
13 Department of Corrections and Rehabilitation shall release an
14 inmate one or two days after his or her scheduled release date if
15 the release date falls on the day before a holiday or weekend.

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

17 SEC. 160. Section 4024.2 of the Penal Code is amended to
18 read:

19 4024.2. (a) Notwithstanding any other law, the board of
20 supervisors of any county may authorize the sheriff or other official
21 in charge of county correctional facilities to offer a voluntary
22 program under which any person committed to the facility may
23 participate in a work release program pursuant to criteria described
24 in subdivision (b), in which one day of participation will be in lieu
25 of one day of confinement.

26 (b) The criteria for a work release program are the following:

27 (1) The work release program shall consist of any of the
28 following:

29 (A) Manual labor to improve or maintain levees or public
30 facilities, including, but not limited to, streets, parks, and schools.

31 (B) Manual labor in support of nonprofit organizations, as
32 approved by the sheriff or other official in charge of the
33 correctional facilities. As a condition of assigning participants of
34 a work release program to perform manual labor in support of
35 nonprofit organizations pursuant to this section, the board of
36 supervisors shall obtain workers' compensation insurance which
37 shall be adequate to cover work-related injuries incurred by those
38 participants, in accordance with Section 3363.5 of the Labor Code.

39 (C) Performance of graffiti cleanup for local governmental
40 entities, including participation in a graffiti abatement program as

1 defined in subdivision (f) of Section 594, as approved by the sheriff
2 or other official in charge of the correctional facilities.

3 (D) Performance of weed and rubbish abatement on public and
4 private property pursuant to Chapter 13 (commencing with Section
5 39501) of *Part 2* of Division 3 of Title 4 of the Government Code,
6 or Part 5 (commencing with Section 14875) or Part 6 (commencing
7 with Section 14930) of Division 12 of the Health and Safety Code,
8 as approved by the sheriff or other official in charge of the
9 correctional facilities.

10 (E) Performance of house repairs or yard services for senior
11 citizens and the performance of repairs to senior centers through
12 contact with local senior service organizations, as approved by the
13 sheriff or other official in charge of the correctional facilities.
14 Where a work release participant has been assigned to this task,
15 the sheriff or other official shall agree upon in advance with the
16 senior service organization about the type of services to be rendered
17 by the participant and the extent of contact permitted between the
18 recipients of these services and the participant.

19 (F) Any person who is not able to perform manual labor as
20 specified in this paragraph because of a medical condition, physical
21 disability, or age, may participate in a work release program
22 involving any other type of public sector work that is designated
23 and approved by the sheriff or other official in charge of county
24 correctional facilities.

25 (2) The sheriff or other official may permit a participant in a
26 work release program to receive work release credit for documented
27 participation in educational programs, vocational programs,
28 substance abuse programs, life skills programs, or parenting
29 programs. Participation in these programs shall be considered in
30 lieu of performing labor in a work release program, with eight
31 work-related hours to equal ~~to~~ one day of custody credit.

32 (3) The work release program shall be under the direction of a
33 responsible person appointed by the sheriff or other official in
34 charge.

35 (4) The hours of labor to be performed pursuant to this section
36 shall be uniform for all persons committed to a facility in a county
37 and may be determined by the sheriff or other official in charge
38 of county correctional facilities, and each day shall be a minimum
39 of 8 and a maximum of 10 hours, in accordance with the normal
40 working hours of county employees assigned to supervise the

1 programs. However, reasonable accommodation may be made for
2 participation in a program under paragraph (2).

3 As used in this section, “nonprofit organizations” means
4 organizations established or operated for the benefit of the public
5 or in support of a significant public interest, as set forth in Section
6 501(c)(3) of the Internal Revenue Code. Organizations established
7 or operated for the primary purpose of benefiting their own
8 memberships are specifically excluded.

9 (c) The board of supervisors may prescribe reasonable rules and
10 regulations under which a work release program is operated and
11 may provide that participants wear clothing of a distinctive
12 character while performing the work. As a condition of
13 participating in a work release program, a person shall give his or
14 her promise to appear for work or assigned activity by signing a
15 notice to appear before the sheriff or at the education, vocational,
16 or substance abuse program at a time and place specified in the
17 notice and shall sign an agreement that the sheriff may immediately
18 retake the person into custody to serve the balance of his or her
19 sentence if the person fails to appear for the program at the time
20 and place agreed to, does not perform the work or activity assigned,
21 or for any other reason is no longer a fit subject for release under
22 this section. A copy of the notice shall be delivered to the person
23 and a copy shall be retained by the sheriff. Any person who
24 willfully violates his or her written promise to appear at the time
25 and place specified in the notice is guilty of a misdemeanor.

26 Whenever a peace officer has reasonable cause to believe the
27 person has failed to appear at the time and place specified in the
28 notice or fails to appear or work at the time and place agreed to or
29 has failed to perform the work assigned, the peace officer may,
30 without a warrant, retake the person into custody, or the court may
31 issue an arrest warrant for the retaking of the person into custody,
32 to complete the remainder of the original sentence. A peace officer
33 may not retake a person into custody under this subdivision,
34 without a warrant for arrest, unless the officer has a written order
35 to do so, signed by the sheriff or other person in charge of the
36 program, that describes with particularity the person to be retaken.

37 (d) ~~Nothing in this~~ *This section shall be construed to does not*
38 require the sheriff or other official in charge to assign a person to
39 a program pursuant to this section if it appears from the record
40 that the person has refused to satisfactorily perform as assigned

1 or has not satisfactorily complied with the reasonable rules and
2 regulations governing the assignment or any other order of the
3 court.

4 A person shall be eligible for work release under this section
5 only if the sheriff or other official in charge concludes that the
6 person is a fit subject therefor.

7 (e) The board of supervisors may prescribe a program
8 administrative fee, not to exceed the pro rata cost of administration,
9 to be paid by each person according to his or her ability to pay.

10 SEC. 161. Section 4115.55 of the Penal Code is amended to
11 read:

12 4115.55. (a) Upon agreement with the sheriff or director of
13 the county department of corrections, a board of supervisors may
14 enter into a contract with other public agencies to provide housing
15 for inmates sentenced to county jail in community correctional
16 facilities created pursuant to ~~Chapter 7 Article 1.5~~ (commencing
17 with Section 2910) *of Chapter 7* of Title 1 or Chapter 9.5
18 (commencing with Section 6250) of Title 7.

19 (b) Facilities operated pursuant to agreements entered into under
20 subdivision ~~(a)~~ shall (a) *shall* comply with the minimum standards
21 for local detention facilities as provided by Chapter 1 (commencing
22 with Section 3000) of Division 3 of Title 15 of the California Code
23 of Regulations.

24 SEC. 162. Section 5072 of the Penal Code is amended to read:

25 5072. (a) Notwithstanding any other provision of law, the
26 Department of Corrections and Rehabilitation and the State
27 Department of Health Care Services may develop a process to
28 maximize federal financial participation for the provision of acute
29 inpatient hospital services rendered to individuals who, but for
30 their institutional status as inmates, are otherwise eligible for
31 Medi-Cal pursuant to Chapter 7 (commencing with Section 14000)
32 of Part 3 of Division 9 of the Welfare and Institutions Code or a
33 Low Income Health Program (LIHP) pursuant to Part 3.6
34 (commencing with Section 15909) of Division 9 of the Welfare
35 and Institutions Code.

36 (b) Federal reimbursement for acute inpatient hospital services
37 for inmates enrolled in Medi-Cal shall occur through the State
38 Department of Health Care Services and federal reimbursement
39 for acute inpatient hospital services for inmates not enrolled in

1 Medi-Cal but who are eligible for a LIHP shall occur through a
2 county LIHP.

3 (c) (1) The Secretary of the Department of Corrections and
4 Rehabilitation, in conjunction with the State Department of Health
5 Care Services, shall develop a process to claim federal financial
6 participation and to reimburse the Department of Corrections and
7 Rehabilitation for the federal share of the allowable Medicaid cost
8 provision of acute inpatient hospital services rendered to inmates
9 according to this section and for any administrative costs incurred
10 in support of those services.

11 (2) Public or community hospitals shall invoice the Department
12 of Corrections and Rehabilitation to obtain reimbursement for
13 acute inpatient hospital services in accordance with contracted
14 rates of reimbursement, or if no contract is in place, the rates
15 pursuant to Section 5023.5. The Department of Corrections and
16 Rehabilitation shall reimburse a public or community hospital for
17 the delivery of acute inpatient hospital services rendered to an
18 inmate pursuant to this section. For individuals eligible for
19 Medi-Cal pursuant to this section, the Department of Corrections
20 and Rehabilitation shall submit a quarterly invoice to the State
21 Department of Health Care Services for claiming federal
22 participation at the Medi-Cal rate for acute inpatient hospital
23 services. For enrollees in the LIHP, the Department of Corrections
24 and Rehabilitation shall submit a quarterly invoice to the county
25 of last legal residence pursuant to Section 14053.7 of the Welfare
26 and Institutions Code. The county shall submit the invoice to the
27 State Department of Health Care Services for claiming federal
28 financial participation for acute inpatient hospital services for
29 individuals made eligible pursuant to this section, pursuant to
30 Section 14053.7 of the Welfare and Institutions Code, and pursuant
31 to the process developed in subdivision (b). The State Department
32 of Health Care Services shall claim federal participation for eligible
33 services for LIHP enrolled inmates at the rate paid by the
34 Department of Corrections and Rehabilitation. The State
35 Department of Health Care Services and counties shall remit funds
36 received for federal participation to the Department of Corrections
37 and Rehabilitation for allowable costs incurred as a result of
38 delivering acute inpatient hospital services allowable under this
39 section.

1 (3) The county LIHPs shall not experience any additional net
2 expenditures of county funds due to the provision of services under
3 this section.

4 (4) The Department of Corrections and Rehabilitation shall
5 reimburse the State Department of Health Care Services and
6 counties for administrative costs that are not reimbursed by the
7 federal government.

8 (5) The Department of Corrections and Rehabilitation shall
9 reimburse the State Department of Health Care Services for any
10 disallowance that is required to be returned to the Centers for
11 Medicare and Medicaid Services for any litigation costs incurred
12 due to the implementation of this section.

13 (d) (1) The state shall indemnify and hold harmless participating
14 entities that operate a LIHP, including all counties, and all counties
15 that operate in a consortium that participates as a LIHP, against
16 any and all losses, including, but not limited to, claims, demands,
17 liabilities, court costs, judgments, or obligations, due to the
18 implementation of this section as directed by the secretary and the
19 State Department of Health Care Services.

20 (2) The State Department of Health Care Services may at its
21 discretion require a county, as a condition of participation as a
22 LIHP, to enroll an eligible inmate into its LIHP if the county is
23 the inmate’s county of last legal residence.

24 (3) The county LIHPs shall be held harmless by the state for
25 any disallowance or deferral if federal action is taken due to the
26 implementation of this section in accord with the state’s policies,
27 directions, and requirements.

28 (e) (1) The Department of Corrections and Rehabilitation, in
29 conjunction with the State Department of Health Care Services,
30 shall develop a process to facilitate eligibility determinations for
31 individuals who may be eligible for Medi-Cal or a LIHP pursuant
32 to this section and Section 14053.7 of the Welfare and Institutions
33 Code.

34 (2) The Department of Corrections and Rehabilitation shall
35 assist inmates in completing either the Medi-Cal or LIHP
36 application as appropriate and shall forward that application to the
37 State Department of Health Care Services for processing.

38 (3) Notwithstanding any other state law, and only to the extent
39 that federal law allows and federal financial participation is
40 available, for the limited purpose of implementing this section,

1 the department or its designee is authorized to act on behalf of an
2 inmate for purposes of applying for or determinations of Medi-Cal
3 or LIHP eligibility.

4 (f) (1) ~~Nothing in this~~ *This section shall be interpreted to does*
5 *not* restrict or limit the eligibility or alter county responsibility for
6 payment of any service delivered to a parolee who has been
7 released from detention or incarceration and now resides in a
8 county that participates in the LIHP. If otherwise eligible for the
9 county's LIHP, the LIHP shall enroll the parolee.

10 (2) Notwithstanding paragraph (1), at the option of the state,
11 for enrolled parolees who have been released from detention or
12 incarceration and now reside in a county that participates in a
13 LIHP, the LIHP shall reimburse providers for the delivery of
14 services which are otherwise the responsibility of the state to
15 provide. Payment for these medical services, including both the
16 state and federal shares of reimbursement, shall be included as
17 part of the reimbursement process described in paragraph (1) of
18 subdivision (c).

19 (3) Enrollment of individuals in a LIHP under this subdivision
20 shall be subject to any enrollment limitations described in
21 subdivision ~~(g)~~ (h) of Section 15910 of the Welfare and Institutions
22 Code.

23 (g) The department shall be responsible to the LIHP for the
24 nonfederal share of any reimbursement made for the provision of
25 acute inpatient hospital services rendered to inmates pursuant to
26 this section.

27 (h) Reimbursement pursuant to this section shall be limited to
28 those acute inpatient hospital services for which federal financial
29 participation pursuant to Title XIX of the federal Social Security
30 Act is allowed.

31 (i) This section shall have no force or effect if there is a final
32 judicial determination made by any state or federal court that is
33 not appealed, or by a court of appellate jurisdiction that is not
34 further appealed, in any action by any party, or a final
35 determination by the administrator of the federal Centers for
36 Medicare and Medicaid Services, that limits or affects the
37 department's authority to select the hospitals used to provide
38 inpatient hospital services to inmates.

39 (j) It is the intent of the Legislature that the implementation of
40 this section will result in state General Fund savings for the funding

1 of acute inpatient hospital services provided to inmates along with
2 any related administrative costs.

3 (k) Any agreements entered into under this section for Medi-Cal
4 or a LIHP to provide for reimbursement of acute inpatient hospital
5 services and administrative expenditures as described in
6 subdivision (c) shall not be subject to Part 2 (commencing with
7 Section 10100) of Division 2 of the Public Contract Code.

8 (l) This section shall be implemented in a manner that is
9 consistent with federal Medicaid law and regulations. The Director
10 of the State Department of Health Care Services shall seek any
11 federal approvals necessary for the implementation of this section.
12 This section shall be implemented only when and to the extent that
13 any necessary federal approval is obtained, and only to the extent
14 that existing levels of federal financial participation are not
15 otherwise jeopardized.

16 (m) To the extent that the Director of the State Department of
17 Health Care Services determines that existing levels of federal
18 financial participation are jeopardized, this section shall no longer
19 be implemented.

20 (n) Notwithstanding Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
22 the State Department of Health Care Services may, without taking
23 any further regulatory action, implement this section by means of
24 all-county letters, provider bulletins, facility letters, or similar
25 instructions.

26 (o) For purposes of this section, the following terms have the
27 following meanings:

28 (1) The term “county of last legal residence” means the county
29 in which the inmate resided at the time of arrest that resulted in
30 conviction and incarceration in a state prison facility.

31 (2) The term “inmate” means an adult who is involuntarily
32 residing in a state prison facility operated, administered, or
33 regulated, directly or indirectly, by the department.

34 (3) During the existence of the receivership established in United
35 States District Court for the Northern District of California, Case
36 No. CO1-1351-~~THE~~ *TEH*, Plata v. Schwarzenegger, references in
37 this section to the “secretary” shall mean the receiver appointed
38 in that action, who shall implement portions of this section that
39 would otherwise be within the secretary’s responsibility.

40 SEC. 163. Section 6030 of the Penal Code is amended to read:

1 6030. (a) The Board of State and Community Corrections shall
2 establish minimum standards for local correctional facilities. The
3 board shall review those standards biennially and make any
4 appropriate revisions.

5 (b) The standards shall include, but not be limited to, the
6 following areas: health and sanitary conditions, fire and life safety,
7 security, rehabilitation programs, recreation, treatment of persons
8 confined in local correctional facilities, and personnel training.

9 (c) The standards shall require that at least one person on duty
10 at the facility is knowledgeable in the area of fire and life safety
11 procedures.

12 (d) The standards shall also include requirements relating to the
13 acquisition, storage, labeling, packaging, and dispensing of drugs.

14 (e) The standards shall require that inmates who are received
15 by the facility while they are pregnant be notified, orally or in
16 writing, of and provided all of the following:

17 (1) A balanced, nutritious diet approved by a doctor.

18 (2) Prenatal and post partum information and health care,
19 including, but not limited to, access to necessary vitamins as
20 recommended by a doctor.

21 (3) Information pertaining to childbirth education and infant
22 care.

23 (4) A dental cleaning while in a state facility.

24 (f) The standards shall provide that a woman known to be
25 pregnant or in recovery after delivery shall not be restrained, except
26 as provided in Section 3407. The board shall develop standards
27 regarding the restraint of pregnant women at the next biennial
28 review of the standards after the enactment of the act amending
29 this subdivision and shall review the individual ~~facilities~~² *facility's*
30 compliance with the standards.

31 (g) In establishing minimum standards, the board shall seek the
32 advice of the following:

33 (1) For health and sanitary conditions:

34 The State Department of Public Health, physicians, psychiatrists,
35 local public health officials, and other interested persons.

36 (2) For fire and life safety:

37 The State Fire Marshal, local fire officials, and other interested
38 persons.

39 (3) For security, rehabilitation programs, recreation, and
40 treatment of persons confined in correctional facilities:

1 The Department of Corrections and Rehabilitation, state and
2 local juvenile justice commissions, state and local correctional
3 officials, experts in criminology and penology, and other interested
4 persons.

5 (4) For personnel training:

6 The Commission on Peace Officer Standards and Training,
7 psychiatrists, experts in criminology and penology, the Department
8 of Corrections and Rehabilitation, state and local correctional
9 officials, and other interested persons.

10 (5) For female inmates and pregnant inmates in local adult and
11 juvenile facilities:

12 The California State Sheriffs' Association and Chief Probation
13 Officers' Association of California, and other interested persons.

14 SEC. 164. Section 11165.7 of the Penal Code is amended to
15 read:

16 11165.7. (a) As used in this article, "mandated reporter" is
17 defined as any of the following:

18 (1) A teacher.

19 (2) An instructional aide.

20 (3) A teacher's aide or teacher's assistant employed by a public
21 or private school.

22 (4) A classified employee of a public school.

23 (5) An administrative officer or supervisor of child welfare and
24 attendance, or a certificated pupil personnel employee of a public
25 or private school.

26 (6) An administrator of a public or private day camp.

27 (7) An administrator or employee of a public or private youth
28 center, youth recreation program, or youth organization.

29 (8) An administrator or employee of a public or private
30 organization whose duties require direct contact and supervision
31 of children.

32 (9) An employee of a county office of education or the State
33 Department of Education whose duties bring the employee into
34 contact with children on a regular basis.

35 (10) A licensee, an administrator, or an employee of a licensed
36 community care or child day care facility.

37 (11) A Head Start program teacher.

38 (12) A licensing worker or licensing evaluator employed by a
39 licensing agency, as defined in Section 11165.11.

40 (13) A public assistance worker.

- 1 (14) An employee of a child care institution, including, but not
2 limited to, foster parents, group home personnel, and personnel of
3 residential care facilities.
- 4 (15) A social worker, probation officer, or parole officer.
- 5 (16) An employee of a school district police or security
6 department.
- 7 (17) A person who is an administrator or presenter of, or a
8 counselor in, a child abuse prevention program in a public or
9 private school.
- 10 (18) A district attorney investigator, inspector, or local child
11 support agency caseworker, unless the investigator, inspector, or
12 caseworker is working with an attorney appointed pursuant to
13 Section 317 of the Welfare and Institutions Code to represent a
14 minor.
- 15 (19) A peace officer, as defined in Chapter 4.5 (commencing
16 with Section 830) of Title 3 of Part 2, who is not otherwise
17 described in this section.
- 18 (20) A firefighter, except for volunteer firefighters.
- 19 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
20 resident, intern, podiatrist, chiropractor, licensed nurse, dental
21 hygienist, optometrist, marriage and family therapist, clinical social
22 worker, professional clinical counselor, or any other person who
23 is currently licensed under Division 2 (commencing with Section
24 500) of the Business and Professions Code.
- 25 (22) An emergency medical technician I or II, paramedic, or
26 other person certified pursuant to Division 2.5 (commencing with
27 Section 1797) of the Health and Safety Code.
- 28 (23) A psychological assistant registered pursuant to Section
29 2913 of the Business and Professions Code.
- 30 (24) A marriage and family therapist trainee, as defined in
31 subdivision (c) of Section 4980.03 of the Business and Professions
32 Code.
- 33 (25) An unlicensed marriage and family therapist intern
34 registered under Section 4980.44 of the Business and Professions
35 Code.
- 36 (26) A state or county public health employee who treats a minor
37 for venereal disease or any other condition.
- 38 (27) A coroner.
- 39 (28) A medical examiner or other person who performs
40 autopsies.

1 (29) A commercial film and photographic print or image
2 processor as specified in subdivision (e) of Section 11166. As used
3 in this article, “commercial film and photographic print or image
4 processor” means a person who develops exposed photographic
5 film into negatives, slides, or prints, or who makes prints from
6 negatives or slides, or who prepares, publishes, produces, develops,
7 duplicates, or prints any representation of information, data, or an
8 image, including, but not limited to, any film, filmstrip, photograph,
9 negative, slide, photocopy, videotape, video laser ~~disk~~ *disc*,
10 computer hardware, computer software, computer floppy disk,
11 data storage medium, CD-ROM, computer-generated equipment,
12 or computer-generated image, for compensation. The term includes
13 any employee of that person; it does not include a person who
14 develops film or makes prints or images for a public agency.

15 (30) A child visitation monitor. As used in this article, “child
16 visitation monitor” means a person who, for financial
17 compensation, acts as a monitor of a visit between a child and
18 another person when the monitoring of that visit has been ordered
19 by a court of law.

20 (31) An animal control officer or humane society officer. For
21 the purposes of this article, the following terms have the following
22 meanings:

23 (A) “Animal control officer” means a person employed by a
24 city, county, or city and county for the purpose of enforcing animal
25 control laws or regulations.

26 (B) “Humane society officer” means a person appointed or
27 employed by a public or private entity as a humane officer who is
28 qualified pursuant to Section 14502 or 14503 of the Corporations
29 Code.

30 (32) A clergy member, as specified in subdivision (d) of Section
31 11166. As used in this article, “clergy member” means a priest,
32 minister, rabbi, religious practitioner, or similar functionary of a
33 church, temple, or recognized denomination or organization.

34 (33) Any custodian of records of a clergy member, as specified
35 in this section and subdivision (d) of Section 11166.

36 (34) An employee of any police department, county sheriff’s
37 department, county probation department, or county welfare
38 department.

1 (35) An employee or volunteer of a Court Appointed Special
2 Advocate program, as defined in Rule 5.655 of the California Rules
3 of Court.

4 (36) A custodial officer, as defined in Section 831.5.

5 (37) A person providing services to a minor child under Section
6 12300 or 12300.1 of the Welfare and Institutions Code.

7 (38) An alcohol and drug counselor. As used in this article, an
8 “alcohol and drug counselor” is a person providing counseling,
9 therapy, or other clinical services for a state licensed or certified
10 drug, alcohol, or drug and alcohol treatment program. However,
11 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
12 and of itself, a sufficient basis for reporting child abuse or neglect.

13 (39) A clinical counselor trainee, as defined in subdivision (g)
14 of Section 4999.12 of the Business and Professions Code.

15 (40) A clinical counselor intern registered under Section 4999.42
16 of the Business and Professions Code.

17 (41) An employee or administrator of a public or private
18 postsecondary institution, whose duties bring the administrator or
19 employee into contact with children on a regular basis, or who
20 supervises those whose duties bring the administrator or employee
21 into contact with children on a regular basis, as to child abuse or
22 neglect occurring on that institution’s premises or at an official
23 activity of, or program conducted by, the institution. Nothing in
24 this paragraph shall be construed as altering the lawyer-client
25 privilege as set forth in Article 3 (commencing with Section 950)
26 of Chapter 4 of Division 8 of the Evidence Code.

27 (42) An athletic coach, athletic administrator, or athletic director
28 employed by any public or private school that provides any
29 combination of instruction for kindergarten, or grades 1 to 12,
30 inclusive.

31 (43) (A) A commercial computer technician as specified in
32 subdivision (e) of Section 11166. As used in this article,
33 “commercial computer technician” means a person who works for
34 a company that is in the business of repairing, installing, or
35 otherwise servicing a computer or computer component, including,
36 but not limited to, a computer part, device, memory storage or
37 recording mechanism, auxiliary storage recording or memory
38 capacity, or any other material relating to the operation and
39 maintenance of a computer or computer network system, for a fee.
40 An employer who provides an electronic communications service

1 or a remote computing service to the public shall be deemed to
2 comply with this article if that employer complies with Section
3 2258A of Title 18 of the United States Code.

4 (B) An employer of a commercial computer technician may
5 implement internal procedures for facilitating reporting consistent
6 with this article. These procedures may direct employees who are
7 mandated reporters under this paragraph to report materials
8 described in subdivision (e) of Section 11166 to an employee who
9 is designated by the employer to receive the reports. An employee
10 who is designated to receive reports under this subparagraph shall
11 be a commercial computer technician for purposes of this article.
12 A commercial computer technician who makes a report to the
13 designated employee pursuant to this subparagraph shall be deemed
14 to have complied with the requirements of this article and shall be
15 subject to the protections afforded to mandated reporters, including,
16 but not limited to, those protections afforded by Section 11172.

17 (44) Any athletic coach, including, but not limited to, an
18 assistant coach or a graduate assistant involved in coaching, at
19 public or private postsecondary institutions.

20 (b) Except as provided in paragraph (35) of subdivision (a),
21 volunteers of public or private organizations whose duties require
22 direct contact with and supervision of children are not mandated
23 reporters but are encouraged to obtain training in the identification
24 and reporting of child abuse and neglect and are further encouraged
25 to report known or suspected instances of child abuse or neglect
26 to an agency specified in Section 11165.9.

27 (c) Employers are strongly encouraged to provide their
28 employees who are mandated reporters with training in the duties
29 imposed by this article. This training shall include training in child
30 abuse and neglect identification and training in child abuse and
31 neglect reporting. Whether or not employers provide their
32 employees with training in child abuse and neglect identification
33 and reporting, the employers shall provide their employees who
34 are mandated reporters with the statement required pursuant to
35 subdivision (a) of Section 11166.5.

36 (d) School districts that do not train their employees specified
37 in subdivision (a) in the duties of mandated reporters under the
38 child abuse reporting laws shall report to the State Department of
39 Education the reasons why this training is not provided.

1 (e) Unless otherwise specifically provided, the absence of
2 training shall not excuse a mandated reporter from the duties
3 imposed by this article.

4 (f) Public and private organizations are encouraged to provide
5 their volunteers whose duties require direct contact with and
6 supervision of children with training in the identification and
7 reporting of child abuse and neglect.

8 SEC. 165. Section 11166 of the Penal Code is amended to read:

9 11166. (a) Except as provided in subdivision (d), and in
10 Section 11166.05, a mandated reporter shall make a report to an
11 agency specified in Section 11165.9 whenever the mandated
12 reporter, in his or her professional capacity or within the scope of
13 his or her employment, has knowledge of or observes a child whom
14 the mandated reporter knows or reasonably suspects has been the
15 victim of child abuse or neglect. The mandated reporter shall make
16 an initial report by telephone to the agency immediately or as soon
17 as is practicably possible, and shall prepare and send, fax, or
18 electronically transmit a written followup report within 36 hours
19 of receiving the information concerning the incident. The mandated
20 reporter may include with the report any nonprivileged
21 documentary evidence the mandated reporter possesses relating
22 to the incident.

23 (1) For purposes of this article, “reasonable suspicion” means
24 that it is objectively reasonable for a person to entertain a suspicion,
25 based upon facts that could cause a reasonable person in a like
26 position, drawing, when appropriate, on his or her training and
27 experience, to suspect child abuse or neglect. “Reasonable
28 suspicion” does not require certainty that child abuse or neglect
29 has occurred nor does it require a specific medical indication of
30 child abuse or neglect; any “reasonable suspicion” is sufficient.
31 For purposes of this article, the pregnancy of a minor does not, in
32 and of itself, constitute a basis for a reasonable suspicion of sexual
33 abuse.

34 (2) The agency shall be notified and a report shall be prepared
35 and sent, faxed, or electronically transmitted even if the child has
36 expired, regardless of whether or not the possible abuse was a
37 factor contributing to the death, and even if suspected child abuse
38 was discovered during an autopsy.

39 (3) ~~Any~~ A report made by a mandated reporter pursuant to this
40 section shall be known as a mandated report.

1 (b) If, after reasonable efforts, a mandated reporter is unable to
2 submit an initial report by telephone, he or she shall immediately
3 or as soon as is practicably possible, by fax or electronic
4 transmission, make a one-time automated written report on the
5 form prescribed by the Department of Justice, and shall also be
6 available to respond to a telephone followup call by the agency
7 with which he or she filed the report. A mandated reporter who
8 files a one-time automated written report because he or she was
9 unable to submit an initial report by telephone is not required to
10 submit a written followup report.

11 (1) The one-time automated written report form prescribed by
12 the Department of Justice shall be clearly identifiable so that it is
13 not mistaken for a standard written followup report. In addition,
14 the automated one-time report shall contain a section that allows
15 the mandated reporter to state the reason the initial telephone call
16 was not able to be completed. The reason for the submission of
17 the one-time automated written report in lieu of the procedure
18 prescribed in subdivision (a) shall be captured in the Child Welfare
19 Services/Case Management System (CWS/CMS). The department
20 shall work with stakeholders to modify reporting forms and the
21 CWS/CMS as is necessary to accommodate the changes enacted
22 by these provisions.

23 (2) This subdivision shall not become operative until the
24 CWS/CMS is updated to capture the information prescribed in this
25 subdivision.

26 (3) This subdivision shall become inoperative three years after
27 this subdivision becomes operative or on January 1, 2009,
28 whichever occurs first.

29 (4) On the inoperative date of these provisions, a report shall
30 be submitted to the counties and the Legislature by the State
31 Department of Social Services that reflects the data collected from
32 automated one-time reports indicating the reasons stated as to why
33 the automated one-time report was filed in lieu of the initial
34 telephone report.

35 (5) Nothing in this section shall supersede the requirement that
36 a mandated reporter first attempt to make a report via telephone,
37 or that agencies specified in Section 11165.9 accept reports from
38 mandated reporters and other persons as required.

39 (c) ~~Any~~A mandated reporter who fails to report an incident of
40 known or reasonably suspected child abuse or neglect as required

1 by this section is guilty of a misdemeanor punishable by up to six
2 months confinement in a county jail or by a fine of one thousand
3 dollars (\$1,000) or by both that imprisonment and fine. If a
4 mandated reporter intentionally conceals his or her failure to report
5 an incident known by the mandated reporter to be abuse or severe
6 neglect under this section, the failure to report is a continuing
7 offense until an agency specified in Section 11165.9 discovers the
8 offense.

9 (d) (1) A clergy member who acquires knowledge or a
10 reasonable suspicion of child abuse or neglect during a penitential
11 communication is not subject to subdivision (a). For the purposes
12 of this subdivision, “penitential communication” means a
13 communication, intended to be in confidence, including, but not
14 limited to, a sacramental confession, made to a clergy member
15 who, in the course of the discipline or practice of his or her church,
16 denomination, or organization, is authorized or accustomed to hear
17 those communications, and under the discipline, tenets, customs,
18 or practices of his or her church, denomination, or organization,
19 has a duty to keep those communications secret.

20 (2) Nothing in this subdivision shall be construed to modify or
21 limit a clergy member’s duty to report known or suspected child
22 abuse or neglect when the clergy member is acting in some other
23 capacity that would otherwise make the clergy member a mandated
24 reporter.

25 (3) (A) On or before January 1, 2004, a clergy member or any
26 custodian of records for the clergy member may report to an agency
27 specified in Section 11165.9 that the clergy member or any
28 custodian of records for the clergy member, prior to January 1,
29 1997, in his or her professional capacity or within the scope of his
30 or her employment, other than during a penitential communication,
31 acquired knowledge or had a reasonable suspicion that a child had
32 been the victim of sexual abuse that the clergy member or any
33 custodian of records for the clergy member did not previously
34 report the abuse to an agency specified in Section 11165.9. The
35 provisions of Section 11172 shall apply to all reports made pursuant
36 to this paragraph.

37 (B) This paragraph shall apply even if the victim of the known
38 or suspected abuse has reached the age of majority by the time the
39 required report is made.

1 (C) The local law enforcement agency shall have jurisdiction
2 to investigate any report of child abuse made pursuant to this
3 paragraph even if the report is made after the victim has reached
4 the age of majority.

5 (e) (1) ~~Any~~ A commercial film, photographic print, or image
6 processor who has knowledge of or observes, within the scope of
7 his or her professional capacity or employment, any film,
8 photograph, videotape, negative, slide, or any representation of
9 information, data, or an image, including, but not limited to, any
10 film, filmstrip, photograph, negative, slide, photocopy, videotape,
11 video laser disc, computer hardware, computer software, computer
12 floppy disk, data storage medium, CD-ROM, computer-generated
13 equipment, or computer-generated image depicting a child under
14 16 years of age engaged in an act of sexual conduct, shall,
15 immediately; or as soon as ~~practically~~ *practicably* possible,
16 telephonically report the instance of suspected abuse to the law
17 enforcement agency located in the county in which the images are
18 seen. Within 36 hours of receiving the information concerning the
19 incident, the reporter shall prepare and send, fax, or electronically
20 transmit a written followup report of the incident with a copy of
21 the image or material attached.

22 (2) ~~Any~~ A commercial computer technician who has knowledge
23 of or observes, within the scope of his or her professional capacity
24 or employment, any representation of information, data, or an
25 image, including, but not limited; to, any computer hardware,
26 computer software, computer file, computer floppy disk, data
27 storage medium, CD-ROM, computer-generated equipment, or
28 computer-generated image that is retrievable in perceivable form
29 and that is intentionally saved, transmitted, or organized on an
30 electronic medium, depicting a child under 16 years of age engaged
31 in an act of sexual conduct, shall immediately, or as soon as
32 *practicably* possible, telephonically report the instance of suspected
33 abuse to the law enforcement agency located in the county in which
34 the images or material are seen. As soon as *practicably* possible
35 after receiving the information concerning the incident, the reporter
36 shall prepare and send, fax, or electronically transmit a written
37 followup report of the incident with a brief description of the
38 images or materials.

39 (3) For purposes of this article, “commercial computer
40 technician” includes an employee designated by an employer to

1 receive reports pursuant to an established reporting process
2 authorized by subparagraph (B) of paragraph ~~(41)~~ (43) of
3 subdivision (a) of Section 11165.7.

4 (4) As used in this subdivision, “electronic medium” includes,
5 but is not limited to, a recording, CD-ROM, magnetic disk memory,
6 magnetic tape memory, CD, DVD, thumbdrive, or any other
7 computer hardware or media.

8 (5) As used in this subdivision, “sexual conduct” means any of
9 the following:

10 (A) Sexual intercourse, including genital-genital, oral-genital,
11 anal-genital, or oral-anal, whether between persons of the same or
12 opposite sex or between humans and animals.

13 (B) Penetration of the vagina or rectum by any object.

14 (C) Masturbation for the purpose of sexual stimulation of the
15 viewer.

16 (D) Sadomasochistic abuse for the purpose of sexual stimulation
17 of the viewer.

18 (E) Exhibition of the genitals, pubic, or rectal areas of ~~any~~ a
19 person for the purpose of sexual stimulation of the viewer.

20 (f) Any mandated reporter who knows or reasonably suspects
21 that the home or institution in which a child resides is unsuitable
22 for the child because of abuse or neglect of the child shall bring
23 the condition to the attention of the agency to which, and at the
24 same time as, he or she makes a report of the abuse or neglect
25 pursuant to subdivision (a).

26 (g) ~~Any~~ A other person who has knowledge of or observes a
27 child whom he or she knows or reasonably suspects has been a
28 victim of child abuse or neglect may report the known or suspected
29 instance of child abuse or neglect to an agency specified in Section
30 11165.9. For purposes of this section, “any other person” includes
31 a mandated reporter who acts in his or her private capacity and
32 not in his or her professional capacity or within the scope of his
33 or her employment.

34 (h) When two or more persons, who are required to report,
35 jointly have knowledge of a known or suspected instance of child
36 abuse or neglect, and when there is agreement among them, the
37 telephone report may be made by a member of the team selected
38 by mutual agreement and a single report may be made and signed
39 by the selected member of the reporting team. Any member who

1 has knowledge that the member designated to report has failed to
2 do so shall thereafter make the report.

3 (i) (1) The reporting duties under this section are individual,
4 and no supervisor or administrator may impede or inhibit the
5 reporting duties, and no person making a report shall be subject
6 to any sanction for making the report. However, internal procedures
7 to facilitate reporting and apprise supervisors and administrators
8 of reports may be established provided that they are not inconsistent
9 with this article.

10 (2) The internal procedures shall not require any employee
11 required to make reports pursuant to this article to disclose his or
12 her identity to the employer.

13 (3) Reporting the information regarding a case of possible child
14 abuse or neglect to an employer, supervisor, school principal,
15 school counselor, coworker, or other person shall not be a substitute
16 for making a mandated report to an agency specified in Section
17 11165.9.

18 (j) A county probation or welfare department shall immediately,
19 or as soon as practicably possible, report by telephone, fax, or
20 electronic transmission to the law enforcement agency having
21 jurisdiction over the case, to the agency given the responsibility
22 for investigation of cases under Section 300 of the Welfare and
23 Institutions Code, and to the district attorney’s office every known
24 or suspected instance of child abuse or neglect, as defined in
25 Section 11165.6, except acts or omissions coming within
26 subdivision (b) of Section 11165.2, or reports made pursuant to
27 Section 11165.13 based on risk to a child which relates solely to
28 the inability of the parent to provide the child with regular care
29 due to the parent’s substance abuse, which shall be reported only
30 to the county welfare or probation department. A county probation
31 or welfare department also shall send, fax, or electronically transmit
32 a written report thereof within 36 hours of receiving the information
33 concerning the incident to any agency to which it makes a
34 telephone report under this subdivision.

35 (k) A law enforcement agency shall immediately, or as soon as
36 practicably possible, report by telephone, fax, or electronic
37 transmission to the agency given responsibility for investigation
38 of cases under Section 300 of the Welfare and Institutions Code
39 and to the district attorney’s office every known or suspected
40 instance of child abuse or neglect reported to it, except acts or

1 omissions coming within subdivision (b) of Section 11165.2, which
2 shall be reported only to the county welfare or probation
3 department. A law enforcement agency shall report to the county
4 welfare or probation department every known or suspected instance
5 of child abuse or neglect reported to it which is alleged to have
6 occurred as a result of the action of a person responsible for the
7 child's welfare, or as the result of the failure of a person responsible
8 for the child's welfare to adequately protect the minor from abuse
9 when the person responsible for the child's welfare knew or
10 reasonably should have known that the minor was in danger of
11 abuse. A law enforcement agency also shall send, fax, or
12 electronically transmit a written report thereof within 36 hours of
13 receiving the information concerning the incident to any agency
14 to which it makes a telephone report under this subdivision.

15 SEC. 166. Section 12022 of the Penal Code is amended to read:

16 12022. (a) (1) Except as provided in subdivisions (c) and (d),
17 ~~any~~ a person who is armed with a firearm in the commission of a
18 felony or attempted felony shall be punished by an additional and
19 consecutive term of imprisonment pursuant to subdivision (h) of
20 Section 1170 for one year, unless the arming is an element of that
21 offense. This additional term shall apply to ~~any~~ a person who is a
22 principal in the commission of a felony or attempted felony if one
23 or more of the principals is armed with a firearm, whether or not
24 the person is personally armed with a firearm.

25 (2) Except as provided in subdivision (c), and notwithstanding
26 subdivision (d), if the firearm is an assault weapon, as defined in
27 Section 30510 or Section 30515, or a machinegun, as defined in
28 Section 16880, or a .50 BMG rifle, as defined in Section 30530,
29 the additional and consecutive term described in this subdivision
30 shall be three years imprisonment pursuant to subdivision (h) of
31 Section 1170 whether or not the arming is an element of the offense
32 of which the person was convicted. The additional term provided
33 in this paragraph shall apply to any person who is a principal in
34 the commission of a felony or attempted felony if one or more of
35 the principals is armed with an assault weapon ~~or~~, machinegun,
36 or a .50 BMG rifle, whether or not the person is personally armed
37 with an assault weapon ~~or~~, machinegun, or a .50 BMG rifle.

38 (b) (1) ~~Any~~ A person who personally uses a deadly or dangerous
39 weapon in the commission of a felony or attempted felony shall
40 be punished by an additional and consecutive term of imprisonment

1 pursuant in the state prison for one year, unless use of a deadly or
2 dangerous weapon is an element of that offense.

3 (2) If the person described in paragraph (1) has been convicted
4 of carjacking or attempted carjacking, the additional term shall be
5 in the state prison for one, two, or three years.

6 (3) When a person is found to have personally used a deadly or
7 dangerous weapon in the commission of a felony or attempted
8 felony as provided in this subdivision and the weapon is owned
9 by that person, the court shall order that the weapon be deemed a
10 nuisance and disposed of in the manner provided in Sections 18000
11 and 18005.

12 (c) Notwithstanding the enhancement set forth in subdivision
13 (a), ~~any~~ a person who is personally armed with a firearm in the
14 commission of a violation or attempted violation of Section 11351,
15 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,
16 11379.5, or 11379.6 of the Health and Safety Code, shall be
17 punished by an additional and consecutive term of imprisonment
18 pursuant to subdivision (h) of Section 1170 for three, four, or five
19 years.

20 (d) Notwithstanding the enhancement set forth in subdivision
21 (a), ~~any~~ a person who is not personally armed with a firearm who,
22 knowing that another principal is personally armed with a firearm,
23 is a principal in the commission of an offense or attempted offense
24 specified in subdivision (c), shall be punished by an additional and
25 consecutive term of imprisonment pursuant to subdivision (h) of
26 Section 1170 for one, two, or three years.

27 (e) For purposes of imposing an enhancement under Section
28 1170.1, the enhancements under this section shall count as ~~one~~, a
29 single enhancement.

30 (f) Notwithstanding any other provision of law, the court may
31 strike the additional punishment for the enhancements provided
32 in subdivision (c) or (d) in an unusual case where the interests of
33 justice would best be served, if the court specifies on the record
34 and enters into the minutes the circumstances indicating that the
35 interests of justice would best be served by that disposition.

36 SEC. 167. Section 12022.1 of the Penal Code is amended to
37 read:

38 12022.1. (a) For the purposes of this section only:

39 (1) "Primary offense" means a felony offense for which a person
40 has been released from custody on bail or on his or her own

1 recognizance prior to the judgment becoming final, including the
2 disposition of any appeal, or for which release on bail or his or her
3 own recognizance has been revoked. In cases where the court has
4 granted a stay of execution of a county jail commitment or state
5 prison commitment, “primary offense” also means a felony offense
6 for which a person is out of custody during the period of time
7 between the pronouncement of judgment and the time the person
8 actually surrenders into custody or is otherwise returned to custody.

9 (2) “Secondary offense” means a felony offense alleged to have
10 been committed while the person is released from custody for a
11 primary offense.

12 (b) Any person arrested for a secondary offense ~~which~~ *that* was
13 alleged to have been committed while that person was released
14 from custody on a primary offense shall be subject to a penalty
15 enhancement of an additional two years, which shall be served
16 consecutive to any other term imposed by the court.

17 (c) The enhancement allegation provided in subdivision (b)
18 shall be pleaded in the information or indictment which alleges
19 the secondary offense, or in the information or indictment of the
20 primary offense if a conviction has already occurred in the
21 secondary offense, and shall be proved as provided by law. The
22 enhancement allegation may be pleaded in a complaint but need
23 not be proved at the preliminary hearing or grand jury hearing.

24 (d) Whenever there is a conviction for the secondary offense
25 and the enhancement is proved, and the person is sentenced on the
26 secondary offense prior to the conviction of the primary offense,
27 the imposition of the enhancement shall be stayed pending
28 imposition of the sentence for the primary offense. The stay shall
29 be lifted by the court hearing the primary offense at the time of
30 sentencing for that offense and shall be recorded in the abstract of
31 judgment. If the person is acquitted of the primary offense the stay
32 shall be permanent.

33 (e) If the person is convicted of a felony for the primary offense,
34 is sentenced to state prison for the primary offense, and is convicted
35 of a felony for the secondary offense, any sentence for the
36 secondary offense shall be consecutive to the primary sentence
37 and the aggregate term shall be served in the state prison, even if
38 the term for the secondary offense specifies imprisonment in county
39 jail pursuant to subdivision (h) of Section 1170.

1 (f) If the person is convicted of a felony for the primary offense,
2 is granted probation for the primary offense, and is convicted of
3 a felony for the secondary offense, any sentence for the secondary
4 offense shall be enhanced as provided in subdivision (b).

5 (g) If the primary offense conviction is reversed on appeal, the
6 enhancement shall be suspended pending retrial of that felony.
7 Upon retrial and reconviction, the enhancement shall be reimposed.
8 If the person is no longer in custody for the secondary offense
9 upon reconviction of the primary offense, the court may, at its
10 discretion, reimpose the enhancement and order him or her
11 recommitted to custody.

12 SEC. 168. Section 10295.6 of the Public Contract Code is
13 amended to read:

14 10295.6. Sections 10295 and 10297 do not apply to any contract
15 entered into by the Department of Water Resources under Part 3
16 (commencing with Section 11100) of Division 6 or Chapter 8
17 (commencing with Section 12930) of Part 6 of Division 6 of the
18 Water Code for the acquisition, sale, or transmission of power, or
19 for services to facilitate ~~such~~ those activities.

20 SEC. 169. Section 20651.7 of the Public Contract Code is
21 amended to read:

22 20651.7. (a) For the purposes of bid evaluation and selection
23 pursuant to subdivision (a) of Section 20651, when a community
24 college district determines that it can expect long-term savings
25 through the use of life-cycle cost methodology, the use of more
26 sustainable goods and materials, and reduced administrative costs,
27 the community college district may provide for the selection of
28 the lowest responsible bidder on the basis of best value pursuant
29 to policies and procedures adopted by the governing board in
30 accordance with this section.

31 (b) For purposes of this section, “best value” means the most
32 advantageous balance of price, quality, service, performance, and
33 other elements, as defined by the governing board, achieved
34 through methods in accordance with this section and determined
35 by objective performance criteria that may include price, features,
36 long-term functionality, life-cycle costs, overall sustainability, and
37 required services.

38 (c) A community college district shall consider all of the
39 following when adopting best value policies pursuant to subdivision
40 (a):

- 1 (1) Price and service level proposals that reduce the district's
2 overall operating costs, including end-of-life expenditures and
3 impact.
- 4 (2) Equipment, services, supplies, and materials standards that
5 support the community college district's strategic acquisition and
6 management program direction.
- 7 (3) A procedure for protest and resolution.
- 8 (d) A community college district may consider any of the
9 following factors if adopting policies and procedures pursuant to
10 subdivision (c):
- 11 (1) The total cost to the community college district of its
12 purchase, use, and consumption of equipment, supplies, and
13 materials.
- 14 (2) The operational cost or benefit incurred by the community
15 college district as a result of a contract award.
- 16 (3) The added value to the community college district, as defined
17 in the request for proposal, of vendor-added services.
- 18 (4) The quality and effectiveness of equipment, supplies,
19 materials, and services.
- 20 (5) The reliability of delivery and installation schedules.
- 21 (6) The terms and conditions of product warranties and vendor
22 guarantees.
- 23 (7) The financial stability of the vendor.
- 24 (8) The vendor's quality assurance program.
- 25 (9) The vendor's experience with the provisions of equipment,
26 supplies, materials, and services within the institutional
27 marketplace.
- 28 (10) The consistency of the vendor's proposed equipment,
29 supplies, materials, and services with the district's overall supplies
30 and materials procurement program.
- 31 (11) The economic benefits to the local community, including,
32 but not limited to, job creation and retention.
- 33 (12) The environmental benefits to the local community.
- 34 (e) A community college district awarding a contract under this
35 section shall award a contract to the lowest responsible bidder
36 whose proposal is determined, in writing by the community college
37 district, to be the best value to the community college district based
38 solely on the criteria set forth in the request for proposal.
- 39 (f) The governing board of a community college district shall
40 issue a written notice of intent to award supporting its contract

1 award and stating in detail the basis of the award. The notice of
2 the intent to award and the contract file must be sufficient to satisfy
3 an external audit.

4 (g) The governing board of a community college district shall
5 publicly announce its award, identifying the bidder to which the
6 award is made, the price proposal of the contractor awarded the
7 contract, and the overall combined rating on the request for
8 proposal evaluation factors. The announcement shall also include
9 the ranking of the contractor awarded the contract in relation to
10 all other responsive bidders and their respective price proposals
11 and summary of the rationale for the contract award.

12 (h) The community college district shall ensure that all
13 businesses have a fair and equitable opportunity to compete for,
14 and participate in, district contracts and shall also ensure that
15 discrimination, as described in subdivision (e) of Section 12751.3
16 of the Public Utilities Code, in the award and performance of
17 contracts does not occur.

18 (i) (1) If a community college district elects to purchase
19 equipment, materials, supplies, and services by contract, let in
20 accordance with this section, the community college district shall
21 submit the following information to the Chancellor of the
22 California Community Colleges on or before January 1, 2016:

23 (A) The community college district's policies adopted pursuant
24 to subdivision (a).

25 (B) An annual list of district procurements for contracts with a
26 brief description of the contract, the winning bid, the cost, and if
27 the contract was done under best value acquisition policies.

28 (C) For a contract awarded under the best value acquisition
29 policies, the bid announcement announcing the bidder to which
30 the award was made, including that bidder's scoring rating
31 compared to other bidders, the winning contractor's price proposal,
32 the overall combined rating on the request for proposal evaluation
33 factors, a description of the products, commodities, or services
34 sought, and a summary of the rationale for the contract award.

35 (D) For each contract awarded using the best value acquisition
36 policies at least one bid award announcement for a comparably
37 priced contract using the traditional lowest responsible bidder
38 process that specifies the bidder to which the contract was awarded,
39 ~~and~~ the amount of the award, and the request for bid for that
40 contract that includes a description of the products, commodities,

1 or services sought for at least one comparably sized contract, to
2 the best value contract being let, awarded pursuant to the traditional
3 lowest responsible bidder process including contracts awarded by
4 the district in the three years prior to the adoption of best value
5 acquisition policies by the district.

6 (E) For contracts awarded using best value, a summary of any
7 additional economic benefit other than the price of the contract
8 obtained, including an explanation of whether these benefits were
9 realized as expected.

10 (F) The total number of bid protests or protests concerning an
11 aspect of the solicitation, bid, or award of the agreement since the
12 district adopted policies pursuant to subdivision (a) and the number
13 of those protests that occurred under best value.

14 (G) A description of any written bid protest or protests
15 concerning an aspect of the solicitation, bid, or award of the
16 agreement including the resolution of the protest for any contract
17 submitted pursuant to this section.

18 (2) The Legislative Analyst shall request the chancellor to
19 provide the information specified in paragraph (1) to the Legislative
20 Analyst on or before July 1, 2016. On or before February 1, 2017,
21 the Legislative Analyst shall report to the Legislature on the use
22 of competitive means for obtaining best value procurement by
23 community college districts. The Legislative Analyst shall use the
24 information provided by the chancellor to report all of the
25 following:

26 (A) A summary of the overall benefits of best value acquisition.

27 (B) A comparison of the overall cost of contracts let under best
28 value acquisition pursuant to this section to similar contracts let
29 under traditional low bid procurement practices.

30 (C) An assessment of any benefits or disadvantages of best value
31 procurement practices as compared to bids awarded to the lowest
32 responsible bidder.

33 (D) An assessment of whether the use of best value procurement
34 has led to a difference in the number of disputes as compared to
35 contracts awarded using the traditional lowest responsible bidder
36 method.

37 (E) An assessment of the policies adopted by the community
38 college districts pursuant to subdivision (a) as well as an assessment
39 of the overall performance criteria used to evaluate the bids and
40 the effectiveness of the methodology.

1 (F) Recommendations as to whether the best value at lowest
2 cost acquisition procurement authority should be continued.

3 (j) This section shall remain in effect only until January 1, 2018,
4 and as of that date is repealed.

5 SEC. 170. Section 4629.5 of the Public Resources Code is
6 amended to read:

7 4629.5. (a) (1) On and after January 1, 2013, there is hereby
8 imposed an assessment on a person who purchases a lumber
9 product or an engineered wood product for the storage, use, or
10 other consumption in this state, at the rate of 1 percent of the sales
11 price.

12 (2) A retailer shall charge the person the amount of the
13 assessment as a charge that is separate from, and not included in,
14 any other fee, charge, or other amount paid by the purchaser.

15 (3) The retailer shall collect the assessment from the person at
16 the time of sale, and may retain an amount equal to the amount of
17 reimbursement, as determined by the State Board of Equalization
18 pursuant to regulations, for any costs associated with the collection
19 of the assessment, to be taken on the first return or next consecutive
20 returns until the entire reimbursement amount is retained. For
21 purposes of this paragraph, the State Board of Equalization may
22 adopt emergency regulations pursuant to Section 11346.1 of the
23 Government Code. The adoption of any regulation pursuant to this
24 paragraph shall be deemed to be an emergency and necessary for
25 the immediate preservation of the public peace, health, and safety,
26 and general welfare.

27 (b) The retailer shall separately state the amount of the
28 assessment imposed under this section on the sales receipt given
29 by the retailer to the person at the time of sale.

30 (c) The State Board of Equalization shall administer and collect
31 the assessment imposed by this section pursuant to the Fee
32 Collection Procedures Law (Part 30 (commencing with Section
33 55001) of Division 2 of the Revenue and Taxation Code) with
34 those changes as may be necessary to conform to the provisions
35 of this article. For purposes of this section, the references in the
36 Fee Collection Procedures Law to “fee” shall include the
37 assessment imposed by this section.

38 (d) (1) The assessment is required to be collected by a retailer
39 and any amount unreturned to the person who paid an amount in
40 excess of the assessment, but was collected from the person under

1 the representation by the retailer that it was owed as an assessment,
2 constitutes debts owed by the retailer to this state.

3 (2) Every person who purchases a lumber product or an
4 engineered wood product for storage, use, or other consumption
5 in this state is liable for the assessment until it has been paid to
6 this state, except that payment to a retailer relieves the person from
7 further liability for the assessment. Any assessment collected from
8 a person that has not been remitted to the State Board of
9 Equalization shall be a debt owed to the state by the retailer
10 required to collect and remit the assessment. Nothing in this part
11 shall impose any obligation upon a retailer to take any legal action
12 to enforce the collection of the assessment imposed by this section.

13 (e) Except as provided in paragraph (3) of subdivision (a), the
14 State Board of Equalization may prescribe, adopt, and enforce
15 regulations relating to the administration and enforcement of this
16 section, including, but not limited to, collections, reporting, refunds,
17 and appeals.

18 (f) (1) The assessment imposed by this section is due and
19 payable to the State Board of Equalization quarterly on or before
20 the last day of the month next succeeding each quarterly period.

21 (2) On or before the last day of the month following each
22 quarterly period, a return for the preceding quarterly period shall
23 be filed with the State Board of Equalization using electronic
24 media, in the form prescribed by the State Board of Equalization.
25 Returns shall be authenticated in a form or pursuant to methods,
26 as prescribed by the State Board of Equalization.

27 (g) For purposes of this section, all of the following shall apply:

28 (1) "Purchase" has the same meaning as that term is defined in
29 Section 6010 of the Revenue and Taxation Code.

30 (2) "Retailer" has the same meaning as that term is defined in
31 Section 6015 of the Revenue and Taxation Code.

32 (3) "Sales price" has the same meaning as that term is defined
33 in Section 6011 of the Revenue and Taxation Code.

34 (4) "Storage" has the same meaning as that term is defined in
35 Section 6008 of the Revenue and Taxation Code.

36 (5) "Use" has the same meaning as that term is defined in
37 Section 6009 of the Revenue and Taxation Code.

38 (h) (1) Every person required to pay the assessment imposed
39 under this article shall register with the State Board of Equalization.
40 Every application for registration shall be made in a form

1 prescribed by the State Board of Equalization and shall set forth
2 the name under which the applicant transacts or intends to transact
3 business, the location of his or her place or places of business, and
4 such other information as the State Board of Equalization may
5 require. An application for registration shall be authenticated in a
6 form or pursuant to methods as may be prescribed by the State
7 Board of Equalization.

8 (2) An application for registration filed pursuant to this section
9 may be filed using electronic media as prescribed by the State
10 Board of Equalization.

11 (3) Electronic media includes, but is not limited to, computer
12 modem, magnetic media, optical-~~disk~~ *disc*, facsimile machine, or
13 telephone.

14 SEC. 171. Section 4629.9 of the Public Resources Code is
15 amended to read:

16 4629.9. (a) On or before January 10, 2013, and on each January
17 10 thereafter in conjunction with the 2014–15 Governor’s Budget
18 and ~~Governors’ Budgets~~ *each Governor’s Budget* thereafter, the
19 Secretary of the Natural Resources Agency, in consultation with
20 the Secretary for Environmental Protection, shall submit to the
21 Joint Legislative Budget Committee a report on the activities of
22 all state departments, agencies, and boards relating to forest and
23 timberland regulation. This report shall include, at a minimum, all
24 of the following:

25 (1) A listing, by organization, of the proposed total costs
26 associated with the review, approval, and inspection of timber
27 harvest plans and associated permits.

28 (2) The number of timber harvest plans, and acreage covered
29 by the plans, reviewed in the 2011–12 fiscal year, or the most
30 recent fiscal year.

31 (3) To the extent feasible, a listing of activities, personnel, and
32 funding, by department, for the forest practice program for
33 2012–13, or the most recent fiscal year, and the preceding 10 fiscal
34 years.

35 (4) The number of staff in each organization dedicated fully or
36 partially to (A) review of timber harvest plans, and (B) other
37 forestry-related activities, by geographical location in the state.

38 (5) The costs of other forestry-related activities undertaken.

1 (6) A summary of any process improvements identified by the
2 administration as part of ongoing review of the timber harvest
3 process, including data and technology improvement needs.

4 (7) Workload analysis for the forest practice program in each
5 organization.

6 (8) In order to assess efficiencies in the program and the
7 effectiveness of spending, a set of measures for, and a plan for
8 collection of data on, the program, including, but not limited to:

9 (A) The number of timber harvest plans reviewed.

10 (B) Average time for plan review.

11 (C) Number of field inspections per inspector.

12 (D) Number of acres under active plans.

13 (E) Number of violations.

14 (F) Evaluating ecological performance.

15 (b) A report required to be submitted pursuant to subdivision
16 (a) shall be submitted in compliance with Section 9795 of the
17 Government Code.

18 SEC. 172. Section 6224.5 of the Public Resources Code is
19 amended to read:

20 6224.5. (a) If, as of January 1, 2013, a person is in violation
21 of subdivision (a) of Section 6224.3, that person shall not be subject
22 to a penalty pursuant to that section, if the person, on or before
23 July 1, 2013, remedies the violation or submits to the commission
24 a completed lease application, including the payment of all fees
25 and costs. The remedy may include, but is not limited to, entering
26 into an appropriate lease with the commission or adequately
27 removing the structure or facility.

28 (b) A person shall not be subject to a penalty or order pursuant
29 to Section 6224.3, if the person submits a notice to the commission
30 that a structure or facility owned by that person is potentially in
31 violation of subdivision (a) of Section 6224.3 and the person,
32 within six months from the date the notice is received by the
33 commission, remedies the violation or submits to the commission
34 a completed lease application, including the payment of all fees
35 and costs. This subdivision shall apply only if the potential violator
36 submits a notice to the commission before the commission
37 otherwise receives notice or information regarding the potential
38 violation, or takes action against the violator.

39 (c) If any pole, conduit, cable, wire, pipeline, or associated
40 appurtenance that is owned by an electrical corporation, as defined

1 in Section 218 of the Public Utilities Code, or a gas corporation,
2 as defined in Section 222 of the Public Utilities Code, violates
3 subdivision (a) of Section 6224.3, and the electrical or gas
4 corporation can demonstrate that it has not received actual notice
5 that it does not have adequate existing land rights for its structure
6 or facility located on land under the commission's jurisdiction, the
7 electrical or gas corporation shall not be subject to a penalty or
8 order pursuant to Section 6224.3 if the electrical or gas corporation
9 remedies the violation or submits to the commission a completed
10 lease application, including the payment of all fees and costs, or
11 files with a court of competent jurisdiction a motion to perfect a
12 prescriptive easement within six months from the date the violation
13 is reported or the mistake is discovered.

14 (d) The commission may adopt regulations necessary or useful
15 to carry out this section and Sections 6224.3 and 6224.4.

16 SEC. 173. Section 21080.37 of the Public Resources Code is
17 amended to read:

18 21080.37. (a) This division does not apply to a project or an
19 activity to repair, maintain, or make minor alterations to an existing
20 roadway if all of the following conditions are met:

21 (1) The project is carried out by a city or county with a
22 population of less than 100,000 persons to improve public safety.

23 (2) (A) The project does not cross a waterway.

24 (B) For purposes of the paragraph, "waterway" means a bay,
25 estuary, lake, pond, river, slough, or a perennial, intermittent, or
26 ephemeral stream, lake, or estuarine-marine shoreline.

27 (3) The project involves negligible or no expansion of an
28 existing use beyond that existing at the time of the lead agency's
29 determination.

30 (4) The roadway is not a state roadway.

31 (5) (A) The site of the project does not contain wetlands or
32 riparian areas and does not have significant value as a wildlife
33 habitat, and the project does not harm any species protected by the
34 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
35 seq.), the Native Plant Protection Act (Chapter 10 (commencing
36 with Section 1900) of Division 2 of the Fish and Game Code), or
37 the California Endangered Species Act (Chapter 1.5 (commencing
38 with Section 2050) of Division 3 of the Fish and Game Code), and
39 the project does not cause the destruction or removal of any species
40 protected by a local ordinance.

1 (B) For the purposes of this paragraph:

2 (i) “Riparian areas” mean those areas transitional between
3 terrestrial and aquatic ecosystems and that are distinguished by
4 gradients in biophysical conditions, ecological processes, and biota.
5 A riparian area is an area through which surface and subsurface
6 hydrology connect waterbodies with their adjacent uplands. A
7 riparian area includes those portions of terrestrial ecosystems that
8 significantly influence exchanges of energy and matter with aquatic
9 ecosystems. A riparian area is adjacent to perennial, intermittent,
10 and ephemeral streams, lakes, and estuarine-marine shorelines.

11 (ii) “Significant value as a wildlife habitat” includes wildlife
12 habitat of national, statewide, regional, or local importance; habitat
13 for species protected by the federal Endangered Species Act of
14 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered
15 Species Act (Chapter 1.5 (commencing with Section 2050) of
16 Division 3 of the Fish and Game Code), or the Native Plant
17 Protection Act (Chapter 10 (commencing with Section 1900) of
18 Division 2 of the Fish and Game Code); habitat identified as
19 candidate, fully protected, sensitive, or species of special status
20 by local, state, or federal agencies; or habitat essential to the
21 movement of resident or migratory wildlife.

22 (iii) “Wetlands” has the same meaning as in the United States
23 Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

24 (iv) “Wildlife habitat” means the ecological communities upon
25 which wild animals, birds, plants, fish, amphibians, and
26 invertebrates depend for their conservation and protection.

27 (6) The project does not impact cultural resources.

28 (7) The roadway does not affect scenic resources, as provided
29 pursuant to subdivision (c) of Section 21084.

30 (b) Prior to determining that a project is exempt pursuant to this
31 section, the lead agency shall do both of the following:

32 (1) Include measures in the project to mitigate potential
33 vehicular traffic and safety impacts and bicycle and pedestrian
34 safety impacts.

35 (2) Hold a noticed public hearing on the project to hear and
36 respond to public comments. The hearing on the project may be
37 conducted with another noticed lead agency public hearing.
38 Publication of the notice shall be no fewer times than required by
39 Section 6061 of the Government Code, by the public agency in a
40 newspaper of general circulation in the area.

1 (c) For purposes of this section, “roadway” means a roadway
2 as defined pursuant to Section 530 of the Vehicle Code and the
3 previously graded and maintained shoulder that is within a roadway
4 right-of-way of no more than five feet from the edge of the
5 roadway.

6 (d) Whenever a local agency determines that a project is not
7 subject to this division pursuant to this section, and it approves or
8 determines to ~~or~~ carry out that project, the local agency shall file
9 a notice with the Office of Planning and Research, and with the
10 county clerk in the county in which the project will be located in
11 the manner specified in subdivisions (b) and (c) of Section 21152.

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

15 SEC. 174. Section 21080.5 of the Public Resources Code is
16 amended to read:

17 21080.5. (a) Except as provided in Section 21158.1, when the
18 regulatory program of a state agency requires a plan or other written
19 documentation containing environmental information and
20 complying with paragraph (3) of subdivision (d) to be submitted
21 in support of an activity listed in subdivision (b), the plan or other
22 written documentation may be submitted in lieu of the
23 environmental impact report required by this division if the
24 Secretary of the Resources Agency has certified the regulatory
25 program pursuant to this section.

26 (b) This section applies only to regulatory programs or portions
27 thereof that involve either of the following:

28 (1) The issuance to a person of a lease, permit, license,
29 certificate, or other entitlement for use.

30 (2) The adoption or approval of standards, rules, regulations,
31 or plans for use in the regulatory program.

32 (c) A regulatory program certified pursuant to this section is
33 exempt from Chapter 3 (commencing with Section 21100), Chapter
34 4 (commencing with Section 21150), and Section 21167, except
35 as provided in Article 2 (commencing with Section 21157) of
36 Chapter 4.5.

37 (d) To qualify for certification pursuant to this section, a
38 regulatory program shall require the utilization of an
39 interdisciplinary approach that will ensure the integrated use of

1 the natural and social sciences in decisionmaking and that shall
2 meet all of the following criteria:

3 (1) The enabling legislation of the regulatory program does both
4 of the following:

5 (A) Includes protection of the environment among its principal
6 purposes.

7 (B) Contains authority for the administering agency to adopt
8 rules and regulations for the protection of the environment, guided
9 by standards set forth in the enabling legislation.

10 (2) The rules and regulations adopted by the administering
11 agency for the regulatory program do all of the following:

12 (A) Require that an activity will not be approved or adopted as
13 proposed if there are feasible alternatives or feasible mitigation
14 measures available that would substantially lessen a significant
15 adverse effect that the activity may have on the environment.

16 (B) Include guidelines for the orderly evaluation of proposed
17 activities and the preparation of the plan or other written
18 documentation in a manner consistent with the environmental
19 protection purposes of the regulatory program.

20 (C) Require the administering agency to consult with all public
21 agencies that have jurisdiction, by law, with respect to the proposed
22 activity.

23 (D) Require that final action on the proposed activity include
24 the written responses of the issuing authority to significant
25 environmental points raised during the evaluation process.

26 (E) Require the filing of a notice of the decision by the
27 administering agency on the proposed activity with the Secretary
28 of the Resources Agency. Those notices shall be available for
29 public inspection, and a list of the notices shall be posted on a
30 weekly basis in the Office of the Resources Agency. Each list shall
31 remain posted for a period of 30 days.

32 (F) Require notice of the filing of the plan or other written
33 documentation to be made to the public and to a person who
34 requests, in writing, notification. The notification shall be made
35 in a manner that will provide the public or a person requesting
36 notification with sufficient time to review and comment on the
37 filing.

38 (3) The plan or other written documentation required by the
39 regulatory program does both of the following:

1 (A) Includes a description of the proposed activity with
2 alternatives to the activity, and mitigation measures to minimize
3 any significant adverse effect on the environment of the activity.

4 (B) Is available for a reasonable time for review and comment
5 by other public agencies and the general public.

6 (e) (1) The Secretary of the Resources Agency shall certify a
7 regulatory program that the secretary determines meets all the
8 qualifications for certification set forth in this section, and withdraw
9 certification on determination that the regulatory program has been
10 altered so that it no longer meets those qualifications. Certification
11 and withdrawal of certification shall occur only after compliance
12 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
13 Division 3 of Title 2 of the Government Code.

14 (2) In determining whether or not a regulatory program meets
15 the qualifications for certification set forth in this section, the
16 inquiry of the secretary shall extend only to the question of whether
17 the regulatory program meets the generic requirements of
18 subdivision (d). The inquiry may not extend to individual decisions
19 to be reached under the regulatory program, including the nature
20 of specific alternatives or mitigation measures that might be
21 proposed to lessen any significant adverse effect on the
22 environment of the activity.

23 (3) If the secretary determines that the regulatory program
24 submitted for certification does not meet the qualifications for
25 certification set forth in this section, the secretary shall adopt
26 findings setting forth the reasons for the determination.

27 (f) After a regulatory program has been certified pursuant to
28 this section, a proposed change in the program that could affect
29 compliance with the qualifications for certification specified in
30 subdivision (d) may be submitted to the Secretary of the Resources
31 Agency for review and comment. The scope of the secretary's
32 review shall extend only to the question of whether the regulatory
33 program meets the generic requirements of subdivision (d). The
34 review may not extend to individual decisions to be reached under
35 the regulatory program, including specific alternatives or mitigation
36 measures that might be proposed to lessen any significant adverse
37 effect on the environment of the activity. The secretary shall have
38 30 days from the date of receipt of the proposed change to notify
39 the state agency whether the proposed change will alter the
40 regulatory program so that it no longer meets the qualification for

1 certification established in this section and will result in a
2 withdrawal of certification as provided in this section.

3 (g) An action or proceeding to attack, review, set aside, void,
4 or annul a determination or decision of a state agency approving
5 or adopting a proposed activity under a regulatory program that
6 has been certified pursuant to this section on the basis that the plan
7 or other written documentation prepared pursuant to paragraph (3)
8 of subdivision (d) does not comply with this section shall be
9 commenced not later than 30 days from the date of the filing of
10 notice of the approval or adoption of the activity.

11 (h) (1) An action or proceeding to attack, review, set aside,
12 void, or annul a determination of the Secretary of the Resources
13 Agency to certify a regulatory program pursuant to this section on
14 the basis that the regulatory program does not comply with this
15 section shall be commenced within 30 days from the date of
16 certification by the secretary.

17 (2) In an action brought pursuant to paragraph (1), the inquiry
18 shall extend only to whether there was a prejudicial abuse of
19 discretion by the secretary. Abuse of discretion is established if
20 the secretary has not proceeded in a manner required by law or if
21 the determination is not supported by substantial evidence.

22 (i) For purposes of this section, a county agricultural
23 commissioner is a state agency.

24 (j) For purposes of this section, an air quality management
25 district or air pollution control district is a state agency, except
26 that the approval, if any, by a district of a nonattainment area plan
27 is subject to this section only if, and to the extent that, the approval
28 adopts or amends rules or regulations.

29 (k) (1) The secretary, by July 1, 2004, shall develop a protocol
30 for reviewing the prospective application of certified regulatory
31 programs to evaluate the consistency of those programs with the
32 requirements of this division. Following the completion of the
33 development of the protocol, the secretary shall provide a report
34 to the Senate Committee on Environmental Quality and the
35 Assembly Committee on Natural Resources regarding the need
36 for a grant of additional statutory authority authorizing the secretary
37 to undertake a review of the certified regulatory programs.

38 (2) The secretary may update the protocol, and may update the
39 report provided to the legislative committees pursuant to paragraph
40 (1) and provide, in compliance with Section 9795 of the

1 Government Code, the updated report to those committees if
2 additional statutory authority is needed.

3 (3) The secretary shall provide a significant opportunity for
4 public participation in developing or updating the protocol
5 described in paragraph (1) or (2), including, but not limited to, at
6 least two public meetings with interested parties. A notice of each
7 meeting shall be provided at least 10 days prior to the meeting to
8 a person who files a written request for a notice with the agency
9 and to the Senate Committee on Environmental Quality and the
10 Assembly Committee on Natural Resources.

11 SEC. 175. Section 21084 of the Public Resources Code is
12 amended to read:

13 21084. (a) The guidelines prepared and adopted pursuant to
14 Section 21083 shall include a list of classes of projects that have
15 been determined not to have a significant effect on the environment
16 and that shall be exempt from this division. In adopting the
17 guidelines, the Secretary of the Natural Resources Agency shall
18 make a finding that the listed classes of projects referred to in this
19 section do not have a significant effect on the environment.

20 (b) A project's greenhouse gas emissions shall not, in and of
21 themselves, be deemed to cause an exemption adopted pursuant
22 to subdivision (a) to be inapplicable if the project complies with
23 all applicable regulations or requirements adopted to implement
24 statewide, regional, or local plans consistent with Section 15183.5
25 of Title 14 of the California Code of Regulations.

26 (c) A project that may result in damage to scenic resources,
27 including, but not limited to, trees, historic buildings, rock
28 outcroppings, or similar resources, within a highway designated
29 as an official state scenic highway, pursuant to Article 2.5
30 (commencing with Section 260) of Chapter 2 of Division 1 of the
31 Streets and Highways Code, shall not be exempted from this
32 division pursuant to subdivision (a). This subdivision does not
33 apply to improvements as mitigation for a project for which a
34 negative declaration has been approved or an environmental impact
35 report has been certified.

36 (d) A project located on a site that is included on any list
37 compiled pursuant to Section 65962.5 of the Government Code
38 shall not be exempted from this division pursuant to subdivision
39 (a).

1 (e) A project that may cause a substantial adverse change in the
2 significance of ~~an~~ a historical resource, as specified in Section
3 21084.1, shall not be exempted from this division pursuant to
4 subdivision (a).

5 SEC. 176. Section 72410 of the Public Resources Code is
6 amended to read:

7 72410. (a) Unless the context otherwise requires, the
8 definitions set forth in this section govern this division.

9 (b) “Board” means the State Water Resources Control Board.

10 (c) “Commission” means the State Lands Commission.

11 (d) “Graywater” means drainage from dishwasher, shower,
12 laundry, bath, and washbasin drains, but does not include drainage
13 from toilets, urinals, hospitals, or cargo spaces.

14 (e) “Hazardous waste” has the meaning set forth in Section
15 25117 of the Health and Safety Code, but does not include sewage.

16 (f) “Large passenger vessel” or “vessel” means a vessel of 300
17 gross registered tons or greater that is engaged in the carrying of
18 passengers for hire, excluding all of the following vessels:

19 (1) Vessels without berths or overnight accommodations for
20 passengers.

21 (2) Noncommercial vessels, warships, vessels operated by
22 nonprofit entities as determined by the Internal Revenue Service,
23 and vessels operated by the state, the United States, or a foreign
24 government.

25 (3) Oceangoing ships, as defined in subdivision (j).

26 (g) “Marine waters of the state” means waters within the area
27 bounded by the mean high tide line to the three-mile state waters
28 limit, from the Oregon border to the Mexican border.

29 (h) “Marine sanctuary” means marine waters of the state in the
30 Channel Islands National Marine Sanctuary, Cordell Bank National
31 Marine Sanctuary, Gulf of the Farallones National Marine
32 Sanctuary, or Monterey Bay National Marine Sanctuary.

33 (i) “Medical waste” means medical waste subject to regulation
34 pursuant to Part 14 (commencing with Section 117600) of Division
35 104 of the Health and Safety Code.

36 (j) “Oceangoing ship” means a private, commercial, government,
37 or military vessel of 300 gross registered tons or more calling on
38 California ports or places.

39 (k) “Oil” has the meaning set forth in Section 8750.

1 (l) “Oily bilgewater” includes bilgewater that contains used
2 lubrication oils, oil sludge and slops, fuel and oil sludge, used oil,
3 used fuel and fuel filters, and oily waste.

4 (m) “Operator” has the meaning set forth in Section 651 of the
5 Harbors and Navigation Code.

6 (n) “Other waste” means photography laboratory chemicals,
7 dry cleaning chemicals, or medical waste.

8 (o) “Owner” has the meaning set forth in Section 651 of the
9 Harbors and Navigation Code.

10 (p) “Release” means discharging or disposing of wastes into
11 the environment.

12 (q) “Sewage” has the meaning set forth in Section 775.5 of the
13 Harbors and Navigation Code, including material that has been
14 collected or treated through a marine sanitation device as that term
15 is used in Section 312 of the *federal* Clean Water Act (33 U.S.C.
16 Sec. 1322) or material that is a byproduct of sewage treatment.

17 (r) “Sewage sludge” has the meaning set forth in Section 122.2
18 of Title 40 of the Code of Federal Regulations.

19 (s) “Sufficient holding tank capacity” means a holding tank of
20 sufficient capacity to contain sewage and graywater while the
21 oceangoing ship is within the marine waters of the state.

22 (t) “Waste” means hazardous waste and other waste.

23 SEC. 177. Section 2827.10 of the Public Utilities Code is
24 amended to read:

25 2827.10. (a) As used in this section, the following terms have
26 the following meanings:

27 (1) “Electrical corporation” means an electrical corporation, as
28 defined in Section 218.

29 (2) “Eligible fuel cell electrical generating facility” means a
30 facility that includes the following:

31 (A) Integrated powerplant systems containing a stack, tubular
32 array, or other functionally similar configuration used to
33 electrochemically convert fuel to electric energy.

34 (B) An inverter and fuel processing system where necessary.

35 (C) Other plant equipment, including heat recovery equipment,
36 necessary to support the plant’s operation or its energy conversion.

37 (3) (A) “Eligible fuel cell customer-generator” means a
38 customer of an electrical corporation that meets all the following
39 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 ~~electric~~
9 *electrical* generation using fuel cells, the commission may review
10 and incrementally raise the limitation established in paragraph (1)
11 on the total cumulative rated generating capacity of the eligible
12 fuel cell electrical generating facilities receiving service pursuant
13 to 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 ~~generation~~ *generating*
17 facility is located and on all property adjacent or contiguous to the
18 property on which the facility is located, if those properties are
19 solely 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 ~~the~~ *this* article should be a
40 cost-effective investment by gas customers. Gas customers will

1 recoup the cost of their investment through lower prices as a result
2 of avoiding 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 ~~the~~ *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 ~~meaning~~ *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 ~~meaning~~ *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 cosignor, for at least
14 three years from the date the notice was signed by the cosignor.

15 (c) Any waiver of the requirements of this section is void and
16 unenforceable.

17 (d) The “Not To Exceed” amount set forth in the notice and the
18 agreement between the household goods carrier and the consignor
19 shall be the maximum total dollar amount for which the consignor
20 may be liable for the transportation of household goods and
21 personal effects and any additional services ordered by the
22 consignor (including any bona fide change order permitted under
23 the commission’s rules and tariffs) and agreed to by the consignor
24 before any goods or personal effects are moved from their location
25 or any other services are performed.

26 (e) A household goods carrier may provide the notice set forth
27 in this section either as a separate document or by including it as
28 the centerfold of the informational booklet that the household
29 goods carrier is required to provide the consignor under the
30 commission’s tariffs. If the household goods carrier provides the
31 notice as part of the informational booklet, the booklet shall contain
32 a tab that extends beyond the edge of the booklet at the place where
33 the notice is included. The statement “Important Notice” shall be
34 printed on the tab in at least 12-point boldface type. In addition,
35 the statement “Customer Must Read And Sign The Important
36 Notice In The Middle Of This Booklet Before A Move Can Begin”
37 shall be set forth in 14-point boldface type on the front cover of
38 the booklet.

39 (f) The notice provided the consignor shall be in the following
40 form:

1 “IMPORTANT NOTICE ABOUT YOUR MOVE

2

3 “IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A
4 “NOT TO EXCEED” AMOUNT THAT YOU THINK IS A
5 PROPER AND REASONABLE FEE FOR THE SERVICES YOU
6 ARE REQUESTING. THE “NOT TO EXCEED” AMOUNT THIS
7 MOVER IS REQUESTING IS \$ _____ to
8 perform the following services:

9

10

11

_____.

12

13 “IF YOU DO NOT AGREE TO THE “NOT TO EXCEED”
14 AMOUNT LISTED OR THE DESCRIPTION OF SERVICES,
15 YOU HAVE THE RIGHT TO REFUSE THE MOVER’S
16 SERVICE AT NO CHARGE TO YOU.

17 “If you request additional or different services at the time of the
18 move, you may be asked to complete a Change Order which will
19 set forth your agreement to pay for additional fees for those newly
20 requested services. If you agree to the additional charges on that
21 Change Order, those charges may be added to the “NOT TO
22 EXCEED” amount set forth above. If you do not agree to the
23 amounts listed in the Change Order, you should not sign it and
24 may refuse the mover’s services.

25 “A mover cannot refuse to release your goods once you have paid
26 the “NOT TO EXCEED” amount for the transportation of your
27 goods and personal effects and any additional services that you
28 have agreed to in writing. The “NOT TO EXCEED” amount must
29 be reasonable.

30 “A mover cannot, under any circumstances, withhold food,
31 medicine, medical devices, items to treat or assist a disabled person,
32 or items used for care of a minor child. An unlicensed mover has
33 no right to withhold your goods for any reason including claims
34 that you have not adequately paid for services rendered.

35 “For additional information or to confirm whether a mover is
36 licensed by the California Public Utilities Commission, please call
37 the Public Utilities Commission toll free at:

38

39

40

1 _____
2 insert toll-free number

3
4 “I have completed this form and provided the consumer (shipper) with a copy
5 of this notice.

6 “Signed _____ Dated _____

7 “I have been provided with a copy of this form.

8 “Signed _____ Dated _____”

9
10 (g) Any document required by this section may be in an
11 electronic form, if agreed upon by the carrier and the customer.

12 SEC. 181. Section 9506 of the Public Utilities Code is amended
13 to read:

14 9506. (a) A local publicly owned electric utility shall report
15 to the Energy Commission regarding the energy storage system
16 procurement targets and policies adopted by the governing board
17 pursuant to paragraph (2) of, and report any modifications made
18 to those targets as a result of a reevaluation undertaken pursuant
19 to paragraph (3) of; subdivision (b) of Section 2836.

20 (b) By January 1, 2017, a local publicly owned electric utility
21 shall submit a report to the Energy Commission demonstrating
22 that it has complied with the energy storage system procurement
23 targets and policies adopted by the governing board pursuant to
24 subdivision (b) of Section 2836.

25 (c) By January 1, 2021, a local publicly owned electric utility
26 shall submit a report to the Energy Commission demonstrating
27 that it has complied with the energy storage system procurement
28 targets and policies adopted by the governing board pursuant to
29 subdivision (b) of Section 2836.

30 (d) The Energy Commission shall ensure that a copy of each
31 report or plan required by subdivisions (b) and (c), with any
32 confidential information redacted, is available on the Energy
33 Commission’s Internet Web site, or on an Internet Web site
34 maintained by the local publicly owned electric utility that can be
35 accessed from the Energy Commission’s Internet Web site.

36 (e) A summary of the reports required by this section shall be
37 included as part of each integrated energy policy report required
38 pursuant to Section 25302 of the *Public Resources Code*.

39 SEC. 182. Section 185035 of the Public Utilities Code is
40 amended to read:

1 185035. (a) The authority shall establish an independent peer
 2 review group for the purpose of reviewing the planning,
 3 engineering, financing, and other elements of the authority’s plans
 4 and issuing an analysis of appropriateness and accuracy of the
 5 authority’s assumptions and an analysis of the viability of the
 6 authority’s financing plan, including the funding plan for each
 7 corridor required pursuant to subdivision ~~(b)~~ (c) of Section 2704.08
 8 of the Streets and Highways Code.

9 (b) The peer review group shall include all of the following:

10 (1) Two individuals with experience in the construction or
 11 operation of high-speed trains in Europe, Asia, or both, designated
 12 by the Treasurer.

13 (2) Two individuals, one with experience in engineering and
 14 construction of high-speed trains and one with experience in project
 15 finance, designated by the Controller.

16 (3) One representative from a financial services or financial
 17 consulting firm who shall not have been a contractor or
 18 subcontractor of the authority for the previous three years,
 19 designated by the Director of Finance.

20 (4) One representative with experience in environmental
 21 planning, designated by the Secretary of Business, Transportation
 22 and Housing.

23 (5) Two expert representatives from agencies providing intercity
 24 or commuter passenger train services in California, designated by
 25 the Secretary of Business, Transportation and Housing.

26 (c) The peer review group shall evaluate the authority’s funding
 27 plans and prepare its independent judgment as to the feasibility
 28 and reasonableness of the plans, appropriateness of assumptions,
 29 analyses, and estimates, and any other observations or evaluations
 30 it deems necessary.

31 (d) The authority shall provide the peer review group any and
 32 all information that the peer review group may request to carry
 33 out its responsibilities.

34 (e) The peer review group shall report its findings and
 35 conclusions to the Legislature no later than 60 days after receiving
 36 the plans.

37 SEC. 183. Section 2188.6 of the Revenue and Taxation Code,
 38 as amended by Section 79 of Chapter 181 of the Statutes of 2012,
 39 is amended to read:

1 2188.6. (a) Unless a request for exemption has been recorded
2 pursuant to subdivision (d), prior to the creation of a condominium
3 as defined in Section 783 of the Civil Code, the county assessor
4 may separately assess each individual unit which is shown on the
5 condominium plan of a proposed condominium project when all
6 of the following documents have been recorded as required by
7 law:

8 (1) A subdivision final map or parcel map, as described in
9 Sections 66434 and 66445, respectively, of the Government Code.

10 (2) A condominium plan, as defined in Section 4120 of the Civil
11 Code.

12 (3) A declaration, as defined *in* Section 4135 of the Civil Code.

13 (b) The tax due on each individual unit shall constitute a lien
14 solely on that unit.

15 (c) The lien created pursuant to this section shall be a lien on
16 an undivided interest in a portion of real property coupled with a
17 separate interest in space called a unit as described in Section 4125
18 of the Civil Code.

19 (d) The record owner of the real property may record with the
20 condominium plan a request that the real property be exempt from
21 separate assessment pursuant to this section. If a request for
22 exemption is recorded, separate assessment of a condominium unit
23 shall be made only in accordance with Section 2188.3.

24 (e) This section shall become operative on January 1, 1990, and
25 shall apply to condominium projects for which a condominium
26 plan is recorded after that date.

27 SEC. 184. Section 7285.3 of the Revenue and Taxation Code
28 is amended to read:

29 7285.3. ~~Except as provided in Sections 7251.3 and 7251.4, the~~
30 *The* combined rate of all taxes imposed in any county pursuant to
31 this chapter and pursuant to Part 1.6 (commencing with Section
32 7251) shall not exceed the rate specified in Section 7251.1.

33 SEC. 185. Section 17276.20 of the Revenue and Taxation Code
34 is amended to read:

35 17276.20. Except as provided in Sections 17276.1, 17276.2,
36 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
37 by Section 172 of the Internal Revenue Code, relating to net
38 operating loss deduction, shall be modified as follows:

39 (a) (1) Net operating losses attributable to taxable years
40 beginning before January 1, 1987, shall not be allowed.

1 (2) A net operating loss shall not be carried forward to any
2 taxable year beginning before January 1, 1987.

3 (b) (1) Except as provided in paragraphs (2) and (3), the
4 provisions of Section 172(b)(2) of the Internal Revenue Code,
5 relating to amount of carrybacks and carryovers, shall be modified
6 so that the applicable percentage of the entire amount of the net
7 operating loss for any taxable year shall be eligible for carryover
8 to any subsequent taxable year. For purposes of this subdivision,
9 the applicable percentage shall be:

10 (A) Fifty percent for any taxable year beginning before January
11 1, 2000.

12 (B) Fifty-five percent for any taxable year beginning on or after
13 January 1, 2000, and before January 1, 2002.

14 (C) Sixty percent for any taxable year beginning on or after
15 January 1, 2002, and before January 1, 2004.

16 (D) One hundred percent for any taxable year beginning on or
17 after January 1, 2004.

18 (2) In the case of a taxpayer who has a net operating loss in any
19 taxable year beginning on or after January 1, 1994, and who
20 operates a new business during that taxable year, each of the
21 following shall apply to each loss incurred during the first three
22 taxable years of operating the new business:

23 (A) If the net operating loss is equal to or less than the net loss
24 from the new business, 100 percent of the net operating loss shall
25 be carried forward as provided in subdivision (d).

26 (B) If the net operating loss is greater than the net loss from the
27 new business, the net operating loss shall be carried over as
28 follows:

29 (i) With respect to an amount equal to the net loss from the new
30 business, 100 percent of that amount shall be carried forward as
31 provided in subdivision (d).

32 (ii) With respect to the portion of the net operating loss that
33 exceeds the net loss from the new business, the applicable
34 percentage of that amount shall be carried forward as provided in
35 subdivision (d).

36 (C) For purposes of Section 172(b)(2) of the Internal Revenue
37 Code, the amount described in clause (ii) of subparagraph (B) shall
38 be absorbed before the amount described in clause (i) of
39 subparagraph (B).

1 (3) In the case of a taxpayer who has a net operating loss in any
2 taxable year beginning on or after January 1, 1994, and who
3 operates an eligible small business during that taxable year, each
4 of the following shall apply:

5 (A) If the net operating loss is equal to or less than the net loss
6 from the eligible small business, 100 percent of the net operating
7 loss shall be carried forward to the taxable years specified in
8 subdivision (d).

9 (B) If the net operating loss is greater than the net loss from the
10 eligible small business, the net operating loss shall be carried over
11 as follows:

12 (i) With respect to an amount equal to the net loss from the
13 eligible small business, 100 percent of that amount shall be carried
14 forward as provided in subdivision (d).

15 (ii) With respect to that portion of the net operating loss that
16 exceeds the net loss from the eligible small business, the applicable
17 percentage of that amount shall be carried forward as provided in
18 subdivision (d).

19 (C) For purposes of Section 172(b)(2) of the Internal Revenue
20 Code, the amount described in clause (ii) of subparagraph (B) shall
21 be absorbed before the amount described in clause (i) of
22 subparagraph (B).

23 (4) In the case of a taxpayer who has a net operating loss in a
24 taxable year beginning on or after January 1, 1994, and who
25 operates a business that qualifies as both a new business and an
26 eligible small business under this section, that business shall be
27 treated as a new business for the first three taxable years of the
28 new business.

29 (5) 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 more than one business, and more than one of those
32 businesses qualifies as either a new business or an eligible small
33 business under this section, paragraph (2) shall be applied first,
34 except that if there is any remaining portion of the net operating
35 loss after application of clause (i) of subparagraph (B) of that
36 paragraph, paragraph (3) shall be applied to the remaining portion
37 of the net operating loss as though that remaining portion of the
38 net operating loss constituted the entire net operating loss.

1 (6) For purposes of this section, the term “net loss” means the
2 amount of net loss after application of Sections 465 and 469 of the
3 Internal Revenue Code.

4 (c) Section 172(b)(1) of the Internal Revenue Code, relating to
5 years to which the loss may be carried, is modified as follows:

6 (1) Net operating loss carrybacks shall not be allowed for any
7 net operating losses attributable to taxable years beginning before
8 January 1, 2013.

9 (2) A net operating loss attributable to taxable years beginning
10 on or after January 1, 2013, shall be a net operating loss carryback
11 to each of the two taxable years preceding the taxable year of the
12 loss in lieu of the number of years provided therein.

13 (A) For a net operating loss attributable to a taxable year
14 beginning on or after January 1, 2013, and before January 1, 2014,
15 the amount of carryback to any taxable year shall not exceed 50
16 percent of the net operating loss.

17 (B) For a net operating loss attributable to a taxable year
18 beginning on or after January 1, 2014, and before January 1, 2015,
19 the amount of carryback to any taxable year shall not exceed 75
20 percent of the net operating loss.

21 (C) For a net operating loss attributable to a taxable year
22 beginning on or after January 1, 2015, the amount of carryback to
23 any taxable year shall not exceed 100 percent of the net operating
24 loss.

25 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
26 Internal Revenue Code, relating to special rules for ~~REITs~~ *REIT's*,
27 and Section 172(b)(1)(E) of the Internal Revenue Code, relating
28 to excess interest loss, and Section 172(h) of the Internal Revenue
29 Code, relating to corporate equity reduction interest losses, shall
30 apply as provided.

31 (4) A net operating loss carryback shall not be carried back to
32 any taxable year beginning before January 1, 2011.

33 (d) (1) (A) For a net operating loss for any taxable year
34 beginning on or after January 1, 1987, and before January 1, 2000,
35 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
36 to substitute “five taxable years” in lieu of “20 taxable years”
37 except as otherwise provided in paragraphs (2) and (3).

38 (B) For a net operating loss for any taxable year beginning on
39 or after January 1, 2000, and before January 1, 2008, Section

1 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
2 substitute “10 taxable years” in lieu of “20 taxable years.”

3 (2) For any taxable year beginning before January 1, 2000, in
4 the case of a “new business,” the “five taxable years” in paragraph
5 (1) shall be modified to read as follows:

6 (A) “Eight taxable years” for a net operating loss attributable
7 to the first taxable year of that new business.

8 (B) “Seven taxable years” for a net operating loss attributable
9 to the second taxable year of that new business.

10 (C) “Six taxable years” for a net operating loss attributable to
11 the third taxable year of that new business.

12 (3) For any carryover of a net operating loss for which a
13 deduction is denied by Section 17276.3, the carryover period
14 specified in this subdivision shall be extended as follows:

15 (A) By one year for a net operating loss attributable to taxable
16 years beginning in 1991.

17 (B) By two years for a net operating loss attributable to taxable
18 years beginning prior to January 1, 1991.

19 (4) The net operating loss attributable to taxable years beginning
20 on or after January 1, 1987, and before January 1, 1994, shall be
21 a net operating loss carryover to each of the 10 taxable years
22 following the year of the loss if it is incurred by a taxpayer that is
23 under the jurisdiction of the court in a Title 11 or similar case at
24 any time during the income year. The loss carryover provided in
25 the preceding sentence shall not apply to any loss incurred after
26 the date the taxpayer is no longer under the jurisdiction of the court
27 in a Title 11 or similar case.

28 (e) For purposes of this section:

29 (1) “Eligible small business” means any trade or business that
30 has gross receipts, less returns and allowances, of less than one
31 million dollars (\$1,000,000) during the taxable year.

32 (2) Except as provided in subdivision (f), “new business” means
33 any trade or business activity that is first commenced in this state
34 on or after January 1, 1994.

35 (3) “Title 11 or similar case” shall have the same meaning as
36 in Section 368(a)(3) of the Internal Revenue Code.

37 (4) In the case of any trade or business activity conducted by a
38 partnership or “S” corporation paragraphs (1) and (2) shall be
39 applied to the partnership or “S” corporation.

1 (f) For purposes of this section, in determining whether a trade
2 or business activity qualifies as a new business under paragraph
3 (2) of subdivision (e), the following rules shall apply:

4 (1) In any case where a taxpayer purchases or otherwise acquires
5 all or any portion of the assets of an existing trade or business
6 (irrespective of the form of entity) that is doing business in this
7 state (within the meaning of Section 23101), the trade or business
8 thereafter conducted by the taxpayer (or any related person) shall
9 not be treated as a new business if the aggregate fair market value
10 of the acquired assets (including real, personal, tangible, and
11 intangible property) used by the taxpayer (or any related person)
12 in the conduct of its trade or business exceeds 20 percent of the
13 aggregate fair market value of the total assets of the trade or
14 business being conducted by the taxpayer (or any related person).
15 For purposes of this paragraph only, the following rules shall apply:

16 (A) The determination of the relative fair market values of the
17 acquired assets and the total assets shall be made as of the last day
18 of the first taxable year in which the taxpayer (or any related
19 person) first uses any of the acquired trade or business assets in
20 its business activity.

21 (B) Any acquired assets that constituted property described in
22 Section 1221(1) of the Internal Revenue Code in the hands of the
23 transferor shall not be treated as assets acquired from an existing
24 trade or business, unless those assets also constitute property
25 described in Section 1221(1) of the Internal Revenue Code in the
26 hands of the acquiring taxpayer (or related person).

27 (2) In any case where a taxpayer (or any related person) is
28 engaged in one or more trade or business activities in this state, or
29 has been engaged in one or more trade or business activities in this
30 state within the preceding 36 months (“prior trade or business
31 activity”), and thereafter commences an additional trade or business
32 activity in this state, the additional trade or business activity shall
33 only be treated as a new business if the additional trade or business
34 activity is classified under a different division of the Standard
35 Industrial Classification (SIC) Manual published by the United
36 States Office of Management and Budget, 1987 edition, than are
37 any of the taxpayer’s (or any related person’s) current or prior
38 trade or business activities.

39 (3) In any case where a taxpayer, including all related persons,
40 is engaged in trade or business activities wholly outside of this

1 state and the taxpayer first commences doing business in this state
2 (within the meaning of Section 23101) after December 31, 1993
3 (other than by purchase or other acquisition described in paragraph
4 (1)), the trade or business activity shall be treated as a new business
5 under paragraph (2) of subdivision (e).

6 (4) In any case where the legal form under which a trade or
7 business activity is being conducted is changed, the change in form
8 shall be disregarded and the determination of whether the trade or
9 business activity is a new business shall be made by treating the
10 taxpayer as having purchased or otherwise acquired all or any
11 portion of the assets of an existing trade or business under the rules
12 of paragraph (1) ~~of this subdivision.~~

13 (5) “Related person” shall mean any person that is related to
14 the taxpayer under either Section 267 or 318 of the Internal
15 Revenue Code.

16 (6) “Acquire” shall include any gift, inheritance, transfer incident
17 to divorce, or any other transfer, whether or not for consideration.

18 (7) (A) For taxable years beginning on or after January 1, 1997,
19 the term “new business” shall include any taxpayer that is engaged
20 in biopharmaceutical activities or other biotechnology activities
21 that are described in Codes 2833 to 2836, inclusive, of the Standard
22 Industrial Classification (SIC) Manual published by the United
23 States Office of Management and Budget, 1987 edition, and as
24 further amended, and that has not received regulatory approval for
25 any product from the ~~United States~~ Food and Drug Administration.

26 (B) For purposes of this paragraph:

27 (i) “Biopharmaceutical activities” means those activities that
28 use organisms or materials derived from organisms, and their
29 cellular, subcellular, or molecular components, in order to provide
30 pharmaceutical products for human or animal therapeutics and
31 diagnostics. Biopharmaceutical activities make use of living
32 organisms to make commercial products, as opposed to
33 pharmaceutical activities that make use of chemical compounds
34 to produce commercial products.

35 (ii) “Other biotechnology activities” means activities consisting
36 of the application of recombinant DNA technology to produce
37 commercial products, as well as activities regarding pharmaceutical
38 delivery systems designed to provide a measure of control over
39 the rate, duration, and site of pharmaceutical delivery.

1 (g) In computing the modifications under Section 172(d)(2) of
2 the Internal Revenue Code, relating to capital gains and losses of
3 taxpayers other than corporations, the exclusion provided by
4 Section 18152.5 shall not be allowed.

5 (h) Notwithstanding any provisions of this section to the
6 contrary, a deduction shall be allowed to a “qualified taxpayer” as
7 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
8 and 17276.7.

9 (i) The Franchise Tax Board may prescribe appropriate
10 regulations to carry out the purposes of this section, including any
11 regulations necessary to prevent the avoidance of the purposes of
12 this section through ~~split-ups~~ *split-ups*, shell corporations,
13 partnerships, tiered ownership structures, or otherwise.

14 (j) The Franchise Tax Board may reclassify any net operating
15 loss carryover determined under either paragraph (2) or (3) of
16 subdivision (b) as a net operating loss carryover under paragraph
17 (1) of subdivision (b) upon a showing that the reclassification is
18 necessary to prevent evasion of the purposes of this section.

19 (k) Except as otherwise provided, the amendments made by
20 Chapter 107 of the Statutes of 2000 shall apply to net operating
21 losses for taxable years beginning on or after January 1, 2000.

22 SEC. 186. Section 18152.5 of the Revenue and Taxation Code
23 is amended to read:

24 18152.5. (a) For purposes of this part, gross income shall not
25 include 50 percent of any gain from the sale or exchange of
26 qualified small business stock held for more than five years.

27 (b) (1) If the taxpayer has eligible gain for the taxable year
28 from one or more dispositions of stock issued by any corporation,
29 the aggregate amount of the gain from dispositions of stock issued
30 by the corporation which may be taken into account under
31 subdivision (a) for the taxable year shall not exceed the greater of
32 either of the following:

33 (A) Ten million dollars (\$10,000,000) reduced by the aggregate
34 amount of eligible gain taken into account by the taxpayer under
35 subdivision (a) for prior taxable years and attributable to
36 dispositions of stock issued by the corporation.

37 (B) Ten times the aggregate adjusted bases of qualified small
38 business stock issued by the corporation and disposed of by the
39 taxpayer during the taxable year. For purposes of *this* subparagraph
40 ~~(B)~~, the adjusted basis of any stock shall be determined without

1 regard to any addition to basis after the date on which the stock
2 was originally issued.

3 (2) For purposes of this subdivision, the term “eligible gain”
4 means any gain from the sale or exchange of qualified small
5 business stock held for more than five years.

6 (3) (A) In the case of a married individual filing a separate
7 return, subparagraph (A) of paragraph (1) shall be applied by
8 substituting five million dollars (\$5,000,000) for ten million dollars
9 (\$10,000,000).

10 (B) In the case of a married taxpayer filing a joint return, the
11 amount of gain taken into account under subdivision (a) shall be
12 allocated equally between the spouses for purposes of applying
13 this subdivision to subsequent taxable years.

14 (C) For purposes of this subdivision, marital status shall be
15 determined under Section 7703 of the Internal Revenue Code.

16 (c) For purposes of this section:

17 (1) Except as otherwise provided in this section, the term
18 “qualified small business stock” means any stock in a C corporation
19 which is originally issued after August 10, 1993, if both of the
20 following apply:

21 (A) As of the date of issuance, the corporation is a qualified
22 small business.

23 (B) Except as provided in subdivisions (f) and (h), the stock is
24 acquired by the taxpayer at its original issue (directly or through
25 an underwriter) in either of the following manners:

26 (i) In exchange for money or other property (not including
27 stock).

28 (ii) As compensation for services provided to the corporation
29 (other than services performed as an underwriter of the stock).

30 (2) (A) Stock in a corporation shall not be treated as qualified
31 small business stock unless, during substantially all of the
32 taxpayer’s holding period for the stock, the corporation meets the
33 active business requirements of subdivision (e) and the corporation
34 is a C corporation.

35 (B) (i) Notwithstanding subdivision (e), a corporation shall be
36 treated as meeting the active business requirements of subdivision
37 (e) for any period during which the corporation qualifies as a
38 specialized small business investment company.

39 (ii) For purposes of clause (i), the term “specialized small
40 business investment company” means any eligible corporation (as

1 defined in paragraph (4) of subdivision (e)) that is licensed to
2 operate under *former* Section 301(d) of the *federal* Small Business
3 Investment Act of 1958 (as in effect on May 13, 1993).

4 (3) (A) Stock acquired by the taxpayer shall not be treated as
5 qualified small business stock if, at any time during the four-year
6 period beginning on the date two years before the issuance of the
7 stock, the corporation issuing the stock purchased (directly or
8 indirectly) any of its stock from the taxpayer or from a related
9 person (within the meaning of Section 267(b) or 707(b)) to the
10 taxpayer.

11 (B) Stock issued by a corporation shall not be treated as qualified
12 small business stock if, during the two-year period beginning on
13 the date one year before the issuance of the stock, the corporation
14 made one or more purchases of its stock with an aggregate value
15 (as of the time of the respective purchases) exceeding 5 percent
16 of the aggregate value of all of its stock as of the beginning of the
17 two-year period.

18 (C) If any transaction is treated under Section 304(a) of the
19 Internal Revenue Code as a distribution in redemption of the stock
20 of any corporation, for purposes of subparagraphs (A) and (B), the
21 corporation shall be treated as purchasing an amount of its stock
22 equal to the amount treated as a distribution in redemption of the
23 stock of the corporation under Section 304(a) of the Internal
24 Revenue Code.

25 (d) For purposes of this section:

26 (1) The term “qualified small business” means any domestic
27 corporation (as defined in Section 7701(a)(4) of the Internal
28 Revenue Code) which is a C corporation if all of the following
29 apply:

30 (A) The aggregate gross assets of the corporation (or any
31 predecessor thereof) at all times on or after July 1, 1993, and before
32 the issuance did not exceed fifty million dollars (\$50,000,000).

33 (B) The aggregate gross assets of the corporation immediately
34 after the issuance (determined by taking into account amounts
35 received in the issuance) do not exceed fifty million dollars
36 (\$50,000,000).

37 (C) At least 80 percent of the corporation’s payroll, as measured
38 by total dollar value, is attributable to employment located within
39 California.

1 (D) The corporation agrees to submit those reports to the
2 Franchise Tax Board and to shareholders as the Franchise Tax
3 Board may require to carry out the purposes of this section.

4 (2) (A) For purposes of paragraph (1), the term “aggregate
5 gross assets” means the amount of cash and the aggregate adjusted
6 basis of other property held by the corporation.

7 (B) For purposes of subparagraph (A), the adjusted basis of any
8 property contributed to the corporation (or other property with a
9 basis determined in whole or in part by reference to the adjusted
10 basis of property so contributed) shall be determined as if the basis
11 of the property contributed to the corporation immediately after
12 the contribution was equal to its fair market value as of the time
13 of the contribution.

14 (3) (A) All corporations which are members of the same
15 parent-subsidiary controlled group shall be treated as one
16 corporation for purposes of this subdivision.

17 (B) For purposes of subparagraph (A), the term
18 “parent-subsidiary controlled group” means any controlled group
19 of corporations as defined in Section 1563(a)(1) of the Internal
20 Revenue Code, except that both of the following shall apply:

21 (i) “More than 50 percent” shall be substituted for “at least 80
22 percent” each place it appears in Section 1563(a)(1) of the Internal
23 Revenue Code.

24 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not
25 apply.

26 (e) (1) For purposes of paragraph (2) of subdivision (c), the
27 requirements of this subdivision are met by a corporation for any
28 period if during that period both of the following apply:

29 (A) At least 80 percent (by value) of the assets of the corporation
30 are used by the corporation in the active conduct of one or more
31 qualified trades or businesses in California.

32 (B) The corporation is an eligible corporation.

33 (2) For purposes of paragraph (1), if, in connection with any
34 future qualified trade or business, a corporation is engaged in:

35 (A) Startup activities described in Section 195(c)(1)(A) of the
36 Internal Revenue Code,

37 (B) Activities resulting in the payment or incurring of
38 expenditures which may be treated as research and experimental
39 expenditures under Section 174 of the Internal Revenue Code, or

- 1 (C) Activities with respect to in-house research expenses
 2 described in Section ~~41(b)(4)~~ 41(b)(2) of the Internal Revenue
 3 Code, then assets used in those activities shall be treated as used
 4 in the active conduct of a qualified trade or business. Any
 5 determination under this paragraph shall be made without regard
 6 to whether a corporation has any gross income from those activities
 7 at the time of the determination.
- 8 (3) For purposes of this subdivision, the term “qualified trade
 9 or business” means any trade or business other than any of the
 10 following:
- 11 (A) Any trade or business involving the performance of services
 12 in the fields of health, law, engineering, architecture, accounting,
 13 actuarial science, performing arts, consulting, athletics, financial
 14 services, brokerage services, or any trade or business where the
 15 principal asset of the trade or business is the reputation or skill of
 16 one or more of its employees.
- 17 (B) Any banking, insurance, financing, leasing, investing, or
 18 similar business.
- 19 (C) Any farming business (including the business of raising or
 20 harvesting trees).
- 21 (D) Any business involving the production or extraction of
 22 products of a character with respect to which a deduction is
 23 allowable under Section 613 or 613A of the Internal Revenue
 24 Code.
- 25 (E) Any business of operating a hotel, motel, restaurant, or
 26 similar business.
- 27 (4) For purposes of this subdivision, the term “eligible
 28 corporation” means any domestic corporation, except that the term
 29 shall not include any of the following:
- 30 (A) A DISC or former DISC.
- 31 (B) A corporation with respect to which an election under
 32 Section 936 of the Internal Revenue Code is in effect or which has
 33 a direct or indirect subsidiary with respect to which the election
 34 is in effect.
- 35 (C) A regulated investment company, real estate investment
 36 trust (REIT), or real estate mortgage investment conduit (REMIC).
- 37 (D) A cooperative.
- 38 (5) (A) For purposes of this subdivision, stock and debt in any
 39 subsidiary corporation shall be disregarded and the parent
 40 corporation shall be deemed to own its ratable share of the

1 subsidiary's assets, and to conduct its ratable share of the
2 subsidiary's activities.

3 (B) A corporation shall be treated as failing to meet the
4 requirements of paragraph (1) for any period during which more
5 than 10 percent of the value of its assets (in excess of liabilities)
6 consists of stock or securities in other corporations which are not
7 subsidiaries of the corporation (other than assets described in
8 paragraph (6)).

9 (C) For purposes of this paragraph, a corporation shall be
10 considered a subsidiary if the parent owns more than 50 percent
11 of the combined voting power of all classes of stock entitled to
12 vote, or more than 50 percent in value of all outstanding stock, of
13 the corporation.

14 (6) For purposes of subparagraph (A) of paragraph (1), the
15 following assets shall be treated as used in the active conduct of
16 a qualified trade or business:

17 (A) Assets that are held as a part of the reasonably required
18 working capital needs of a qualified trade or business of the
19 corporation.

20 (B) Assets that are held for investment and are reasonably
21 expected to be used within two years to finance research and
22 experimentation in a qualified trade or business or increases in
23 working capital needs of a qualified trade or business. For periods
24 after the corporation has been in existence for at least two years,
25 in no event may more than 50 percent of the assets of the
26 corporation qualify as used in the active conduct of a qualified
27 trade or business by reason of this paragraph.

28 (7) A corporation shall not be treated as meeting the
29 requirements of paragraph (1) for any period during which more
30 than 10 percent of the total value of its assets consists of real
31 property that is not used in the active conduct of a qualified trade
32 or business. For purposes of the preceding sentence, the ownership
33 of, dealing in, or renting of, real property shall not be treated as
34 the active conduct of a qualified trade or business.

35 (8) For purposes of paragraph (1), rights to computer software
36 that produces active business computer software royalties (within
37 the meaning of Section 543(d)(1) of the Internal Revenue Code)
38 shall be treated as an asset used in the active conduct of a trade or
39 business.

1 (9) A corporation shall not be treated as meeting the
2 requirements of paragraph (1) for any period during which more
3 than 20 percent of the corporation's total payroll expense is
4 attributable to employment located outside of California.

5 (f) If any stock in a corporation is acquired solely through the
6 conversion of other stock in the corporation that is qualified small
7 business stock in the hands of the taxpayer, both of the following
8 shall apply:

9 (1) The stock so acquired shall be treated as qualified small
10 business stock in the hands of the taxpayer.

11 (2) The stock so acquired shall be treated as having been held
12 during the period during which the converted stock was held.

13 (g) (1) If any amount included in gross income by reason of
14 holding an interest in a pass-through entity meets the requirements
15 of paragraph (2), then both of the following shall apply:

16 (A) The amount shall be treated as gain described in subdivision
17 (a).

18 (B) For purposes of applying subdivision (b), the amount shall
19 be treated as gain from a disposition of stock in the corporation
20 issuing the stock disposed of by the pass-through entity and the
21 taxpayer's proportionate share of the adjusted basis of the
22 pass-through entity in the stock shall be taken into account.

23 (2) An amount meets the requirements of this paragraph if both
24 of the following apply:

25 (A) The amount is attributable to gain on the sale or exchange
26 by the pass-through entity of stock that is qualified small business
27 stock in the hands of the entity (determined by treating the entity
28 as an individual) and that was held by that entity for more than
29 five years.

30 (B) The amount is includable in the gross income of the taxpayer
31 by reason of the holding of an interest in the entity that was held
32 by the taxpayer on the date on which the pass-through entity
33 acquired the stock and at all times thereafter before the disposition
34 of the stock by the pass-through entity.

35 (3) Paragraph (1) shall not apply to any amount to the extent
36 the amount exceeds the amount to which paragraph (1) would have
37 applied if the amount was determined by reference to the interest
38 the taxpayer held in the pass-through entity on the date the qualified
39 small business stock was acquired.

- 1 (4) For purposes of this subdivision, the term “pass-through
2 entity” means any of the following:
- 3 (A) Any partnership.
 - 4 (B) Any S corporation.
 - 5 (C) Any regulated investment company.
 - 6 (D) Any common trust fund.
- 7 (h) For purposes of this section:
- 8 (1) In the case of a transfer described in paragraph (2), the
9 transferee shall be treated as meeting both of the following:
 - 10 (A) Having acquired the stock in the same manner as the
11 transferor.
 - 12 (B) Having held the stock during any continuous period
13 immediately preceding the transfer during which it was held (or
14 treated as held under this subdivision) by the transferor.
 - 15 (2) A transfer is described in this subdivision if the transfer is
16 any of the following:
 - 17 (A) By gift.
 - 18 (B) At death.
 - 19 (C) From a partnership to a partner of stock with respect to
20 which requirements similar to the requirements of subdivision (g)
21 are met at the time of the transfer (without regard to the five-year
22 holding period requirement).
 - 23 (3) Rules similar to the rules of Section 1244(d)(2) of the
24 Internal Revenue Code shall apply for purposes of this section.
 - 25 (4) (A) In the case of a transaction described in Section 351 of
26 the Internal Revenue Code or a reorganization described in Section
27 368 of the Internal Revenue Code, if qualified small business stock
28 is exchanged for other stock that would not qualify as qualified
29 small business stock but for this subparagraph, the other stock
30 shall be treated as qualified small business stock acquired on the
31 date on which the exchanged stock was acquired.
 - 32 (B) This section shall apply to gain from the sale or exchange
33 of stock treated as qualified small business stock by reason of
34 subparagraph (A) only to the extent of the gain that would have
35 been recognized at the time of the transfer described in
36 subparagraph (A) if Section 351 or 368 of the Internal Revenue
37 Code had not applied at that time. The preceding sentence shall
38 not apply if the stock that is treated as qualified small business
39 stock by reason of subparagraph (A) is issued by a corporation

1 that (as of the time of the transfer described in subparagraph (A))
2 is a qualified small business.

3 (C) For purposes of this paragraph, stock treated as qualified
4 small business stock under subparagraph (A) shall be so treated
5 for subsequent transactions or reorganizations, except that the
6 limitation of subparagraph (B) shall be applied as of the time of
7 the first transfer to which the limitation applied (determined after
8 the application of the second sentence of subparagraph (B)).

9 (D) In the case of a transaction described in Section 351 of the
10 Internal Revenue Code, this paragraph shall apply only if
11 immediately after the transaction the corporation issuing the stock
12 owns directly or indirectly stock representing control (within the
13 meaning of Section 368(c) of the Internal Revenue Code) of the
14 corporation whose stock was exchanged.

15 (i) For purposes of this section:

16 (1) In the case where the taxpayer transfers property (other than
17 money or stock) to a corporation in exchange for stock in the
18 corporation, both of the following shall apply:

19 (A) The stock shall be treated as having been acquired by the
20 taxpayer on the date of the exchange.

21 (B) The basis of the stock in the hands of the taxpayer shall in
22 no event be less than the fair market value of the property
23 exchanged.

24 (2) If the adjusted basis of any qualified small business stock
25 is adjusted by reason of any contribution to capital after the date
26 on which the stock was originally issued, in determining the
27 amount of the adjustment by reason of the contribution, the basis
28 of the contributed property shall in no event be treated as less than
29 its fair market value on the date of the contribution.

30 (j) (1) If the taxpayer has an offsetting short position with
31 respect to any qualified small business stock, subdivision (a) shall
32 not apply to any gain from the sale or exchange of the stock unless
33 both of the following apply:

34 (A) The stock was held by the taxpayer for more than five years
35 as of the first day on which there was such a short position.

36 (B) The taxpayer elects to recognize gain as if the stock was
37 sold on that first day for its fair market value.

38 (2) For purposes of paragraph (1), the taxpayer shall be treated
39 as having an offsetting short position with respect to any qualified
40 small business stock if any of the following apply:

1 (A) The taxpayer has made a short sale of substantially identical
2 property.

3 (B) The taxpayer has acquired an option to sell substantially
4 identical property at a fixed price.

5 (C) To the extent provided in regulations, the taxpayer has
6 entered into any other transaction that substantially reduces the
7 risk of loss from holding the qualified small business stock. For
8 purposes of the preceding sentence, any reference to the taxpayer
9 shall be treated as including a reference to any person who is
10 related (within the meaning of Section 267(b) or 707(b) of the
11 Internal Revenue Code) to the taxpayer.

12 (k) The Franchise Tax Board may prescribe those regulations
13 as may be appropriate to carry out the purposes of this section,
14 including regulations to prevent the avoidance of the purposes of
15 this section through ~~split-ups~~ *split-ups*, shell corporations,
16 partnerships, or otherwise.

17 (l) It is the intent of the Legislature that, in construing this
18 section, any regulations that may be promulgated by the Secretary
19 of the Treasury under Section 1202(k) of the Internal Revenue
20 Code shall apply to the extent that those regulations do not conflict
21 with this section or with any regulations that may be promulgated
22 by the Franchise Tax Board.

23 SEC. 187. Section 18738 of the Revenue and Taxation Code,
24 as added by Section 1 of Chapter 228 of the Statutes of 2012, is
25 amended to read:

26 18738. (a) All moneys transferred to the California YMCA
27 Youth and Government Fund pursuant to Section 18736, upon
28 appropriation by the Legislature, shall be allocated as follows:

29 (1) To the Franchise Tax Board, the Controller, and the State
30 Department of Education for reimbursement of all costs incurred
31 by the Franchise Tax Board, the Controller, and the State
32 Department of Education in connection with their duties under
33 this article.

34 (2) The balance to the State Department of Education for
35 distribution as follows:

36 (A) If the California YMCA Youth and Government Fund
37 collects contributions of less than three hundred thousand dollars
38 (\$300,000), all funds shall be distributed to the California YMCA
39 Youth and Government Program.

1 (B) If the California YMCA Youth and Government Fund
2 collects ~~donations~~ *contributions* in excess of three hundred
3 thousand dollars (\$300,000), the balance of the fund shall be
4 distributed as follows:

5 (i) To provide an annual grant of ten thousand dollars (\$10,000)
6 to each of the following nonprofit civic youth organizations in
7 order to operate civic education and mock legislative programs:

8 (I) African American Leaders for Tomorrow Program.

9 (II) Asian Pacific Youth Leadership Project.

10 (III) Chicano Latino Youth Leadership Project.

11 (ii) (I) All remaining funds shall be distributed to the California
12 YMCA Youth and Government Program.

13 (II) The California YMCA Youth and Government Board of
14 Directors may award additional nonprofit civic youth organizations
15 a grant of up to ten thousand dollars (\$10,000) each in order to
16 operate civic education and mock legislative programs. Grants
17 shall be administered by the California YMCA Youth and
18 Government Board of Directors, who shall be responsible for
19 developing criteria, evaluating applications, and awarding grants
20 to eligible organizations.

21 (b) All moneys allocated pursuant to subdivision (a) ~~of this~~
22 ~~section~~ may be carried over from the year in which they were
23 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~~ *REITs*,
40 and Section 172(b)(1)(E) of the Internal Revenue Code, relating

1 to 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) ~~of this subdivision~~.

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 ~~United States~~ 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~~ *split-ups*, shell corporations,
31 partnerships, tiered 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 ~~24900.~~

4 24452. (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 ~~(f) If any provision of subdivision (d) or (e) of Section 11205,~~
32 ~~as added by Section 4 of Assembly Bill 185 of the 1991-92 Regular~~
33 ~~Session, or the application thereof to any person, is held to be~~
34 ~~unconstitutional, that Section 11205 is repealed on the date the~~
35 ~~decision of the court so holding becomes final, and on that date,~~
36 ~~this section shall become operative.~~

37 SEC. 194. Section 12804.11 of the Vehicle Code is amended
38 to read:

39 12804.11. (a) To operate firefighting equipment, a driver,
40 including a tiller operator, is required to do either of the following:

1 (1) Obtain and maintain a firefighter endorsement issued by the
2 department and obtain and maintain a class C license as described
3 in Section 12804.9, a restricted class A license as described in
4 Section 12804.12, or a noncommercial class B license as described
5 in Section 12804.10.

6 (2) Obtain and maintain a class A or B license as described in
7 Section 12804.9; and, as appropriate, for the size and configuration
8 of the firefighting equipment operated.

9 (b) To qualify for a firefighter endorsement the driver shall do
10 all of the following:

11 (1) (A) Provide to the department proof of current employment
12 as a firefighter or registration as a volunteer firefighter with a fire
13 department and evidence of fire equipment operation training by
14 providing a letter; or other indication; from the chief of the fire
15 department; or his or her designee.

16 (B) For purposes of this section, evidence of fire equipment
17 operation training means the applicant has successfully completed
18 Fire Apparatus Driver/Operator 1A taught by an instructor
19 registered with the Office of the State Fire Marshal or fire
20 department driver training that meets all of the following
21 requirements:

22 (i) Meets or exceeds the standards outlined in NFPA 1002,
23 Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator
24 1A course adopted by the Office of the State Fire Marshal.

25 (ii) Prepares the applicant to safely operate the department's
26 fire equipment that the applicant will be authorized to operate.

27 (iii) Includes a classroom (cognitive) portion of at least 16 hours.

28 (iv) Includes a manipulative portion of at least 14 hours, which
29 includes directly supervised behind-the-wheel driver training.

30 (C) Driver training shall be conducted by a person who is
31 registered with the Office of the State Fire Marshal to instruct *a*
32 *Fire Apparatus Driver/Operator 1A course* or a person who meets
33 all of the following criteria:

34 (i) Possesses a minimum of five years of fire service experience
35 as an emergency vehicle operator, three of which must be at the
36 rank of engineer or higher.

37 (ii) Possesses a valid California class A or B license or a class
38 A or B license restricted to the operation of firefighting equipment.

1 (iii) Is certified as a qualified training instructor or training
2 officer by the State of California, the federal government, or a
3 county training officers' association.

4 (2) Pass the written firefighter examination developed by the
5 department with the cooperation of the *Office of the State Fire*
6 ~~Marshal's office~~ *Marshal*.

7 (3) Upon application and every two years thereafter, submit
8 medical information on a form approved by the department.

9 (c) There shall be no additional charge for adding a firefighter
10 endorsement to an original license or when renewing a license. To
11 add a firefighter endorsement to an existing license when not
12 renewing the license, the applicant shall pay the fee for a duplicate
13 license pursuant to Section 14901.

14 (d) (1) A driver of firefighting equipment is subject to the
15 requirements of subdivision (a) if both of the following conditions
16 exist:

17 (A) The equipment is operated by a person employed as a
18 firefighter by a federal or state agency, by a regularly organized
19 fire department of a city, county, city and county, or district, or by
20 a tribal fire department or registered as a volunteer member of a
21 regularly organized fire department having official recognition of
22 the city, county, city and county, or district in which the department
23 is located, or of a tribal fire department.

24 (B) The motor vehicle is used to travel to and from the scene
25 of ~~any~~ *an* emergency situation, or to transport equipment used in
26 the control of ~~any~~ *an* emergency situation, and which is owned,
27 leased, or rented by, or under the exclusive control of, a federal or
28 state agency, a regularly organized fire department of a city, county,
29 city and county, or district, a volunteer fire department having
30 official recognition of the city, county, city and county, or district
31 in which the department is located, or a tribal fire department.

32 (2) A driver of firefighting equipment is not required to obtain
33 and maintain a firefighter endorsement pursuant to paragraph (1)
34 of subdivision (a) if the driver is operating the firefighting
35 equipment for training purposes, during a nonemergency, while
36 under the direct supervision of a fire department employee who is
37 properly licensed to operate the equipment and is authorized by
38 the fire department to provide training.

39 (e) For purposes of this section, a tiller operator is the driver of
40 the rear free-axle portion of a ladder truck.

1 (f) For purposes of this section, “firefighting equipment” means
2 a motor vehicle, that meets the definition of a class A or class B
3 vehicle described in subdivision (b) of Section 12804.9, that is
4 used to travel to and from the scene of an emergency situation, or
5 to transport equipment used in the control of an emergency
6 situation, and that is owned, leased, or rented by, or under the
7 exclusive control of, a federal or state agency, a regularly organized
8 fire department of a city, county, city and county, or district, or a
9 volunteer fire department having official recognition of the city,
10 county, city and county, or district in which the department is
11 located.

12 (g) Notwithstanding paragraph (1) of subdivision (a), a regularly
13 organized fire department, having official recognition of the city,
14 county, city and county, or district in which the department is
15 located, may require an employee or a volunteer of the fire
16 department who is a driver or operator of firefighting equipment
17 to hold a class A or B license.

18 (h) This section applies to a person hired by a fire department,
19 or to a person renewing a driver’s license, on or after January 1,
20 2011.

21 SEC. 195. Section 16028 of the Vehicle Code is amended to
22 read:

23 16028. (a) Upon the demand of a peace officer pursuant to
24 subdivision (b) or upon the demand of a peace officer or traffic
25 collision investigator pursuant to subdivision (c), every person
26 who drives a motor vehicle upon a highway shall provide evidence
27 of financial responsibility for the vehicle that is in effect at the
28 time the demand is made. The evidence of financial responsibility
29 may be provided using a mobile electronic device. However, a
30 peace officer shall not stop a vehicle for the sole purpose of
31 determining whether the vehicle is being driven in violation of this
32 subdivision.

33 (b) If a notice to appear is issued for any alleged violation of
34 this code, except a violation specified in Chapter 9 (commencing
35 with Section 22500) of Division 11 or any local ordinance adopted
36 pursuant to that chapter, the cited driver shall furnish written
37 evidence of financial responsibility or may provide electronic
38 verification of evidence of financial responsibility using a mobile
39 electronic device upon request of the peace officer issuing the
40 citation. The peace officer shall request and write the driver’s

1 evidence of financial responsibility on the notice to appear, except
2 when the peace officer is unable to write the driver's evidence of
3 financial responsibility on the notice to appear due to an emergency
4 that requires his or her presence elsewhere. If the cited driver fails
5 to provide evidence of financial responsibility at the time the notice
6 to appear is issued, the peace officer may issue the driver a notice
7 to appear for violation of subdivision (a). The notice to appear for
8 violation of subdivision (a) shall be written on the same citation
9 form as the original violation.

10 (c) If a peace officer, or a regularly employed and salaried
11 employee of a city or county who has been trained as a traffic
12 collision investigator, is summoned to the scene of an accident
13 described in Section 16000, the driver of a motor vehicle that is
14 in any manner involved in the accident shall furnish written
15 evidence of financial responsibility or may provide electronic
16 verification of evidence of financial responsibility using a mobile
17 electronic device upon the request of the peace officer or traffic
18 collision investigator. If the driver fails to provide evidence of
19 financial responsibility when requested, the peace officer may
20 issue the driver a notice to appear for violation of this subdivision.
21 A traffic collision investigator may cause a notice to appear to be
22 issued for a violation of this subdivision, upon review of that
23 citation by a peace officer.

24 (d) (1) If, at the time a notice to appear for a violation of
25 subdivision (a) is issued, the person is driving a motor vehicle
26 owned or leased by the driver's employer, and the vehicle is being
27 driven with the permission of the employer, this section shall apply
28 to the employer rather than the driver. In that case, a notice to
29 appear shall be issued to the employer rather than the driver, and
30 the driver may sign the notice on behalf of the employer.

31 (2) The driver shall notify the employer of the receipt of the
32 notice issued pursuant to paragraph (1) not later than five days
33 after receipt.

34 (e) A person issued a notice to appear for a violation of
35 subdivision (a) may personally appear before the clerk of the court,
36 as designated in the notice to appear, and provide written evidence
37 of financial responsibility in a form consistent with Section 16020,
38 showing that the driver was in compliance with that section at the
39 time the notice to appear for violating subdivision (a) was issued.
40 In lieu of the personal appearance, the person may submit by mail

1 to the court written evidence of having had financial responsibility
2 at the time the notice to appear was issued. Upon receipt by the
3 clerk of that written evidence of financial responsibility in a form
4 consistent with Section 16020, further proceedings on the notice
5 to appear for the violation of subdivision (a) shall be dismissed.

6 (f) For *the* purposes of this section, “mobile electronic device”
7 means a portable computing and communication device that has
8 a display screen with touch input or a miniature keyboard.

9 (g) For the purposes of this section, when a person provides
10 evidence of financial responsibility using a mobile electronic device
11 to a peace officer, the peace officer shall only view the evidence
12 of financial responsibility and is prohibited from viewing any other
13 content on the mobile electronic device.

14 (h) ~~Whenever~~ *If* a person presents a mobile electronic device
15 pursuant to this section, that person assumes all liability for any
16 damage to the mobile electronic device.

17 SEC. 196. Section 23612 of the Vehicle Code is amended to
18 read:

19 23612. (a) (1) (A) A person who drives a motor vehicle is
20 deemed to have given his or her consent to chemical testing of his
21 or her blood or breath for the purpose of determining the alcoholic
22 content of his or her blood, if lawfully arrested for an offense
23 allegedly committed in violation of Section 23140, 23152, or
24 23153. If a blood or breath test, or both, are unavailable, then
25 paragraph (2) of subdivision (d) applies.

26 (B) A person who drives a motor vehicle is deemed to have
27 given his or her consent to chemical testing of his or her blood for
28 the purpose of determining the drug content of his or her blood, if
29 lawfully arrested for an offense allegedly committed in violation
30 of Section 23140, 23152, or 23153. If a blood test is unavailable,
31 the person shall be deemed to have given his or her consent to
32 chemical testing of his or her urine and shall submit to a urine test.

33 (C) The testing shall be incidental to a lawful arrest and
34 administered at the direction of a peace officer having reasonable
35 cause to believe the person was driving a motor vehicle in violation
36 of Section 23140, 23152, or 23153.

37 (D) The person shall be told that his or her failure to submit to,
38 or the failure to complete, the required chemical testing will result
39 in a fine, mandatory imprisonment if the person is convicted of a
40 violation of Section 23152 or 23153, and (i) the suspension of the

1 person's privilege to operate a motor vehicle for a period of one
2 year, (ii) the revocation of the person's privilege to operate a motor
3 vehicle for a period of two years if the refusal occurs within 10
4 years of a separate violation of Section 23103 as specified in
5 Section 23103.5, or of Section 23140, 23152, or 23153 of this
6 code, or of Section 191.5 or subdivision (a) of Section 192.5 of
7 the Penal Code that resulted in a conviction, or if the person's
8 privilege to operate a motor vehicle has been suspended or revoked
9 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that
10 occurred on a separate occasion, or (iii) the revocation of the
11 person's privilege to operate a motor vehicle for a period of three
12 years if the refusal occurs within 10 years of two or more separate
13 violations of Section 23103 as specified in Section 23103.5, or of
14 Section 23140, 23152, or 23153 of this code, or of Section 191.5
15 or subdivision (a) of Section 192.5 of the Penal Code, or any
16 combination thereof, that resulted in convictions, or if the person's
17 privilege to operate a motor vehicle has been suspended or revoked
18 two or more times pursuant to Section 13353, 13353.1, or 13353.2
19 for offenses that occurred on separate occasions, or if there is any
20 combination of those convictions or administrative suspensions,
21 or revocations.

22 (2) (A) If the person is lawfully arrested for driving under the
23 influence of an alcoholic beverage, the person has the choice of
24 whether the test shall be of his or her blood or breath and the officer
25 shall advise the person that he or she has that choice. If the person
26 arrested either is incapable, or states that he or she is incapable,
27 of completing the chosen test, the person shall submit to the
28 remaining test. If a blood or breath test, or both, are unavailable,
29 then paragraph (2) of subdivision (d) applies.

30 (B) If the person is lawfully arrested for driving under the
31 influence of any drug or the combined influence of an alcoholic
32 beverage and any drug, the person has the choice of whether the
33 test shall be of his or her blood or breath, and the officer shall
34 advise the person that he or she has that choice.

35 (C) A person who chooses to submit to a breath test may also
36 be requested to submit to a blood test if the officer has reasonable
37 cause to believe that the person was driving under the influence
38 of a drug or the combined influence of an alcoholic beverage and
39 a drug and if the officer has a clear indication that a blood test will
40 reveal evidence of the person being under the influence. The officer

1 shall state in his or her report the facts upon which that belief and
2 that clear indication are based. The officer shall advise the person
3 that he or she is required to submit to an additional test. The person
4 shall submit to and complete a blood test. If the person arrested is
5 incapable of completing the blood test, the person shall submit to
6 and complete a urine test.

7 (3) If the person is lawfully arrested for an offense allegedly
8 committed in violation of Section 23140, 23152, or 23153, and,
9 because of the need for medical treatment, the person is first
10 transported to a medical facility where it is not feasible to
11 administer a particular test of, or to obtain a particular sample of,
12 the person's blood or breath, the person has the choice of those
13 tests, including a urine test, that are available at the facility to
14 which that person has been transported. In that case, the officer
15 shall advise the person of those tests that are available at the
16 medical facility and that the person's choice is limited to those
17 tests that are available.

18 (4) The officer shall also advise the person that he or she does
19 not have the right to have an attorney present before stating whether
20 he or she will submit to a test or tests, before deciding which test
21 or tests to take, or during administration of the test or tests chosen,
22 and that, in the event of refusal to submit to a test or tests, the
23 refusal may be used against him or her in a court of law.

24 (5) A person who is unconscious or otherwise in a condition
25 rendering him or her incapable of refusal is deemed not to have
26 withdrawn his or her consent and a test or tests may be
27 administered whether or not the person is told that his or her failure
28 to submit to, or the noncompletion of, the test or tests will result
29 in the suspension or revocation of his or her privilege to operate
30 a motor vehicle. A person who is dead is deemed not to have
31 withdrawn his or her consent and a test or tests may be
32 administered at the direction of a peace officer.

33 (b) A person who is afflicted with hemophilia is exempt from
34 the blood test required by this section, but shall submit to, and
35 complete, a urine test.

36 (c) A person who is afflicted with a heart condition and is using
37 an anticoagulant under the direction of a licensed physician and
38 surgeon is exempt from the blood test required by this section, but
39 shall submit to, and complete, a urine test.

1 (d) (1) A person lawfully arrested for an offense allegedly
2 committed while the person was driving a motor vehicle in
3 violation of Section 23140, 23152, or 23153 may request the
4 arresting officer to have a chemical test made of the arrested
5 person's blood or breath for the purpose of determining the
6 alcoholic content of that person's blood, and, if so requested, the
7 arresting officer shall have the test performed.

8 (2) If a blood or breath test is not available under subparagraph
9 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
10 of paragraph (2) of subdivision (a), or under paragraph (1) of this
11 subdivision, the person shall submit to the remaining test in order
12 to determine the percent, by weight, of alcohol in the person's
13 blood. If both the blood and breath tests are unavailable, the person
14 shall be deemed to have given his or her consent to chemical testing
15 of his or her urine and shall submit to a urine test.

16 (e) If the person, who has been arrested for a violation of Section
17 23140, 23152, or 23153, refuses or fails to complete a chemical
18 test or tests, or requests that a blood or urine test be taken, the
19 peace officer, acting on behalf of the department, shall serve the
20 notice of the order of suspension or revocation of the person's
21 privilege to operate a motor vehicle personally on the arrested
22 person. The notice shall be on a form provided by the department.

23 (f) If the peace officer serves the notice of the order of
24 suspension or revocation of the person's privilege to operate a
25 motor vehicle, the peace officer shall take possession of all driver's
26 licenses issued by this state that are held by the person. The
27 temporary driver's license shall be an endorsement on the notice
28 of the order of suspension and shall be valid for 30 days from the
29 date of arrest.

30 (g) (1) The peace officer shall immediately forward a copy of
31 the completed notice of suspension or revocation form and any
32 driver's license taken into possession under subdivision (f), with
33 the report required by Section 13380, to the department. If the
34 person submitted to a blood or urine test, the peace officer shall
35 forward the results immediately to the appropriate forensic
36 laboratory. The forensic laboratory shall forward the results of the
37 chemical tests to the department within 15 calendar days of the
38 date of the arrest.

39 (2) (A) Notwithstanding any other law, a document containing
40 data prepared and maintained in the governmental forensic

1 laboratory computerized database system that is electronically
2 transmitted or retrieved through public or private computer
3 networks to or by the department is the best available evidence of
4 the chemical test results in all administrative proceedings conducted
5 by the department. In addition, any other official record that is
6 maintained in the governmental forensic laboratory, relates to a
7 chemical test analysis prepared and maintained in the governmental
8 forensic laboratory computerized database system, and is
9 electronically transmitted and retrieved through a public or private
10 computer network to or by the department is admissible as evidence
11 in the department's administrative proceedings. In order to be
12 admissible as evidence in administrative proceedings, a document
13 described in this subparagraph shall bear a certification by the
14 employee of the department who retrieved the document certifying
15 that the information was received or retrieved directly from the
16 computerized database system of a governmental forensic
17 laboratory and that the document accurately reflects the data
18 received or retrieved.

19 (B) Notwithstanding any other law, the failure of an employee
20 of the department to certify under subparagraph (A) is not a public
21 offense.

22 (h) A preliminary alcohol screening test that indicates the
23 presence or concentration of alcohol based on a breath sample in
24 order to establish reasonable cause to believe the person was
25 driving a vehicle in violation of Section 23140, 23152, or 23153
26 is a field sobriety test and may be used by an officer as a further
27 investigative tool.

28 (i) If the officer decides to use a preliminary alcohol screening
29 test, the officer shall advise the person that he or she is requesting
30 that person to take a preliminary alcohol screening test to assist
31 the officer in determining if that person is under the influence of
32 alcohol or drugs, or a combination of alcohol and drugs. The
33 person's obligation to submit to a blood, breath, or urine test, as
34 required by this section, for the purpose of determining the alcohol
35 or drug content of that person's blood, is not satisfied by the person
36 submitting to a preliminary alcohol screening test. The officer shall
37 advise the person of that fact and of the person's right to refuse to
38 take the preliminary alcohol screening test.

39 ~~No reimbursement is required by this act pursuant to Section 6~~
40 ~~of Article XIII B of the California Constitution because the only~~

1 costs that may be incurred by a local agency or school district will
2 be incurred because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty for a crime
4 or infraction, within the meaning of Section 17556 of the
5 Government Code, or changes the definition of a crime within the
6 meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 SEC. 197. Section 34510.5 of the Vehicle Code is amended to
9 read:

10 34510.5. (a) (1) A broker of construction trucking services,
11 as defined in Section 3322 of the Civil Code, shall not furnish
12 construction transportation services to any construction project
13 unless it has secured a surety bond of not less than fifteen thousand
14 dollars (\$15,000) executed by an admitted surety insurer. The
15 surety bond shall ensure the payment of the claims of a contracted
16 motor carrier of property in dump truck equipment if the broker
17 fails to pay the contracted motor carrier within the time period
18 specified in paragraph (1) of subdivision (a) of Section 3322 of
19 the Civil Code.

20 (2) (A) A broker of construction trucking services annually
21 shall provide written evidence of the broker's valid surety bond
22 to a third-party nonprofit organization that is related to the industry
23 and regularly maintains a published database of bonded brokers
24 or post a current copy of the surety bond on the broker's Internet
25 Web site.

26 (B) When a copy of a surety bond is provided to a third-party
27 nonprofit organization, the broker shall notify the third-party
28 nonprofit organization if at any time the surety bond is cancelled
29 or expired. When a copy of the surety bond is posted on the
30 broker's Internet Web site, the broker shall remove the *copy of the*
31 surety bond from his or her *Internet* Web site if at any time the
32 surety bond is cancelled or expired.

33 (C) A third-party nonprofit organization shall not charge a
34 broker for posting evidence of a valid surety bond or limit the
35 posting of the bond only to the organization's members.

36 (D) A third-party nonprofit organization shall not be liable for
37 any damages caused by the publication of any information provided
38 pursuant to this paragraph that is erroneous or outdated.

39 (b) A broker of construction trucking services shall not hire,
40 or otherwise engage the services of, a motor carrier of property to

1 furnish construction transportation services unless the broker
 2 provides, prior to the commencement of work each calendar year,
 3 written evidence of the broker’s valid surety bond to any person
 4 that hires, or otherwise engages the services of, the broker to
 5 furnish construction transportation services and also to the hired
 6 motor carrier of property.

7 (c) A broker of construction trucking services who furnishes
 8 construction transportation services in violation of this section is
 9 guilty of a misdemeanor and subject to a fine of up to five thousand
 10 dollars (\$5,000).

11 (d) In any civil action brought against a broker of construction
 12 trucking services by a motor carrier of property in dump truck
 13 equipment with whom the broker contracted during any period of
 14 time in which the broker did not have a surety bond in violation
 15 of this section, the failure to have the bond shall create a rebuttable
 16 presumption that the broker failed to pay to the motor carrier the
 17 amount due and owing.

18 (e) For purposes of this section, “a broker of construction
 19 trucking services” does not include a facility that meets all the
 20 following requirements:

- 21 (1) Arranges for transportation services of its product.
- 22 (2) Primarily handles raw materials to produce a new product.
- 23 (3) Is a rock product operation (such as an “aggregate”
 24 operation), a hot mixing asphalt plant, or a concrete, concrete
 25 product, or Portland cement product manufacturing facility.
- 26 (4) Does not accept a fee for the arrangement.

27 (f) For the purposes of this section, “written evidence of the
 28 broker’s valid surety bond” includes a copy of the surety bond, a
 29 certificate of insurance, a continuation certificate, or other similar
 30 documentation originally issued from the surety that includes the
 31 surety’s and broker’s name, the bond number, and the effective
 32 and expiration dates of the bond.

33 SEC. 198. Section 40000.20 of the Vehicle Code is amended
 34 to read:

35 40000.20. A third or subsequent violation of Section 23225,
 36 relating to the storage of an opened container of an alcoholic
 37 beverage, or Section 23223, relating to the possession of an open
 38 container of an alcoholic beverage, ~~of~~ by a driver of ~~any~~ a vehicle
 39 used to provide transportation services on a prearranged ~~services~~
 40 basis, operating under a valid certificate or permit pursuant to the

1 Passenger Charter-party Carriers' Act (Chapter 8 (commencing
2 with Section 5351) of Division 2 of the Public Utilities Code), is
3 a misdemeanor.

4 SEC. 199. Section 85057.5 of the Water Code is amended to
5 read:

6 85057.5. (a) "Covered action" means a plan, program, or
7 project as defined pursuant to Section 21065 of the Public
8 Resources Code that meets all of the following conditions:

9 (1) Will occur, in whole or in part, within the boundaries of the
10 Delta or Suisun Marsh.

11 (2) Will be carried out, approved, or funded by the state or a
12 local public agency.

13 (3) Is covered by one or more provisions of the Delta Plan.

14 (4) Will have a significant impact on achievement of one or
15 both of the coequal goals or the implementation of
16 government-sponsored flood control programs to reduce risks to
17 people, property, and state interests in the Delta.

18 (b) "Covered action" does not include any of the following:

19 (1) A regulatory action of a state agency.

20 (2) Routine maintenance and operation of the State Water
21 Project or the federal Central Valley Project.

22 (3) Regional transportation plans prepared pursuant to Section
23 65080 of the Government Code.

24 (4) A plan, program, project, or activity within the secondary
25 zone of the Delta that the applicable metropolitan planning
26 organization pursuant to Section 65080 of the Government Code
27 has determined is consistent with either a sustainable communities
28 strategy or an alternative planning strategy that the State Air
29 Resources Board has determined would, if implemented, achieve
30 the greenhouse gas emission reduction targets established by that
31 board pursuant to subparagraph (A) of paragraph (2) of subdivision
32 (b) of Section 65080 of the Government Code. For purposes of
33 this paragraph, "consistent with" means consistent with the use
34 designation, density, building intensity, transportation plan, and
35 applicable policies specified for the area in the sustainable
36 communities strategy or the alternative planning strategy, as
37 applicable, and any infrastructure necessary to support the plan,
38 program, project, or activity.

- 1 (5) Routine maintenance and operation of a facility located, in
 2 whole or in part, in the Delta, that is owned or operated by a local
 3 public agency.
- 4 (6) A plan, program, project, or activity that occurs, in whole
 5 or in part, in the Delta, if both of the following conditions are met:
- 6 (A) The plan, program, project, or activity is undertaken by a
 7 local public agency that is located, in whole or in part, in the Delta.
- 8 (B) Either a notice of determination is filed, pursuant to Section
 9 21152 of the Public Resources Code, for the plan, program, project,
 10 or activity by, or the plan, program, project, or activity is fully
 11 permitted by, September 30, 2009.
- 12 (7) (A) A project within the secondary zone, as defined pursuant
 13 to Section 29731 of the Public Resources Code as of January 1,
 14 2009, for which a notice of approval or determination pursuant to
 15 Section 21152 of the Public Resources Code has been filed before
 16 the date on which the Delta Plan becomes effective.
- 17 (B) A project for which a notice of approval or determination
 18 is filed on or after the date on which the final Bay Delta
 19 Conservation Plan becomes effective, and before the date on which
 20 the Delta Plan becomes effective, is not a covered action but shall
 21 be consistent with the Bay Delta Conservation Plan.
- 22 (C) Subparagraphs (A) and (B) do not apply to either of the
 23 following:
- 24 (i) A project that is within a Restoration Opportunity Area as
 25 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of
 26 the Bay Delta Conservation Plan, August 3, 2009, or as shown in
 27 a final Bay Delta Conservation Plan.
- 28 (ii) A project that is within the alignment of a conveyance
 29 facility as shown in Figures 1 to 5, inclusive, of the Final Draft
 30 Initial Assessment of Dual Delta Water Conveyance Report, April
 31 23, 2008, and in future revisions of this document by the
 32 department.
- 33 (8) Leases approved by a special district if all of the following
 34 apply:
- 35 (A) The uses proposed by the lease are authorized by the
 36 applicable general plan and zoning ordinances of the city where
 37 the special district is located.
- 38 (B) The uses proposed by the lease are approved by the city
 39 where the special district is located and the city complies with

1 Chapter 3 (commencing with Section 85225) of Part 3, if
2 applicable, prior to approval of the lease by the special district.

3 (C) The special district complies with the California
4 Environmental Quality Act (Division 13 (commencing with Section
5 21000) of the Public Resources Code) prior to approving the lease.

6 (9) (A) Routine dredging activities that are necessary for
7 maintenance of facilities operated by a special district.

8 (B) For purposes of this paragraph, “routine dredging activities”
9 are limited to the following:

10 (i) Dredging to maintain the Stockton Deep Water Ship Channel
11 at a depth of 40 feet in the sediment trap at the confluence of the
12 San Joaquin River, between river mile 39.3 to river mile 40.2, and
13 to maintain the remaining Stockton Deep Water Ship Channel at
14 a depth of 35 feet plus two feet *of* overdredge from river mile 35
15 to river mile 43.

16 (ii) Dredging designed to maintain the Sacramento Deep Water
17 Ship Channel at a depth of 30 feet plus ~~2~~ two feet of overdredge
18 from river mile 0.0 to river mile 30, and at a depth of 35 feet from
19 river mile 35 to river mile 43.

20 (C) Except as provided by this subdivision, it is the intent of
21 the Legislature that this exemption shall not be interpreted or
22 treated as changing or modifying current substantive and procedural
23 regulations applicable to the decision to approve dredging
24 operations.

25 (c) For purposes of this section, “special district” means the
26 Port of Stockton or the Port of West Sacramento.

27 (d) This section shall not be interpreted to authorize the
28 abrogation of a vested right whether created by statute or by
29 common law.

30 SEC. 200. Section 366.21 of the Welfare and Institutions Code
31 is amended to read:

32 366.21. (a) Every hearing conducted by the juvenile court
33 reviewing the status of a dependent child shall be placed on the
34 appearance calendar. The court shall advise all persons present at
35 the hearing of the date of the future hearing and of their right to
36 be present and represented by counsel.

37 (b) Except as provided in Sections 294 and 295, notice of the
38 hearing shall be provided pursuant to Section 293.

39 (c) At least 10 calendar days prior to the hearing, the social
40 worker shall file a supplemental report with the court regarding

1 the services provided or offered to the parent or legal guardian to
2 enable him or her to assume custody and the efforts made to
3 achieve legal permanence for the child if efforts to reunify fail,
4 including, but not limited to, efforts to maintain relationships
5 between a child who is 10 years of age or older and has been in
6 out-of-home placement for six months or longer and individuals
7 who are important to the child, consistent with the child's best
8 interests; the progress made; and, where relevant, the prognosis
9 for return of the child to the physical custody of his or her parent
10 or legal guardian; and shall make his or her recommendation for
11 disposition. If the child is a member of a sibling group described
12 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
13 361.5, the report and recommendation may also take into account
14 those factors described in subdivision (e) relating to the child's
15 sibling group. If the recommendation is not to return the child to
16 a parent or legal guardian, the report shall specify why the return
17 of the child would be detrimental to the child. The social worker
18 shall provide the parent or legal guardian, counsel for the child,
19 and any court-appointed child advocate with a copy of the report,
20 including his or her recommendation for disposition, at least 10
21 calendar days prior to the hearing. In the case of a child removed
22 from the physical custody of his or her parent or legal guardian,
23 the social worker shall, at least 10 calendar days prior to the
24 hearing, provide a summary of his or her recommendation for
25 disposition to any foster parents, relative caregivers, and certified
26 foster parents who have been approved for adoption by the State
27 Department of Social Services when it is acting as an adoption
28 agency or by a county adoption agency, community care facility,
29 or foster family agency having the physical custody of the child.
30 The social worker shall include a copy of the Judicial Council
31 Caregiver Information Form (JV-290) with the summary of
32 recommendations to the child's foster parents, relative caregivers,
33 or foster parents approved for adoption, in the caregiver's primary
34 language when available, along with information on how to file
35 the form with the court.

36 (d) Prior to any hearing involving a child in the physical custody
37 of a community care facility or a foster family agency that may
38 result in the return of the child to the physical custody of his or
39 her parent or legal guardian, or in adoption or the creation of a
40 legal guardianship, or in the case of an Indian child, in consultation

1 with the child's tribe, tribal customary adoption, the facility or
2 agency shall file with the court a report, or a Judicial Council
3 Caregiver Information Form (JV-290), containing its
4 recommendation for disposition. Prior to the hearing involving a
5 child in the physical custody of a foster parent, a relative caregiver,
6 or a certified foster parent who has been approved for adoption by
7 the State Department of Social Services when it is acting as an
8 adoption agency or by a county adoption agency, the foster parent,
9 relative caregiver, or the certified foster parent who has been
10 approved for adoption by the State Department of Social Services
11 when it is acting as an adoption agency or by a county adoption
12 agency, may file with the court a report containing his or her
13 recommendation for disposition. The court shall consider the report
14 and recommendation filed pursuant to this subdivision prior to
15 determining any disposition.

16 (e) At the review hearing held six months after the initial
17 dispositional hearing, but no later than 12 months after the date
18 the child entered foster care as determined in Section 361.49,
19 whichever occurs earlier, after considering the admissible and
20 relevant evidence, the court shall order the return of the child to
21 the physical custody of his or her parent or legal guardian unless
22 the court finds, by a preponderance of the evidence, that the return
23 of the child to his or her parent or legal guardian would create a
24 substantial risk of detriment to the safety, protection, or physical
25 or emotional well-being of the child. The social worker shall have
26 the burden of establishing that detriment. At the hearing, the court
27 shall consider the criminal history, obtained pursuant to paragraph
28 (1) of subdivision (f) of Section 16504.5, of the parent or legal
29 guardian subsequent to the child's removal to the extent that the
30 criminal record is substantially related to the welfare of the child
31 or the parent's or guardian's ability to exercise custody and control
32 regarding his or her child, provided the parent or legal guardian
33 agreed to submit fingerprint images to obtain criminal history
34 information as part of the case plan. The failure of the parent or
35 legal guardian to participate regularly and make substantive
36 progress in court-ordered treatment programs shall be prima facie
37 evidence that return would be detrimental. In making its
38 determination, the court shall review and consider the social
39 worker's report and recommendations and the report and
40 recommendations of any child advocate appointed pursuant to

1 Section 356.5; and shall consider the efforts or progress, or both,
2 demonstrated by the parent or legal guardian and the extent to
3 which he or she availed himself or herself to services provided,
4 taking into account the particular barriers to an incarcerated,
5 institutionalized, detained, or deported parent's or legal guardian's
6 access to those court-mandated services and ability to maintain
7 contact with his or her child.

8 Regardless of whether the child is returned to a parent or legal
9 guardian, the court shall specify the factual basis for its conclusion
10 that the return would be detrimental or would not be detrimental.
11 The court also shall make appropriate findings pursuant to
12 subdivision (a) of Section 366; and, where relevant, shall order
13 any additional services reasonably believed to facilitate the return
14 of the child to the custody of his or her parent or legal guardian.
15 The court shall also inform the parent or legal guardian that if the
16 child cannot be returned home by the 12-month permanency
17 hearing, a proceeding pursuant to Section 366.26 may be instituted.
18 This section does not apply in a case where, pursuant to Section
19 361.5, the court has ordered that reunification services shall not
20 be provided.

21 If the child was under three years of age on the date of the initial
22 removal, or is a member of a sibling group described in
23 subparagraph (C) of paragraph (1) of subdivision (a) of Section
24 361.5, and the court finds by clear and convincing evidence that
25 the parent failed to participate regularly and make substantive
26 progress in a court-ordered treatment plan, the court may schedule
27 a hearing pursuant to Section 366.26 within 120 days. If, however,
28 the court finds there is a substantial probability that the child, who
29 was under three years of age on the date of initial removal or is a
30 member of a sibling group described in subparagraph (C) of
31 paragraph (1) of subdivision (a) of Section 361.5, may be returned
32 to his or her parent or legal guardian within six months or that
33 reasonable services have not been provided, the court shall continue
34 the case to the 12-month permanency hearing.

35 For the purpose of placing and maintaining a sibling group
36 together in a permanent home, the court, in making its
37 determination to schedule a hearing pursuant to Section 366.26
38 for some or all members of a sibling group, as described in
39 subparagraph (C) of paragraph (1) of subdivision (a) of Section
40 361.5, shall review and consider the social worker's report and

1 recommendations. Factors the report shall address, and the court
2 shall consider, may include, but need not be limited to, whether
3 the sibling group was removed from parental care as a group, the
4 closeness and strength of the sibling bond, the ages of the siblings,
5 the appropriateness of maintaining the sibling group together, the
6 detriment to the child if sibling ties are not maintained, the
7 likelihood of finding a permanent home for the sibling group,
8 whether the sibling group is currently placed together in a
9 preadoptive home or has a concurrent plan goal of legal
10 permanency in the same home, the wishes of each child whose
11 age and physical and emotional condition permits a meaningful
12 response, and the best ~~interest~~ *interests* of each child in the sibling
13 group. The court shall specify the factual basis for its finding that
14 it is in the best ~~interest~~ *interests* of each child to schedule a hearing
15 pursuant to Section 366.26 ~~in~~ *within* 120 days for some or all of
16 the members of the sibling group.

17 If the child was removed initially under subdivision (g) of
18 Section 300 and the court finds by clear and convincing evidence
19 that the whereabouts of the parent are still unknown, or the parent
20 has failed to contact and visit the child, the court may schedule a
21 hearing pursuant to Section 366.26 within 120 days. The court
22 shall take into account any particular barriers to a parent's ability
23 to maintain contact with his or her child due to the parent's
24 incarceration, institutionalization, detention by the United States
25 Department of Homeland Security, or deportation. If the court
26 finds by clear and convincing evidence that the parent has been
27 convicted of a felony indicating parental unfitness, the court may
28 schedule a hearing pursuant to Section 366.26 within 120 days.

29 If the child had been placed under court supervision with a
30 previously noncustodial parent pursuant to Section 361.2, the court
31 shall determine whether supervision is still necessary. The court
32 may terminate supervision and transfer permanent custody to that
33 parent, as provided for by paragraph (1) of subdivision (b) of
34 Section 361.2.

35 In all other cases, the court shall direct that any reunification
36 services previously ordered shall continue to be offered to the
37 parent or legal guardian pursuant to the time periods set forth in
38 subdivision (a) of Section 361.5, provided that the court may
39 modify the terms and conditions of those services.

1 If the child is not returned to his or her parent or legal guardian,
2 the court shall determine whether reasonable services that were
3 designed to aid the parent or legal guardian in overcoming the
4 problems that led to the initial removal and the continued custody
5 of the child have been provided or offered to the parent or legal
6 guardian. The court shall order that those services be initiated,
7 continued, or terminated.

8 (f) The permanency hearing shall be held no later than 12
9 months after the date the child entered foster care, as that date is
10 determined pursuant to Section 361.49. At the permanency hearing,
11 the court shall determine the permanent plan for the child, which
12 shall include a determination of whether the child will be returned
13 to the child's home and, if so, when, within the time limits of
14 subdivision (a) of Section 361.5. After considering the relevant
15 and admissible evidence, the court shall order the return of the
16 child to the physical custody of his or her parent or legal guardian
17 unless the court finds, by a preponderance of the evidence, that
18 the return of the child to his or her parent or legal guardian would
19 create a substantial risk of detriment to the safety, protection, or
20 physical or emotional well-being of the child. The social worker
21 shall have the burden of establishing that detriment. At the
22 permanency hearing, the court shall consider the criminal history,
23 obtained pursuant to paragraph (1) of subdivision (f) of Section
24 16504.5, of the parent or legal guardian subsequent to the child's
25 removal to the extent that the criminal record is substantially related
26 to the welfare of the child or the parent's or legal guardian's ability
27 to exercise custody and control regarding his or her child, provided
28 that the parent or legal guardian agreed to submit fingerprint images
29 to obtain criminal history information as part of the case plan. The
30 court shall also determine whether reasonable services that were
31 designed to aid the parent or legal guardian to overcome the
32 problems that led to the initial removal and continued custody of
33 the child have been provided or offered to the parent or legal
34 guardian. For each youth 16 years of age and older, the court shall
35 also determine whether services have been made available to assist
36 him or her in making the transition from foster care to independent
37 living. The failure of the parent or legal guardian to participate
38 regularly and make substantive progress in court-ordered treatment
39 programs shall be prima facie evidence that return would be
40 detrimental. In making its determination, the court shall review

1 and consider the social worker’s report and recommendations and
2 the report and recommendations of any child advocate appointed
3 pursuant to Section 356.5, shall consider the efforts or progress,
4 or both, demonstrated by the parent or legal guardian and the extent
5 to which he or she availed himself or herself of services provided,
6 taking into account the particular barriers to an incarcerated,
7 institutionalized, detained, or deported parent’s or legal guardian’s
8 access to those court-mandated services and ability to maintain
9 contact with his or her child, and shall make appropriate findings
10 pursuant to subdivision (a) of Section 366.

11 Regardless of whether the child is returned to his or her parent
12 or legal guardian, the court shall specify the factual basis for its
13 decision. If the child is not returned to a parent or legal guardian,
14 the court shall specify the factual basis for its conclusion that the
15 return would be detrimental. The court also shall make a finding
16 pursuant to subdivision (a) of Section 366. If the child is not
17 returned to his or her parent or legal guardian, the court shall
18 consider, and state for the record, in-state and out-of-state
19 placement options. If the child is placed out of the state, the court
20 shall make a determination whether the out-of-state placement
21 continues to be appropriate and in the best interests of the child.

22 (g) If the time period in which the court-ordered services were
23 provided has met or exceeded the time period set forth in
24 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
25 of Section 361.5, as appropriate, and a child is not returned to the
26 custody of a parent or legal guardian at the permanency hearing
27 held pursuant to subdivision (f), the court shall do one of the
28 following:

29 (1) Continue the case for up to six months for a permanency
30 review hearing, provided that the hearing shall occur within 18
31 months of the date the child was originally taken from the physical
32 custody of his or her parent or legal guardian. The court shall
33 continue the case only if it finds that there is a substantial
34 probability that the child will be returned to the physical custody
35 of his or her parent or legal guardian and safely maintained in the
36 home within the extended period of time or that reasonable services
37 have not been provided to the parent or legal guardian. For the
38 purposes of this section, in order to find a substantial probability
39 that the child will be returned to the physical custody of his or her
40 parent or legal guardian and safely maintained in the home within

1 the extended period of time, the court shall be required to find all
2 of the following:

3 (A) That the parent or legal guardian has consistently and
4 regularly contacted and visited with the child.

5 (B) That the parent or legal guardian has made significant
6 progress in resolving problems that led to the child's removal from
7 the home.

8 (C) The parent or legal guardian has demonstrated the capacity
9 and ability both to complete the objectives of his or her treatment
10 plan and to provide for the child's safety, protection, physical and
11 emotional well-being, and special needs.

12 For purposes of this subdivision, the court's decision to continue
13 the case based on a finding or substantial probability that the child
14 will be returned to the physical custody of his or her parent or legal
15 guardian is a compelling reason for determining that a hearing
16 held pursuant to Section 366.26 is not in the best interests of the
17 child.

18 The court shall inform the parent or legal guardian that if the
19 child cannot be returned home by the next permanency review
20 hearing, a proceeding pursuant to Section 366.26 may be instituted.
21 The court may not order that a hearing pursuant to Section 366.26
22 be held unless there is clear and convincing evidence that
23 reasonable services have been provided or offered to the parent or
24 legal guardian.

25 (2) Continue the case for up to six months for a permanency
26 review hearing, provided that the hearing shall occur within 18
27 months of the date the child was originally taken from the physical
28 custody of his or her parent or legal guardian, if the parent has
29 been arrested and issued an immigration hold, detained by the
30 United States Department of Homeland Security, or deported to
31 his or her country of origin, and the court determines either that
32 there is a substantial probability that the child will be returned to
33 the physical custody of his or her parent or legal guardian and
34 safely maintained in the home within the extended period of time
35 or that reasonable services have not been provided to the parent
36 or legal guardian.

37 (3) For purposes of paragraph (2), in order to find a substantial
38 probability that the child will be returned to the physical custody
39 of his or her parent or legal guardian and safely maintained in the

1 home within the extended period of time, the court must find all
2 of the following:

3 (A) The parent or legal guardian has consistently and regularly
4 contacted and visited with the child, taking into account any
5 particular barriers to a parent's ability to maintain contact with his
6 or her child due to the parent's arrest and receipt of an immigration
7 hold, detention by the United States Department of Homeland
8 Security, or deportation.

9 (B) The parent or legal guardian has made significant progress
10 in resolving the problems that led to the child's removal from the
11 home.

12 (C) The parent or legal guardian has demonstrated the capacity
13 or ability both to complete the objectives of his or her treatment
14 plan and to provide for the child's safety, protection, physical and
15 emotional well-being, and special needs.

16 (4) Order that a hearing be held within 120 days, pursuant to
17 Section 366.26, but only if the court does not continue the case to
18 the permanency planning review hearing and there is clear and
19 convincing evidence that reasonable services have been provided
20 or offered to the parents or legal guardians. On and after January
21 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
22 if the child is a nonminor dependent, unless the nonminor
23 dependent is an Indian child and tribal customary adoption is
24 recommended as the permanent plan.

25 (5) Order that the child remain in long-term foster care, but only
26 if the court finds by clear and convincing evidence, based upon
27 the evidence already presented to it, including a recommendation
28 by the State Department of Social Services when it is acting as an
29 adoption agency or by a county adoption agency, that there is a
30 compelling reason for determining that a hearing held pursuant to
31 Section 366.26 is not in the best-~~interest~~ *interests* of the child
32 because the child is not a proper subject for adoption and has no
33 one willing to accept legal guardianship. For purposes of this
34 section, a recommendation by the State Department of Social
35 Services when it is acting as an adoption agency or by a county
36 adoption agency that adoption is not in the best-~~interest~~ *interests*
37 of the child shall constitute a compelling reason for the court's
38 determination. That recommendation shall be based on the present
39 circumstances of the child and shall not preclude a different
40 recommendation at a later date if the child's circumstances change.

1 On and after January 1, 2012, the nonminor dependent's legal
2 status as an adult is in and of itself a compelling reason not to hold
3 a hearing pursuant to Section 366.26. The court may order that a
4 nonminor dependent who otherwise is eligible pursuant to Section
5 11403 remain in a planned, permanent living arrangement.

6 If the court orders that a child who is 10 years of age or older
7 remain in long-term foster care, the court shall determine whether
8 the agency has made reasonable efforts to maintain the child's
9 relationships with individuals other than the child's siblings who
10 are important to the child, consistent with the child's best interests,
11 and may make any appropriate order to ensure that those
12 relationships are maintained.

13 If the child is not returned to his or her parent or legal guardian,
14 the court shall consider, and state for the record, in-state and
15 out-of-state options for permanent placement. If the child is placed
16 out of the state, the court shall make a determination whether the
17 out-of-state placement continues to be appropriate and in the best
18 interests of the child.

19 (h) In any case in which the court orders that a hearing pursuant
20 to Section 366.26 shall be held, it shall also order the termination
21 of reunification services to the parent or legal guardian. The court
22 shall continue to permit the parent or legal guardian to visit the
23 child pending the hearing unless it finds that visitation would be
24 detrimental to the child. The court shall make any other appropriate
25 orders to enable the child to maintain relationships with individuals,
26 other than the child's siblings, who are important to the child,
27 consistent with the child's best interests. When the court orders a
28 termination of reunification services to the parent or legal guardian,
29 it shall also order that the child's caregiver receive the child's birth
30 certificate in accordance with Sections 16010.4 and 16010.5.
31 Additionally, when the court orders a termination of reunification
32 services to the parent or legal guardian, it shall order, when
33 appropriate, that a child who is 16 years of age or older receive
34 his or her birth certificate.

35 (i) (1) Whenever a court orders that a hearing pursuant to
36 Section 366.26, including, when, in consultation with the child's
37 tribe, tribal customary adoption is recommended, shall be held, it
38 shall direct the agency supervising the child and the county
39 adoption agency, or the State Department of Social Services when

1 it is acting as an adoption agency, to prepare an assessment that
2 shall include:

3 (A) Current search efforts for an absent parent or parents or
4 legal guardians.

5 (B) A review of the amount of and nature of any contact between
6 the child and his or her parents or legal guardians and other
7 members of his or her extended family since the time of placement.
8 Although the extended family of each child shall be reviewed on
9 a case-by-case basis, “extended family” for the purpose of this
10 subparagraph shall include, but not be limited to, the child’s
11 siblings, grandparents, aunts, and uncles.

12 (C) An evaluation of the child’s medical, developmental,
13 scholastic, mental, and emotional status.

14 (D) A preliminary assessment of the eligibility and commitment
15 of any identified prospective adoptive parent or legal guardian,
16 including the prospective tribal customary adoptive parent,
17 particularly the caretaker, to include a social history including
18 screening for criminal records and prior referrals for child abuse
19 or neglect, the capability to meet the child’s needs, and the
20 understanding of the legal and financial rights and responsibilities
21 of adoption and guardianship. If a proposed guardian is a relative
22 of the minor, the assessment shall also consider, but need not be
23 limited to, all of the factors specified in subdivision (a) of Section
24 361.3 and in Section 361.4.

25 (E) The relationship of the child to any identified prospective
26 adoptive parent or legal guardian, the duration and character of
27 the relationship, the degree of attachment of the child to the
28 prospective relative guardian or adoptive parent, the relative’s or
29 adoptive parent’s strong commitment to caring permanently for
30 the child, the motivation for seeking adoption or guardianship, a
31 statement from the child concerning placement and the adoption
32 or guardianship, and whether the child, if over 12 years of age,
33 has been consulted about the proposed relative guardianship
34 arrangements, unless the child’s age or physical, emotional, or
35 other condition precludes his or her meaningful response, and if
36 so, a description of the condition.

37 (F) A description of efforts to be made to identify a prospective
38 adoptive parent or legal guardian, including, but not limited to,
39 child-specific recruitment and listing on an adoption exchange
40 within the state or out of the state.

1 (G) An analysis of the likelihood that the child will be adopted
2 if parental rights are terminated.

3 (H) In the case of an Indian child, in addition to subparagraphs
4 (A) to (G), inclusive, an assessment of the likelihood that the child
5 will be adopted, when, in consultation with the child's tribe, a
6 tribal customary adoption, as defined in Section 366.24, is
7 recommended. If tribal customary adoption is recommended, the
8 assessment shall include an analysis of both of the following:

9 (i) Whether tribal customary adoption would or would not be
10 detrimental to the Indian child and the reasons for reaching that
11 conclusion.

12 (ii) Whether the Indian child cannot or should not be returned
13 to the home of the Indian parent or Indian custodian and the reasons
14 for reaching that conclusion.

15 (2) (A) A relative caregiver's preference for legal guardianship
16 over adoption, if it is due to circumstances that do not include an
17 unwillingness to accept legal or financial responsibility for the
18 child, shall not constitute the sole basis for recommending removal
19 of the child from the relative caregiver for purposes of adoptive
20 placement.

21 (B) Regardless of his or her immigration status, a relative
22 caregiver shall be given information regarding the permanency
23 options of guardianship and adoption, including the long-term
24 benefits and consequences of each option, prior to establishing
25 legal guardianship or pursuing adoption. If the proposed permanent
26 plan is guardianship with an approved relative caregiver for a
27 minor eligible for aid under the Kin-GAP Program, as provided
28 for in Article 4.7 (commencing with Section 11385) of Chapter 2
29 of Part 3 of Division 9, the relative caregiver shall be informed
30 about the terms and conditions of the negotiated agreement
31 pursuant to Section 11387 and shall agree to its execution prior to
32 the hearing held pursuant to Section 366.26. A copy of the executed
33 negotiated agreement shall be attached to the assessment.

34 (j) If, at any hearing held pursuant to Section 366.26, a
35 guardianship is established for the minor with an approved relative
36 caregiver, and juvenile court dependency is subsequently
37 dismissed, the minor shall be eligible for aid under the Kin-GAP
38 Program, as provided for in Article 4.5 (commencing with Section
39 11360) or Article 4.7 (commencing with Section 11385), as
40 applicable, of Chapter 2 of Part 3 of Division 9.

1 (k) As used in this section, “relative” means an adult who is
2 related to the minor by blood, adoption, or affinity within the fifth
3 degree of kinship, including stepparents, stepsiblings, and all
4 relatives whose status is preceded by the words “great,”
5 “great-great,” or “grand,” or the spouse of any of those persons
6 even if the marriage was terminated by death or dissolution. If the
7 proposed permanent plan is guardianship with an approved relative
8 caregiver for a minor eligible for aid under the Kin-GAP Program,
9 as provided for in Article 4.7 (commencing with Section 11385)
10 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
11 section has the same meaning as “relative” as defined in
12 subdivision (c) of Section 11391.

13 (l) For purposes of this section, evidence of any of the following
14 circumstances may not, in and of itself, be deemed a failure to
15 provide or offer reasonable services:

16 (1) The child has been placed with a foster family that is eligible
17 to adopt a child, or has been placed in a preadoptive home.

18 (2) The case plan includes services to make and finalize a
19 permanent placement for the child if efforts to reunify fail.

20 (3) Services to make and finalize a permanent placement for
21 the child, if efforts to reunify fail, are provided concurrently with
22 services to reunify the family.

23 (m) The implementation and operation of the amendments to
24 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
25 shall be subject to appropriation through the budget process and
26 by phase, as provided in Section 366.35.

27 SEC. 201. Section 366.22 of the Welfare and Institutions Code
28 is amended to read:

29 366.22. (a) When a case has been continued pursuant to
30 paragraph (1) or (2) of subdivision (g) of Section 366.21, the
31 permanency review hearing shall occur within 18 months after the
32 date the child was originally removed from the physical custody
33 of his or her parent or legal guardian. After considering the
34 admissible and relevant evidence, the court shall order the return
35 of the child to the physical custody of his or her parent or legal
36 guardian unless the court finds, by a preponderance of the evidence,
37 that the return of the child to his or her parent or legal guardian
38 would create a substantial risk of detriment to the safety, protection,
39 or physical or emotional well-being of the child. The social worker
40 shall have the burden of establishing that detriment. At the

1 permanency review hearing, the court shall consider the criminal
2 history, obtained pursuant to paragraph (1) of subdivision (f) of
3 Section 16504.5, of the parent or legal guardian subsequent to the
4 child's removal, to the extent that the criminal record is
5 substantially related to the welfare of the child or the parent's or
6 legal guardian's ability to exercise custody and control regarding
7 his or her child, provided that the parent or legal guardian agreed
8 to submit fingerprint images to obtain criminal history information
9 as part of the case plan. The failure of the parent or legal guardian
10 to participate regularly and make substantive progress in
11 court-ordered treatment programs shall be prima facie evidence
12 that return would be detrimental. In making its determination, the
13 court shall review and consider the social worker's report and
14 recommendations and the report and recommendations of any child
15 advocate appointed pursuant to Section 356.5; shall consider the
16 efforts or progress, or both, demonstrated by the parent or legal
17 guardian and the extent to which he or she availed himself or
18 herself of services provided, taking into account the particular
19 barriers of an incarcerated or institutionalized parent's or legal
20 guardian's access to those court-mandated services and ability to
21 maintain contact with his or her child; and shall make appropriate
22 findings pursuant to subdivision (a) of Section 366.

23 Whether or not the child is returned to his or her parent or legal
24 guardian, the court shall specify the factual basis for its decision.
25 If the child is not returned to a parent or legal guardian, the court
26 shall specify the factual basis for its conclusion that return would
27 be detrimental. If the child is not returned to his or her parent or
28 legal guardian, the court shall consider, and state for the record,
29 in-state and out-of-state options for the child's permanent
30 placement. If the child is placed out of the state, the court shall
31 make a determination whether the out-of-state placement continues
32 to be appropriate and in the best interests of the child.

33 Unless the conditions in subdivision (b) are met and the child is
34 not returned to a parent or legal guardian at the permanency review
35 hearing, the court shall order that a hearing be held pursuant to
36 Section 366.26 in order to determine whether adoption, or, in the
37 case of an Indian child, in consultation with the child's tribe, tribal
38 customary adoption, guardianship, or long-term foster care is the
39 most appropriate plan for the child. On and after January 1, 2012,
40 a hearing pursuant to Section 366.26 shall not be ordered if the

1 child is a nonminor dependent, unless the nonminor dependent is
2 an Indian child, and tribal customary adoption is recommended as
3 the permanent plan. However, if the court finds by clear and
4 convincing evidence, based on the evidence already presented to
5 it, including a recommendation by the State Department of Social
6 Services when it is acting as an adoption agency or by a county
7 adoption agency, that there is a compelling reason, as described
8 in paragraph (5) of subdivision (g) of Section 366.21, for
9 determining that a hearing held under Section 366.26 is not in the
10 best-interest *interests* of the child because the child is not a proper
11 subject for adoption and has no one willing to accept legal
12 guardianship, ~~then~~ the court may, only under these circumstances,
13 order that the child remain in long-term foster care. On and after
14 January 1, 2012, the nonminor dependent's legal status as an adult
15 is in and of itself a compelling reason not to hold a hearing pursuant
16 to Section 366.26. The court may order that a nonminor dependent
17 who otherwise is eligible pursuant to Section 11403 remain in a
18 planned, permanent living arrangement. If the court orders that a
19 child who is 10 years of age or older remain in long-term foster
20 care, the court shall determine whether the agency has made
21 reasonable efforts to maintain the child's relationships with
22 individuals other than the child's siblings who are important to the
23 child, consistent with the child's best interests, and may make any
24 appropriate order to ensure that those relationships are maintained.
25 The hearing shall be held no later than 120 days from the date of
26 the permanency review hearing. The court shall also order
27 termination of reunification services to the parent or legal guardian.
28 The court shall continue to permit the parent or legal guardian to
29 visit the child unless it finds that visitation would be detrimental
30 to the child. The court shall determine whether reasonable services
31 have been offered or provided to the parent or legal guardian. For
32 purposes of this subdivision, evidence of any of the following
33 circumstances shall not, in and of themselves, be deemed a failure
34 to provide or offer reasonable services:

- 35 (1) The child has been placed with a foster family that is eligible
36 to adopt a child, or has been placed in a preadoptive home.
- 37 (2) The case plan includes services to make and finalize a
38 permanent placement for the child if efforts to reunify fail.

1 (3) Services to make and finalize a permanent placement for
2 the child, if efforts to reunify fail, are provided concurrently with
3 services to reunify the family.

4 (b) If the child is not returned to a parent or legal guardian at
5 the permanency review hearing and the court determines by clear
6 and convincing evidence that the best interests of the child would
7 be met by the provision of additional reunification services to a
8 parent or legal guardian who is making significant and consistent
9 progress in a court-ordered residential substance abuse treatment
10 program, or a parent recently discharged from incarceration,
11 institutionalization, or the custody of the United States Department
12 of Homeland Security and making significant and consistent
13 progress in establishing a safe home for the child's return, the court
14 may continue the case for up to six months for a subsequent
15 permanency review hearing, provided that the hearing shall occur
16 within 24 months of the date the child was originally taken from
17 the physical custody of his or her parent or legal guardian. The
18 court shall continue the case only if it finds that there is a
19 substantial probability that the child will be returned to the physical
20 custody of his or her parent or legal guardian and safely maintained
21 in the home within the extended period of time or that reasonable
22 services have not been provided to the parent or legal guardian.
23 For the purposes of this section, in order to find a substantial
24 probability that the child will be returned to the physical custody
25 of his or her parent or legal guardian and safely maintained in the
26 home within the extended period of time, the court shall be required
27 to find all of the following:

28 (1) That the parent or legal guardian has consistently and
29 regularly contacted and visited with the child.

30 (2) That the parent or legal guardian has made significant and
31 consistent progress in the prior 18 months in resolving problems
32 that led to the child's removal from the home.

33 (3) The parent or legal guardian has demonstrated the capacity
34 and ability both to complete the objectives of his or her substance
35 abuse treatment plan as evidenced by reports from a substance
36 abuse provider as applicable, or complete a treatment plan
37 postdischarge from incarceration, institutionalization, or detention,
38 or following deportation to his or her country of origin and his or
39 her return to the United States, and to provide for the child's safety,
40 protection, physical and emotional well-being, and special needs.

1 For purposes of this subdivision, the court’s decision to continue
2 the case based on a finding or substantial probability that the child
3 will be returned to the physical custody of his or her parent or legal
4 guardian is a compelling reason for determining that a hearing
5 held pursuant to Section 366.26 is not in the best interests of the
6 child.

7 The court shall inform the parent or legal guardian that if the
8 child cannot be returned home by the subsequent permanency
9 review hearing, a proceeding pursuant to Section 366.26 may be
10 instituted. The court may not order that a hearing pursuant to
11 Section 366.26 be held unless there is clear and convincing
12 evidence that reasonable services have been provided or offered
13 to the parent or legal guardian.

14 (c) (1) Whenever a court orders that a hearing pursuant to
15 Section 366.26, including when a tribal customary adoption is
16 recommended, shall be held, it shall direct the agency supervising
17 the child and the county adoption agency, or the State Department
18 of Social Services when it is acting as an adoption agency, to
19 prepare an assessment that shall include:

20 (A) Current search efforts for an absent parent or parents.

21 (B) A review of the amount of and nature of any contact between
22 the child and his or her parents and other members of his or her
23 extended family since the time of placement. Although the
24 extended family of each child shall be reviewed on a case-by-case
25 basis, “extended family” for the purposes of this subparagraph
26 shall include, but not be limited to, the child’s siblings,
27 grandparents, aunts, and uncles.

28 (C) An evaluation of the child’s medical, developmental,
29 scholastic, mental, and emotional status.

30 (D) A preliminary assessment of the eligibility and commitment
31 of any identified prospective adoptive parent or legal guardian,
32 particularly the caretaker, to include a social history including
33 screening for criminal records and prior referrals for child abuse
34 or neglect, the capability to meet the child’s needs, and the
35 understanding of the legal and financial rights and responsibilities
36 of adoption and guardianship. If a proposed legal guardian is a
37 relative of the minor, the assessment shall also consider, but need
38 not be limited to, all of the factors specified in subdivision (a) of
39 Section 361.3 and Section 361.4.

1 (E) The relationship of the child to any identified prospective
2 adoptive parent or legal guardian, the duration and character of
3 the relationship, the degree of attachment of the child to the
4 prospective relative guardian or adoptive parent, the relative's or
5 adoptive parent's strong commitment to caring permanently for
6 the child, the motivation for seeking adoption or legal guardianship,
7 a statement from the child concerning placement and the adoption
8 or legal guardianship, and whether the child, if over 12 years of
9 age, has been consulted about the proposed relative guardianship
10 arrangements, unless the child's age or physical, emotional, or
11 other condition precludes his or her meaningful response, and if
12 so, a description of the condition.

13 (F) An analysis of the likelihood that the child will be adopted
14 if parental rights are terminated.

15 (G) In the case of an Indian child, in addition to subparagraphs
16 (A) to (F), inclusive, an assessment of the likelihood that the child
17 will be adopted, when, in consultation with the child's tribe, a
18 tribal customary adoption, as defined in Section 366.24, is
19 recommended. If tribal customary adoption is recommended, the
20 assessment shall include an analysis of both of the following:

21 (i) Whether tribal customary adoption would or would not be
22 detrimental to the Indian child and the reasons for reaching that
23 conclusion.

24 (ii) Whether the Indian child cannot or should not be returned
25 to the home of the Indian parent or Indian custodian and the reasons
26 for reaching that conclusion.

27 (2) (A) A relative caregiver's preference for legal guardianship
28 over adoption, if it is due to circumstances that do not include an
29 unwillingness to accept legal or financial responsibility for the
30 child, shall not constitute the sole basis for recommending removal
31 of the child from the relative caregiver for purposes of adoptive
32 placement.

33 (B) Regardless of his or her immigration status, a relative
34 caregiver shall be given information regarding the permanency
35 options of guardianship and adoption, including the long-term
36 benefits and consequences of each option, prior to establishing
37 legal guardianship or pursuing adoption. If the proposed permanent
38 plan is guardianship with an approved relative caregiver for a
39 minor eligible for aid under the Kin-GAP Program, as provided
40 for in Article 4.7 (commencing with Section 11385) of Chapter 2

1 of Part 3 of Division 9, the relative caregiver shall be informed
2 about the terms and conditions of the negotiated agreement
3 pursuant to Section 11387 and shall agree to its execution prior to
4 the hearing held pursuant to Section 366.26. A copy of the executed
5 negotiated agreement shall be attached to the assessment.

6 (d) This section shall become operative January 1, 1999. If at
7 any hearing held pursuant to Section 366.26, a legal guardianship
8 is established for the minor with an approved relative caregiver,
9 and juvenile court dependency is subsequently dismissed, the minor
10 shall be eligible for aid under the Kin-GAP Program, as provided
11 for in Article 4.5 (commencing with Section 11360) or Article 4.7
12 (commencing with Section 11385), as applicable, of Chapter 2 of
13 Part 3 of Division 9.

14 (e) As used in this section, “relative” means an adult who is
15 related to the child by blood, adoption, or affinity within the fifth
16 degree of kinship, including stepparents, stepsiblings, and all
17 relatives whose status is preceded by the words “great,”
18 “great-great,” or “grand,” or the spouse of any of those persons
19 even if the marriage was terminated by death or dissolution. If the
20 proposed permanent plan is guardianship with an approved relative
21 caregiver for a minor eligible for aid under the Kin-GAP Program,
22 as provided for in Article 4.7 (commencing with Section 11385)
23 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
24 section has the same meaning as “relative ” as defined in
25 subdivision (c) of Section 11391.

26 (f) The implementation and operation of the amendments to
27 subdivision (a) enacted at the 2005–06 Regular Session shall be
28 subject to appropriation through the budget process and by phase,
29 as provided in Section 366.35.

30 SEC. 202. Section 366.25 of the Welfare and Institutions Code
31 is amended to read:

32 366.25. (a) (1) When a case has been continued pursuant to
33 subdivision (b) of Section 366.22, the subsequent permanency
34 review hearing shall occur within 24 months after the date the
35 child was originally removed from the physical custody of his or
36 her parent or legal guardian. After considering the relevant and
37 admissible evidence, the court shall order the return of the child
38 to the physical custody of his or her parent or legal guardian unless
39 the court finds, by a preponderance of the evidence, that the return
40 of the child to his or her parent or legal guardian would create a

1 substantial risk of detriment to the safety, protection, or physical
2 or emotional well-being of the child. The social worker shall have
3 the burden of establishing that detriment. At the subsequent
4 permanency review hearing, the court shall consider the criminal
5 history, obtained pursuant to paragraph (1) of subdivision (f) of
6 Section 16504.5, of the parent or legal guardian subsequent to the
7 child's removal to the extent that the criminal record is substantially
8 related to the welfare of the child or parent's or legal guardian's
9 ability to exercise custody and control regarding his or her child
10 provided that the parent or legal guardian agreed to submit
11 fingerprint images to obtain criminal history information as part
12 of the case plan. The failure of the parent or legal guardian to
13 participate regularly and make substantive progress in court-ordered
14 treatment programs shall be prima facie evidence that return would
15 be detrimental. In making its determination, the court shall review
16 and consider the social worker's report and recommendations and
17 the report and recommendations of any child advocate appointed
18 pursuant to Section 356.5; shall consider the efforts or progress,
19 or both, demonstrated by the parent or legal guardian and the extent
20 to which he or she availed himself or herself of services provided;
21 and shall make appropriate findings pursuant to subdivision (a) of
22 Section 366.

23 (2) Whether or not the child is returned to his or her parent or
24 legal guardian, the court shall specify the factual basis for its
25 decision. If the child is not returned to a parent or legal guardian,
26 the court shall specify the factual basis for its conclusion that return
27 would be detrimental. If the child is not returned to his or her
28 ~~parents~~ *parent* or legal guardian, the court shall consider and state
29 for the record, in-state and out-of-state options for the child's
30 permanent placement. If the child is placed out of the state, the
31 court shall make a determination whether the out-of-state placement
32 continues to be appropriate and in the best interests of the child.

33 (3) If the child is not returned to a parent or legal guardian at
34 the subsequent permanency review hearing, the court shall order
35 that a hearing be held pursuant to Section 366.26 in order to
36 determine whether adoption, or, in the case of an Indian child,
37 tribal customary adoption, guardianship, or long-term foster care
38 is the most appropriate plan for the child. On and after January 1,
39 2012, a hearing pursuant to Section 366.26 shall not be ordered if
40 the child is a nonminor dependent, unless the nonminor dependent

1 is an Indian child and tribal customary adoption is recommended
2 as the permanent plan. However, if the court finds by clear and
3 convincing evidence, based on the evidence already presented to
4 it, including a recommendation by the State Department of Social
5 Services when it is acting as an adoption agency or by a county
6 adoption agency, that there is a compelling reason, as described
7 in paragraph (5) of subdivision (g) of Section 366.21, for
8 determining that a hearing held under Section 366.26 is not in the
9 best interest of the child because the child is not a proper subject
10 for adoption or, in the case of an Indian child, tribal customary
11 adoption, and has no one willing to accept legal guardianship, then
12 the court may, only under these circumstances, order that the child
13 remain in long-term foster care. On and after January 1, 2012, the
14 nonminor dependent's legal status as an adult is in and of itself a
15 compelling reason not to hold a hearing pursuant to Section 366.26.
16 The court may order that a nonminor dependent who otherwise is
17 eligible pursuant to Section 11403 remain in a planned, permanent
18 living arrangement. If the court orders that a child who is 10 years
19 of age or older remain in long-term foster care, the court shall
20 determine whether the agency has made reasonable efforts to
21 maintain the child's relationships with individuals other than the
22 child's siblings who are important to the child, consistent with the
23 child's best interests, and may make any appropriate order to ensure
24 that those relationships are maintained. The hearing shall be held
25 no later than 120 days from the date of the subsequent permanency
26 review hearing. The court shall also order termination of
27 reunification services to the parent or legal guardian. The court
28 shall continue to permit the parent or legal guardian to visit the
29 child unless it finds that visitation would be detrimental to the
30 child. The court shall determine whether reasonable services have
31 been offered or provided to the parent or legal guardian. For
32 purposes of this ~~subdivision~~ *paragraph*, evidence of any of the
33 following circumstances shall not, in and of themselves, be deemed
34 a failure to provide or offer reasonable services:

35 (A) The child has been placed with a foster family that is eligible
36 to adopt a child, or has been placed in a preadoptive home.

37 (B) The case plan includes services to make and finalize a
38 permanent placement for the child if efforts to reunify fail.

1 (C) Services to make and finalize a permanent placement for
2 the child, if efforts to reunify fail, are provided concurrently with
3 services to reunify the family.

4 (b) (1) Whenever a court orders that a hearing pursuant to
5 Section 366.26 shall be held, it shall direct the agency supervising
6 the child and the county adoption agency, or the State Department
7 of Social Services when it is acting as an adoption agency, to
8 prepare an assessment that shall include:

9 (A) Current search efforts for an absent parent or parents.

10 (B) A review of the amount of, and nature of, any contact
11 between the child and his or her parents and other members of his
12 or her extended family since the time of placement. Although the
13 extended family of each child shall be reviewed on a case-by-case
14 basis, “extended family” for the purposes of this paragraph shall
15 include, but not be limited to, the child’s siblings, grandparents,
16 aunts, and uncles.

17 (C) An evaluation of the child’s medical, developmental,
18 scholastic, mental, and emotional status.

19 (D) A preliminary assessment of the eligibility and commitment
20 of any identified prospective adoptive parent or legal guardian,
21 including a prospective tribal customary adoptive parent,
22 particularly the caretaker, to include a social history including
23 screening for criminal records and prior referrals for child abuse
24 or neglect, the capability to meet the child’s needs, and the
25 understanding of the legal and financial rights and responsibilities
26 of adoption and guardianship. If a proposed legal guardian is a
27 relative of the minor, the assessment shall also consider, but need
28 not be limited to, all of the factors specified in subdivision (a) of
29 Section 361.3 and in Section 361.4.

30 (E) The relationship of the child to any identified prospective
31 adoptive parent or legal guardian, including a prospective tribal
32 customary adoptive parent, the duration and character of the
33 relationship, the degree of attachment of the child to the prospective
34 relative guardian or adoptive parent, the relative’s or adoptive
35 parent’s strong commitment to caring permanently for the child,
36 the motivation for seeking adoption or legal guardianship, a
37 statement from the child concerning placement and the adoption
38 or legal guardianship, and whether the child, if over 12 years of
39 age, has been consulted about the proposed relative guardianship
40 arrangements, unless the child’s age or physical, emotional, or

1 other condition precludes his or her meaningful response, and if
2 so, a description of the condition.

3 (F) An analysis of the likelihood that the child will be adopted
4 if parental rights are terminated.

5 (G) In the case of an Indian child, in addition to subparagraphs
6 (A) to (F), inclusive, an assessment of the likelihood that the child
7 will be adopted, when, in consultation with the child's tribe, a
8 tribal customary adoption, as defined in Section 366.24, is
9 recommended. If tribal customary adoption is recommended, the
10 assessment shall include an analysis of both of the following:

11 (i) Whether tribal customary adoption would or would not be
12 detrimental to the Indian child and the reasons for reaching that
13 conclusion.

14 (ii) Whether the Indian child cannot or should not be returned
15 to the home of the Indian parent or Indian custodian and the reasons
16 for reaching that conclusion.

17 (2) (A) A relative caregiver's preference for legal guardianship
18 over adoption, if it is due to circumstances that do not include an
19 unwillingness to accept legal or financial responsibility for the
20 child, shall not constitute the sole basis for recommending removal
21 of the child from the relative caregiver for purposes of adoptive
22 placement.

23 (B) Regardless of his or her immigration status, a relative
24 caregiver shall be given information regarding the permanency
25 options of guardianship and adoption, including the long-term
26 benefits and consequences of each option, prior to establishing
27 legal guardianship or pursuing adoption. If the proposed permanent
28 plan is guardianship with an approved relative caregiver for a
29 minor eligible for aid under the Kin-GAP Program, as provided
30 for in Article 4.7 (commencing with Section 11385) of Chapter 2
31 of Part 3 of Division 9, the relative caregiver shall be informed
32 about the terms and conditions of the negotiated agreement
33 pursuant to Section 11387 and shall agree to its execution prior to
34 the hearing held pursuant to Section 366.26. A copy of the executed
35 negotiated agreement shall be attached to the assessment.

36 (c) If, at any hearing held pursuant to Section 366.26, a
37 guardianship is established for the minor with an approved relative
38 caregiver, and juvenile court dependency is subsequently
39 dismissed, the minor shall be eligible for aid under the Kin-GAP
40 Program, as provided for in Article 4.5 (commencing with Section

1 11360) or Article 4.7 (commencing with Section 11385), as
2 applicable, of Chapter 2 of Part 3 of Division 9.

3 (d) As used in this section, “relative” means an adult who is
4 related to the minor by blood, adoption, or affinity within the fifth
5 degree of kinship, including stepparents, stepsiblings, and all
6 relatives whose status is preceded by the words “great,”
7 “great-great,” or “grand,” or the spouse of any of those persons
8 even if the marriage was terminated by death or dissolution. If the
9 proposed permanent plan is guardianship with an approved relative
10 caregiver for a minor eligible for aid under the Kin-GAP Program,
11 as provided in Article 4.7 (commencing with Section 11385) of
12 Chapter 2 of Part 3 of Division 9, “relative” as used in this section
13 has the same meaning as “relative” as defined in subdivision (c)
14 of Section 11391.

15 (e) The implementation and operation of subdivision (a) enacted
16 at the 2005–06 Regular Session shall be subject to appropriation
17 through the budget process and by phase, as provided in Section
18 366.35.

19 SEC. 203. Section 4141 of the Welfare and Institutions Code
20 is amended to read:

21 4141. (a) (1) Each state hospital shall update its injury and
22 illness prevention plan at least once a year to include necessary
23 safeguards to prevent workplace safety hazards in connection with
24 workplace violence associated with patient assaults on employees.

25 (2) Updated injury and illness prevention plans shall address,
26 but shall not be limited to, all of the following:

27 (A) Control of physical access throughout the hospital and
28 grounds.

29 (B) Alarm systems.

30 (C) Presence of security personnel.

31 (D) Training.

32 (E) Buddy systems.

33 (F) Communication.

34 (G) Emergency responses.

35 (3) (A) The department shall submit the updated injury and
36 illness prevention plans to the Legislature every two years.

37 (B) (i) The requirement for submitting the updated injury and
38 illness prevention plans imposed pursuant to subparagraph (A) is
39 inoperative four years after the date the first report is due, pursuant
40 to Section 10231.5 of the Government Code.

1 (ii) Updated injury and illness prevention plans submitted
2 pursuant to subparagraph (A) shall be submitted in compliance
3 with Section 9795 of the Government Code.

4 (b) Each state hospital shall establish an injury and illness
5 prevention committee comprised of hospital management and
6 employees designated by the hospital's director in consultation
7 with the employee bargaining units. The committee shall be
8 responsible for providing recommendations to the hospital director
9 for updates to the injury and illness prevention plan. The committee
10 shall meet at least four times per year.

11 (c) Each state hospital shall develop an incident reporting
12 procedure that can be used, at a minimum, to develop reports of
13 patient assaults on employees and assist the hospital in identifying
14 risks of patient assaults on employees. Data obtained from the
15 incident reporting procedures shall be accessible to ~~staff~~. *staff*.
16 The incident reporting procedure shall be designed to provide
17 hospital management with immediate notification of reported
18 incidents. The hospital shall provide for timely and efficient
19 responses and investigations to incident reports made under the
20 incident reporting procedure. Incident reports shall also be
21 forwarded to the injury and illness prevention committee
22 established pursuant to subdivision (b).

23 SEC. 204. Section 4427.5 of the Welfare and Institutions Code
24 is amended to read:

25 4427.5. (a) (1) A developmental center shall immediately
26 report the following incidents involving a resident to the local law
27 enforcement agency having jurisdiction over the city or county in
28 which the developmental center is located, regardless of whether
29 the Office of Protective Services has investigated the facts and
30 circumstances relating to the incident:

31 (A) A death.

32 (B) A sexual assault, as defined in Section 15610.63.

33 (C) An assault with a deadly weapon, as described in Section
34 245 of the Penal Code, by a nonresident of the developmental
35 center.

36 (D) An assault with force likely to produce great bodily injury,
37 as described in Section 245 of the Penal Code.

38 (E) An injury to the genitals when the cause of the injury is
39 undetermined.

40 (F) A broken bone; when the cause of the break is undetermined.

1 (2) If the incident is reported to the law enforcement agency by
2 telephone, a written report of the incident shall also be submitted
3 to the agency, within two working days.

4 (3) The reporting requirements of this subdivision are in addition
5 to, and do not substitute for, the reporting requirements of
6 mandated reporters, and any other reporting and investigative
7 duties of the developmental center and the department as required
8 by law.

9 (4) ~~Nothing in this~~ *This* subdivision ~~shall be interpreted to~~ *does*
10 *not* prevent the developmental center from reporting any other
11 criminal act constituting a danger to the health or safety of the
12 residents of the developmental center to the local law enforcement
13 agency.

14 (b) (1) The department shall report to the agency described in
15 subdivision (i) of Section 4900 any of the following incidents
16 involving a resident of a developmental center:

17 (A) Any unexpected or suspicious death, regardless of whether
18 the cause is immediately known.

19 (B) Any allegation of sexual assault, as defined in Section
20 15610.63, in which the alleged perpetrator is a developmental
21 center or department employee or contractor.

22 (C) Any report made to the local law enforcement agency in
23 the jurisdiction in which the facility is located that involves
24 physical abuse, as defined in Section 15610.63, in which a staff
25 member is implicated.

26 (2) A report pursuant to this subdivision shall be made no later
27 than the close of the first business day following the discovery of
28 the reportable incident.

29 (c) The department shall do both of the following:

30 (1) Annually provide written information to every developmental
31 center employee regarding all of the following:

32 (A) The statutory and departmental requirements for mandatory
33 reporting of suspected or known abuse.

34 (B) The rights and protections afforded to individuals' reporting
35 of suspected or known abuse.

36 (C) The penalties for failure to report suspected or known abuse.

37 (D) The telephone numbers for reporting suspected or known
38 abuse or neglect to designated investigators of the department and
39 to local law enforcement agencies.

1 (2) On or before August 1, 2001, in consultation with employee
2 organizations, advocates, consumers, and family members, develop
3 a poster that encourages staff, residents, and visitors to report
4 suspected or known abuse and provides information on how to
5 make these reports.

6 SEC. 205. Section 4648 of the Welfare and Institutions Code
7 is amended to read:

8 4648. In order to achieve the stated objectives of a consumer's
9 individual program plan, the regional center shall conduct activities,
10 including, but not limited to, all of the following:

11 (a) Securing needed services and supports.

12 (1) It is the intent of the Legislature that services and supports
13 assist individuals with developmental disabilities in achieving the
14 greatest self-sufficiency possible and in exercising personal
15 choices. The regional center shall secure services and supports
16 that meet the needs of the consumer, as determined in the
17 consumer's individual program plan, and within the context of the
18 individual program plan, the planning team shall give highest
19 preference to those services and supports which would allow
20 minors with developmental disabilities to live with their families,
21 adult persons with developmental disabilities to live as
22 independently as possible in the community, and that allow all
23 consumers to interact with persons without disabilities in positive,
24 meaningful ways.

25 (2) In implementing individual program plans, regional centers,
26 through the planning team, shall first consider services and supports
27 in natural community, home, work, and recreational settings.
28 Services and supports shall be flexible and individually tailored
29 to the consumer and, where appropriate, his or her family.

30 (3) A regional center may, pursuant to vendorization or a
31 contract, purchase services or supports for a consumer from any
32 individual or agency which the regional center and consumer or,
33 where appropriate, his or her parents, legal guardian, or
34 conservator, or authorized representatives, determines will best
35 accomplish all or any part of that consumer's program plan.

36 (A) Vendorization or contracting is the process for identification,
37 selection, and utilization of service vendors or contractors, based
38 on the qualifications and other requirements necessary in order to
39 provide the service.

1 (B) A regional center may reimburse an individual or agency
2 for services or supports provided to a regional center consumer if
3 the individual or agency has a rate of payment for vendored or
4 contracted services established by the department, pursuant to this
5 division, and is providing services pursuant to an emergency
6 vendorization or has completed the vendorization procedures or
7 has entered into a contract with the regional center and continues
8 to comply with the vendorization or contracting requirements. The
9 director shall adopt regulations governing the vendorization process
10 to be utilized by the department, regional centers, vendors and the
11 individual or agency requesting vendorization.

12 (C) Regulations shall include, but not be limited to: the vendor
13 application process, and the basis for accepting or denying an
14 application; the qualification and requirements for each category
15 of services that may be provided to a regional center consumer
16 through a vendor; requirements for emergency vendorization;
17 procedures for termination of vendorization; the procedure for an
18 individual or an agency to appeal any vendorization decision made
19 by the department or regional center.

20 (D) A regional center may vendorize a licensed facility for
21 exclusive services to persons with developmental disabilities at a
22 capacity equal to or less than the facility's licensed capacity. A
23 facility already licensed on January 1, 1999, shall continue to be
24 vendorized at their full licensed capacity until the facility agrees
25 to vendorization at a reduced capacity.

26 (E) Effective July 1, 2009, notwithstanding any other provision
27 of law or regulation to the contrary, a regional center shall not
28 newly vendor a State Department of Social Services licensed
29 24-hour residential care facility with a licensed capacity of 16 or
30 more beds, unless the facility qualifies for receipt of federal funds
31 under the Medicaid Program.

32 (4) Notwithstanding subparagraph (B), a regional center may
33 contract or issue a voucher for services and supports provided to
34 a consumer or family at a cost not to exceed the maximum rate of
35 payment for that service or support established by the department.
36 If a rate has not been established by the department, the regional
37 center may, for an interim period, contract for a specified service
38 or support with, and establish a rate of payment for, any provider
39 of the service or support necessary to implement a consumer's
40 individual program plan. Contracts may be negotiated for a period

1 of up to three years, with annual review and subject to the
2 availability of funds.

3 (5) In order to ensure the maximum flexibility and availability
4 of appropriate services and supports for persons with
5 developmental disabilities, the department shall establish and
6 maintain an equitable system of payment to providers of services
7 and supports identified as necessary to the implementation of a
8 consumers' individual program plan. The system of payment shall
9 include provision for a rate to ensure that the provider can meet
10 the special needs of consumers and provide quality services and
11 supports in the least restrictive setting as required by law.

12 (6) The regional center and the consumer, or where appropriate,
13 his or her parents, legal guardian, conservator, or authorized
14 representative, including those appointed pursuant to subdivision
15 (d) of Section 4548, subdivision (b) of Section 4701.6, or
16 subdivision (e) of Section 4705, shall, pursuant to the individual
17 program plan, consider all of the following when selecting a
18 provider of consumer services and supports:

19 (A) A provider's ability to deliver quality services or supports
20 which can accomplish all or part of the consumer's individual
21 program plan.

22 (B) A provider's success in achieving the objectives set forth
23 in the individual program plan.

24 (C) Where appropriate, the existence of licensing, accreditation,
25 or professional certification.

26 (D) The cost of providing services or supports of comparable
27 quality by different providers, if available, shall be reviewed, and
28 the least costly available provider of comparable service, including
29 the cost of transportation, who is able to accomplish all or part of
30 the consumer's individual program plan, consistent with the
31 particular needs of the consumer and family as identified in the
32 individual program plan, shall be selected. In determining the least
33 costly provider, the availability of federal financial participation
34 shall be considered. The consumer shall not be required to use the
35 least costly provider if it will result in the consumer moving from
36 an existing provider of services or supports to more restrictive or
37 less integrated services or supports.

38 (E) The consumer's choice of providers, or, where appropriate,
39 the consumer's parent's, legal guardian's, authorized
40 representative's, or conservator's choice of providers.

1 (7) No service or support provided by any agency or individual
2 shall be continued unless the consumer or, where appropriate, his
3 or her parents, legal guardian, or conservator, or authorized
4 representative, including those appointed pursuant to subdivision
5 (d) of Section 4548, subdivision (b) of Section 4701.6, or
6 subdivision (e) of Section 4705, is satisfied and the regional center
7 and the consumer or, when appropriate, the person's parents or
8 legal guardian or conservator agree that planned services and
9 supports have been provided, and reasonable progress toward
10 objectives have been made.

11 (8) Regional center funds shall not be used to supplant the
12 budget of any agency which has a legal responsibility to serve all
13 members of the general public and is receiving public funds for
14 providing those services.

15 (9) (A) A regional center may, directly or through an agency
16 acting on behalf of the center, provide placement in, purchase of,
17 or follow-along services to persons with developmental disabilities
18 in, appropriate community living arrangements, including, but not
19 limited to, support service for consumers in homes they own or
20 lease, foster family placements, health care facilities, and licensed
21 community care facilities. In considering appropriate placement
22 alternatives for children with developmental disabilities, approval
23 by the child's parent or guardian shall be obtained before placement
24 is made.

25 (B) Effective July 1, 2012, notwithstanding any other provision
26 of law or regulation to the contrary, a regional center shall not
27 purchase residential services from a State Department of Social
28 Services licensed 24-hour residential care facility with a licensed
29 capacity of 16 or more beds. This prohibition on regional center
30 purchase of residential services shall not apply to any of the
31 following:

32 (i) A residential facility with a licensed capacity of 16 or more
33 beds that has been approved to participate in the department's
34 Home and Community Based Services Waiver or another existing
35 waiver program or certified to participate in the Medi-Cal program.

36 (ii) A residential facility service provider that has a written
37 agreement and specific plan prior to July 1, 2012, with the
38 vendoring regional center to downsize the existing facility by
39 transitioning its residential services to living arrangements of 15

1 beds or less or restructure the large facility to meet federal
2 Medicaid eligibility requirements on or before June 30, 2013.

3 (iii) A residential facility licensed as a mental health
4 rehabilitation center by the State Department of Mental Health or
5 successor agency under any of the following circumstances:

6 (I) The facility is eligible for Medicaid reimbursement.

7 (II) The facility has a department-approved plan in place by
8 June 30, 2013, to transition to a program structure eligible for
9 federal Medicaid funding, and this transition will be completed by
10 June 30, 2014. The department may grant an extension for the date
11 by which the transition will be completed if the facility
12 demonstrates that it has made significant progress toward transition,
13 and states with specificity the timeframe by which the transition
14 will be completed and the specified steps that will be taken to
15 accomplish the transition. A regional center may pay for the costs
16 of care and treatment of a consumer residing in the facility on June
17 30, 2012, until June 30, 2013, inclusive, and, if the facility has a
18 department-approved plan in place by June 30, 2013, may continue
19 to pay the costs under this subparagraph until June 30, 2014, or
20 until the end of any period during which the department has granted
21 an extension.

22 (III) There is an emergency circumstance in which the regional
23 center determines that it cannot locate alternate federally eligible
24 services to meet the consumer's needs. Under such an emergency
25 circumstance, an assessment shall be completed by the regional
26 center as soon as possible and within 30 days of admission. An
27 individual program plan meeting shall be convened immediately
28 following the assessment to determine the services and supports
29 needed for stabilization and to develop a plan to transition the
30 consumer from the facility into the community. If transition is not
31 expected within 90 days of admission, an individual program plan
32 meeting shall be held to discuss the status of transition and to
33 determine if the consumer is still in need of placement in the
34 facility. Commencing October 1, 2012, this determination shall
35 be made after also considering resource options identified by the
36 statewide specialized resource service. If it is determined that
37 emergency services continue to be necessary, the regional center
38 shall submit an updated transition plan that can cover a period of
39 up to 90 days. In no event shall placements under these emergency
40 circumstances exceed 180 days.

1 (C) (i) Effective July 1, 2012, notwithstanding any other
2 provision of law or regulation to the contrary, a regional center
3 shall not purchase new residential services from institutions for
4 mental disease, as described in Part 5 (commencing with Section
5 5900) of Division 5, for which federal Medicaid funding is not
6 available.

7 (ii) The prohibition described in clause (i) shall not apply to
8 emergencies, as determined by the regional center, when a regional
9 center cannot locate alternate federally eligible services to meet
10 the consumer's needs. As soon as possible within 30 days of
11 admission due to an emergency, an assessment shall be completed
12 by the regional center. An individual program plan meeting shall
13 be convened immediately following the assessment, to determine
14 the services and supports needed for stabilization and to develop
15 a plan to transition the consumer from the facility to the
16 community. If transition is not expected within 90 days of
17 admission, an emergency; *individual* program plan meeting shall
18 be held to discuss the status of transition and to determine if the
19 consumer is still in need of placement in the facility. If emergency
20 services continue to be necessary, the regional center shall submit
21 an updated transition plan to the department for an extension of
22 up to 90 days. Placement shall not exceed 180 days.

23 (iii) Regional centers shall complete a comprehensive
24 assessment of any consumer residing in an institution for mental
25 disease as of July 1, 2012, for which federal Medicaid funding is
26 not available. The comprehensive assessment shall be completed
27 prior to the consumer's next scheduled individual program plan
28 meeting and shall include identification of the services and supports
29 needed and the timeline for identifying or developing those services
30 needed to transition the consumer back to the community. Effective
31 October 1, 2012, the regional center shall also consider resource
32 options identified by the statewide specialized resource service.
33 For each individual program plan meeting convened pursuant to
34 this subparagraph, the clients' rights advocate for the regional
35 center shall be notified of the meeting and may participate in the
36 meeting unless the consumer objects on his or her own behalf.

37 (D) Each person with developmental disabilities placed by the
38 regional center in a community living arrangement shall have the
39 rights specified in this division. These rights shall be brought to
40 the person's attention by any means necessary to reasonably

1 communicate these rights to each resident, provided that, at a
2 minimum, the Director of Developmental Services prepare,
3 provide, and require to be clearly posted in all residential facilities
4 and day programs a poster using simplified language and pictures
5 that is designed to be more understandable by persons with
6 cognitive disabilities and that the rights information shall also be
7 available through the regional center to each residential facility
8 and day program in alternative formats, including, but not limited
9 to, other languages, braille, and audio tapes, when necessary to
10 meet the communication needs of consumers.

11 (E) Consumers are eligible to receive supplemental services
12 including, but not limited to, additional staffing, pursuant to the
13 process described in subdivision (d) of Section 4646. Necessary
14 additional staffing that is not specifically included in the rates paid
15 to the service provider may be purchased by the regional center if
16 the additional staff are in excess of the amount required by
17 regulation and the individual's planning team determines the
18 additional services are consistent with the provisions of the
19 individual program plan. Additional staff should be periodically
20 reviewed by the planning team for consistency with the individual
21 program plan objectives in order to determine if continued use of
22 the additional staff is necessary and appropriate and if the service
23 is producing outcomes consistent with the individual program plan.
24 Regional centers shall monitor programs to ensure that the
25 additional staff is being provided and utilized appropriately.

26 (10) Emergency and crisis intervention services including, but
27 not limited to, mental health services and behavior modification
28 services, may be provided, as needed, to maintain persons with
29 developmental disabilities in the living arrangement of their own
30 choice. Crisis services shall first be provided without disrupting a
31 person's living arrangement. If crisis intervention services are
32 unsuccessful, emergency housing shall be available in the person's
33 home community. If dislocation cannot be avoided, every effort
34 shall be made to return the person to his or her living arrangement
35 of choice, with all necessary supports, as soon as possible.

36 (11) Among other service and support options, planning teams
37 shall consider the use of paid roommates or neighbors, personal
38 assistance, technical and financial assistance, and all other service
39 and support options which would result in greater self-sufficiency
40 for the consumer and cost-effectiveness to the state.

1 (12) When facilitation as specified in an individual program
2 plan requires the services of an individual, the facilitator shall be
3 of the consumer's choosing.

4 (13) The community support may be provided to assist
5 individuals with developmental disabilities to fully participate in
6 community and civic life, including, but not limited to, programs,
7 services, work opportunities, business, and activities available to
8 persons without disabilities. This facilitation shall include, but not
9 be limited to, any of the following:

10 (A) Outreach and education to programs and services within
11 the community.

12 (B) Direct support to individuals which would enable them to
13 more fully participate in their community.

14 (C) Developing unpaid natural supports when possible.

15 (14) When feasible and recommended by the individual program
16 planning team, for purposes of facilitating better and cost-effective
17 services for consumers or family members, technology, including
18 telecommunication technology, may be used in conjunction with
19 other services and supports. Technology in lieu of a consumer's
20 in-person appearances at judicial proceedings or administrative
21 due process hearings may be used only if the consumer or, when
22 appropriate, the consumer's parent, legal guardian, conservator,
23 or authorized representative, gives informed consent. Technology
24 may be used in lieu of, or in conjunction with, in-person training
25 for providers, as appropriate.

26 (15) Other services and supports may be provided as set forth
27 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

28 (16) Notwithstanding any other provision of law or regulation
29 to the contrary, effective July 1, 2009, regional centers shall not
30 purchase experimental treatments, therapeutic services, or devices
31 that have not been clinically determined or scientifically proven
32 to be effective or safe or for which risks and complications are
33 unknown. Experimental treatments or therapeutic services include
34 experimental medical or nutritional therapy when the use of the
35 product for that purpose is not a general physician practice. For
36 regional center consumers receiving these services as part of their
37 individual program plan (IPP) or individualized family service
38 plan (IFSP) on July 1, 2009, this prohibition shall apply on August
39 1, 2009.

1 (b) (1) Advocacy for, and protection of, the civil, legal, and
2 service rights of persons with developmental disabilities as
3 established in this division.

4 (2) Whenever the advocacy efforts of a regional center to secure
5 or protect the civil, legal, or service rights of any of its consumers
6 prove ineffective, the regional center or the person with
7 developmental disabilities or his or her parents, legal guardian, or
8 other representative may request the area board to initiate action
9 under the provisions defining area board advocacy functions
10 established in this division.

11 (c) The regional center may assist consumers and families
12 directly, or through a provider, in identifying and building circles
13 of support within the community.

14 (d) In order to increase the quality of community services and
15 protect consumers, the regional center shall, when appropriate,
16 take either of the following actions:

17 (1) Identify services and supports that are ineffective or of poor
18 quality and provide or secure consultation, training, or technical
19 assistance services for any agency or individual provider to assist
20 that agency or individual provider in upgrading the quality of
21 services or supports.

22 (2) Identify providers of services or supports that may not be
23 in compliance with local, state, and federal statutes and regulations
24 and notify the appropriate licensing or regulatory authority, or
25 request the area board to investigate the possible noncompliance.

26 (e) When necessary to expand the availability of needed services
27 of good quality, a regional center may take actions that include,
28 but are not limited to, the following:

29 (1) Soliciting an individual or agency by requests for proposals
30 or other means, to provide needed services or supports not presently
31 available.

32 (2) Requesting funds from the Program Development Fund,
33 pursuant to Section 4677, or community placement plan funds
34 designated from that fund, to reimburse the startup costs needed
35 to initiate a new program of services and supports.

36 (3) Using creative and innovative service delivery models,
37 including, but not limited to, natural supports.

38 (f) Except in emergency situations, a regional center shall not
39 provide direct treatment and therapeutic services, but shall utilize

1 appropriate public and private community agencies and service
2 providers to obtain those services for its consumers.

3 (g) Where there are identified gaps in the system of services
4 and supports or where there are identified consumers for whom
5 no provider will provide services and supports contained in his or
6 her individual program plan, the department may provide the
7 services and supports directly.

8 (h) At least annually, regional centers shall provide the
9 consumer, his or her parents, legal guardian, conservator, or
10 authorized representative a statement of services and supports the
11 regional center purchased for the purpose of ensuring that they are
12 delivered. The statement shall include the type, unit, month, and
13 cost of services and supports purchased.

14 SEC. 206. Section 4684.53 of the Welfare and Institutions
15 Code is amended to read:

16 4684.53. (a) The State Department of Developmental Services
17 and the State Department of Social Services shall jointly implement
18 a licensing program to provide special health care and intensive
19 support services to adults in homelike community settings.

20 (b) The program shall be implemented through approved
21 community placement plans, as follows:

22 (1) For closure of Agnews Developmental Center, through the
23 following regional centers:

24 (A) The San Andreas Regional Center.

25 (B) The Regional Center of the East Bay.

26 (C) The Golden Gate Regional Center.

27 (2) All regional centers involved in the closure of the Lanterman
28 Developmental Center, as determined by the State Department of
29 Developmental Services.

30 (3) All regional centers transitioning developmental center
31 residents to placements in the community.

32 (c) Each ARFPSHN shall possess a community care facility
33 license issued pursuant to Article 9 (commencing with Section
34 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code,
35 and shall be subject to the requirements of Chapter 1 (commencing
36 with Section 80000) of Division 6 of Title 22 of the California
37 Code of Regulations, except for Article 8 (commencing with
38 Section 80090).

39 (d) For purposes of this article, a health facility licensed pursuant
40 to subdivision (e) or (h) of Section 1250 *of the Health and Safety*

1 *Code* may place its licensed bed capacity in voluntary suspension
2 for the purpose of licensing the facility to operate an ARFPSHN
3 if the facility is selected to participate pursuant to Section 4684.58.
4 Consistent with subdivision (a) of Section 4684.50, any facility
5 licensed pursuant to this section shall serve up to five adults. A
6 facility's bed capacity shall not be placed in voluntary suspension
7 until all consumers residing in the facility under the license to be
8 suspended have been relocated. ~~No~~ A consumer ~~may~~ shall not be
9 relocated unless it is reflected in the consumer's individual program
10 plan developed pursuant to Sections 4646 and 4646.5.

11 (e) Each ARFPSHN ~~shall be~~ is subject to the requirements of
12 Subchapters 5 ~~through 9~~ to 9, inclusive, of Chapter 1 of, and
13 Subchapters 2 and 4 of Chapter 3 of, Division 2 of Title 17 of the
14 California Code of Regulations.

15 (f) Each ARFPSHN shall ensure that an operable automatic fire
16 sprinkler system is installed and maintained.

17 (g) Each ARFPSHN shall have an operable automatic fire
18 sprinkler system that is approved by the State Fire Marshal and
19 that meets the National Fire Protection Association (NFPA) 13D
20 standard for the installation of sprinkler systems in single- and
21 two-family dwellings and manufactured homes. A local jurisdiction
22 shall not require a sprinkler system exceeding this standard by
23 amending the standard or by applying standards other than NFPA
24 13D. A public water agency shall not interpret this section as
25 changing the status of a facility from a residence entitled to
26 residential water rates, nor shall a new meter or larger connection
27 pipe be required of the facility.

28 (h) Each ARFPSHN shall provide an alternative power source
29 to operate all functions of the facility for a minimum of six hours
30 in the event the primary power source is interrupted. The alternative
31 power source shall comply with the manufacturer's
32 recommendations for installation and operation. The alternative
33 power source shall be maintained in safe operating condition, and
34 shall be tested every 14 days under the full load condition for a
35 minimum of 10 minutes. Written records of inspection,
36 performance, exercising period, and repair of the alternative power
37 source shall be regularly maintained on the premises and available
38 for inspection by the State Department of Developmental Services.

39 SEC. 207. Section 4792.1 of the Welfare and Institutions Code
40 is repealed.

1 ~~4792.1. (a) This section shall only be operative if the condition~~
2 ~~set forth in subdivision (a) of Section 3.62 of the Budget Act of~~
3 ~~2012 is satisfied. It is the intent of the Legislature for the~~
4 ~~department to identify up to fifty million dollars (\$50,000,000) in~~
5 ~~General Fund savings from within the overall developmental~~
6 ~~services system, including any savings or reductions within state~~
7 ~~administrative support, operation of the developmental centers,~~
8 ~~and operation of the regional centers, including administration and~~
9 ~~the purchase of services where applicable.~~

10 ~~(b) It is the intent of the Legislature to keep the reductions made~~
11 ~~pursuant to this section as far away as feasible from consumer's~~
12 ~~direct needs, services, and supports, including health, safety, and~~
13 ~~quality of life.~~

14 ~~(c) A variety of strategies, including, but not limited to, all of~~
15 ~~the following, may be used to achieve this reduction:~~

16 ~~(1) Savings attributable to caseload adjustments, changes in~~
17 ~~expenditure trends, unexpended contract funds, or other~~
18 ~~administrative savings or restructuring.~~

19 ~~(2) Savings attributable to the establishment of best practices~~
20 ~~for the administrative management of regional centers and for~~
21 ~~regional centers to use when purchasing services for consumers~~
22 ~~and families. In order to achieve these savings, the department~~
23 ~~shall review and submit to the Legislature best practices pursuant~~
24 ~~to subdivisions (b) to (g), inclusive, of Section 4620.3. The~~
25 ~~department shall submit the proposed best practices to the fiscal~~
26 ~~and applicable policy committees of the Legislature. This~~
27 ~~submission shall include a description of the process that was~~
28 ~~followed to collaborate with system stakeholders, the anticipated~~
29 ~~impact of the best practices coupled with prior reductions on~~
30 ~~consumers, families, and providers, estimated cost savings~~
31 ~~associated with each practice, and draft statutory language~~
32 ~~necessary to implement the best practices. Consistent with~~
33 ~~subdivision (h) of Section 4620.3, implementation of the best~~
34 ~~practices shall take effect only upon subsequent legislative~~
35 ~~enactment.~~

36 ~~(d) The department shall consider input from stakeholders,~~
37 ~~including consumers and family members, consumer-focused~~
38 ~~advocacy groups, service provider representatives, regional center~~
39 ~~representatives, developmental center representatives, other~~

1 stakeholders, and staff of the Legislature, to develop General Fund
2 savings proposals as necessary.

3 ~~(e) If the condition set forth in subdivision (a) of Section 3.62~~
4 ~~of the Budget Act of 2012 is satisfied, and the department is~~
5 ~~directed to identify up to fifty million dollars (\$50,000,000) in~~
6 ~~General Fund savings from within the developmental services~~
7 ~~system, any savings or reductions identified shall be reported to~~
8 ~~the Joint Legislative Budget Committee within 10 days of the~~
9 ~~reduction as directed by subdivision (e) of Section 3.62 of the~~
10 ~~Budget Act of 2012.~~

11 SEC. 208. Section 5008 of the Welfare and Institutions Code
12 is amended to read:

13 5008. Unless the context otherwise requires, the following
14 definitions shall govern the construction of this part:

15 (a) "Evaluation" consists of multidisciplinary professional
16 analyses of a person's medical, psychological, educational, social,
17 financial, and legal conditions as may appear to constitute a
18 problem. Persons providing evaluation services shall be properly
19 qualified professionals and may be full-time employees of an
20 agency providing evaluation services or may be part-time
21 employees or may be employed on a contractual basis.

22 (b) "Court-ordered evaluation" means an evaluation ordered by
23 a superior court pursuant to Article 2 (commencing with Section
24 5200) or by a court pursuant to Article 3 (commencing with Section
25 5225) of Chapter 2.

26 (c) "Intensive treatment" consists of such hospital and other
27 services as may be indicated. Intensive treatment shall be provided
28 by properly qualified professionals and carried out in facilities
29 qualifying for reimbursement under the California Medical
30 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing
31 with Section 14000) of Part 3 of Division 9, or under Title XVIII
32 of the federal Social Security Act and regulations thereunder.
33 Intensive treatment may be provided in hospitals of the United
34 States government by properly qualified professionals. Nothing
35 in this part shall be construed to prohibit an intensive treatment
36 facility from also providing 72-hour treatment and evaluation.

37 (d) "Referral" is referral of persons by each agency or facility
38 providing intensive treatment or evaluation services to other
39 agencies or individuals. The purpose of referral shall be to provide
40 for continuity of care, and may include, but need not be limited

1 to, informing the person of available services, making appointments
2 on the person's behalf, discussing the person's problem with the
3 agency or individual to which the person has been referred,
4 appraising the outcome of referrals, and arranging for personal
5 escort and transportation when necessary. Referral shall be
6 considered complete when the agency or individual to whom the
7 person has been referred accepts responsibility for providing the
8 necessary services. All persons shall be advised of available precare
9 services which prevent initial recourse to hospital treatment or
10 aftercare services which support adjustment to community living
11 following hospital treatment. These services may be provided
12 through county welfare departments, *the* State Department of State
13 Hospitals, Short-Doyle programs, or other local agencies.

14 Each agency or facility providing evaluation services shall
15 maintain a current and comprehensive file of all community
16 services, both public and private. These files shall contain current
17 agreements with agencies or individuals accepting referrals, as
18 well as appraisals of the results of past referrals.

19 (e) "Crisis intervention" consists of an interview or series of
20 interviews within a brief period of time, conducted by qualified
21 professionals, and designed to alleviate personal or family
22 situations which present a serious and imminent threat to the health
23 or stability of the person or the family. The interview or interviews
24 may be conducted in the home of the person or family, or on an
25 inpatient or outpatient basis with such therapy, or other services,
26 as may be appropriate. Crisis intervention may, as appropriate,
27 include suicide prevention, psychiatric, welfare, psychological,
28 legal, or other social services.

29 (f) "Prepetition screening" is a screening of all petitions for
30 court-ordered evaluation as provided in Article 2 (commencing
31 with Section 5200) of Chapter 2, consisting of a professional
32 review of all petitions; an interview with the petitioner and,
33 whenever possible, the person alleged, as a result of mental
34 disorder, to be a danger to others, or to himself or herself, or to be
35 gravely disabled, to assess the problem and explain the petition;
36 when indicated, efforts to persuade the person to receive, on a
37 voluntary basis, comprehensive evaluation, crisis intervention,
38 referral, and other services specified in this part.

39 (g) "Conservatorship investigation" means investigation by an
40 agency appointed or designated by the governing body of cases in

1 which conservatorship is recommended pursuant to Chapter 3
2 (commencing with Section 5350).

3 (h) (1) For purposes of Article 1 (commencing with Section
4 5150), Article 2 (commencing with Section 5200), and Article 4
5 (commencing with Section 5250) of Chapter 2, and for the purposes
6 of Chapter 3 (commencing with Section 5350), “gravely disabled”
7 means either of the following:

8 (A) A condition in which a person, as a result of a mental
9 disorder, is unable to provide for his or her basic personal needs
10 for food, clothing, or shelter.

11 (B) A condition in which a person, has been found mentally
12 incompetent under Section 1370 of the Penal Code and all of the
13 following facts exist:

14 (i) The indictment or information pending against the defendant
15 at the time of commitment charges a felony involving death, great
16 bodily harm, or a serious threat to the physical well-being of
17 another person.

18 (ii) The indictment or information has not been dismissed.

19 (iii) As a result of mental disorder, the person is unable to
20 understand the nature and purpose of the proceedings taken against
21 him or her and to assist counsel in the conduct of his or her defense
22 in a rational manner.

23 (2) For purposes of Article 3 (commencing with Section 5225)
24 and Article 4 (commencing with Section 5250), of Chapter 2, and
25 for the purposes of Chapter 3 (commencing with Section 5350),
26 “gravely disabled” means a condition in which a person, as a result
27 of impairment by chronic alcoholism, is unable to provide for his
28 or her basic personal needs for food, clothing, or shelter.

29 (3) The term “gravely disabled” does not include mentally
30 retarded persons by reason of being mentally retarded alone.

31 (i) “Peace officer” means a duly sworn peace officer as that
32 term is defined in Chapter 4.5 (commencing with Section 830) of
33 Title 3 of Part 2 of the Penal Code who has completed the basic
34 training course established by the Commission on Peace Officer
35 Standards and Training, or any parole officer or probation officer
36 specified in Section 830.5 of the Penal Code when acting in relation
37 to cases for which he or she has a legally mandated responsibility.

38 (j) “Postcertification treatment” means an additional period of
39 treatment pursuant to Article 6 (commencing with Section 5300)
40 of Chapter 2.

1 (k) “Court,” unless otherwise specified, means a court of record.

2 (l) “Antipsychotic medication” means any medication
3 customarily prescribed for the treatment of symptoms of psychoses
4 and other severe mental and emotional disorders.

5 (m) “Emergency” means a situation in which action to impose
6 treatment over the person’s objection is immediately necessary
7 for the preservation of life or the prevention of serious bodily harm
8 to the patient or others, and it is impracticable to first gain consent.
9 It is not necessary for harm to take place or become unavoidable
10 prior to treatment.

11 SEC. 209. Section 5328.03 of the Welfare and Institutions
12 Code is amended to read:

13 5328.03. (a) (1) Notwithstanding Section 5328 of this code,
14 Section 3025 of the Family Code, or paragraph (2) of subdivision
15 (c) of Section 56.11 of the Civil Code, a psychotherapist who
16 knows that a minor has been removed from the physical custody
17 of his or her parent or guardian pursuant to Article 6 (commencing
18 with Section 300) to Article 10 (commencing with Section 360),
19 inclusive, of Chapter 2 of Part 1 of Division 2 shall not release
20 mental health records of the minor patient and shall not disclose
21 mental health information about that minor patient based upon an
22 authorization to release those records or the information signed
23 by the minor’s parent or guardian. This restriction shall not apply
24 if the juvenile court has issued an order authorizing the parent or
25 guardian to sign an authorization for the release of the records or
26 information after finding that such an order would not be
27 detrimental to the minor patient.

28 (2) Notwithstanding Section 5328 of this code or Section 3025
29 of the Family Code, a psychotherapist who knows that a minor
30 has been removed from the physical custody of his or her parent
31 or guardian pursuant to Article 6 (commencing with Section 300)
32 to Article 10 (commencing with Section 360), inclusive, of Chapter
33 2 of Part 1 of Division 2 shall not allow the parent or guardian to
34 inspect or obtain copies of mental health records of the minor
35 patient. This restriction shall not apply if the juvenile court has
36 issued an order authorizing the parent or guardian to inspect or
37 obtain copies of the mental health records of the minor patient
38 after finding that such an order would not be detrimental to the
39 minor patient.

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

1 (1) “Mental health records” means mental health records as
2 defined by subdivision (b) of Section 123105 of the Health and
3 Safety Code.

4 (2) “Psychotherapist” means a provider of health care as defined
5 in Section 1010 of the Evidence Code.

6 (c) (1) When the juvenile court has issued an order described
7 in paragraph (1) of subdivision (a), the parent or guardian seeking
8 the release of the minor’s mental health records or information
9 about the minor shall present a copy of the court order to the
10 psychotherapist before any records or information may be released
11 pursuant to the signed authorization.

12 (2) When the juvenile court has issued an order described in
13 paragraph (2) of subdivision (a), the parent or guardian seeking to
14 inspect or obtain copies of the mental health records of the minor
15 patient shall present a copy of the court order to the psychotherapist
16 and shall comply with subdivisions (a) and (b) of Section 123110
17 of the Health and Safety Code before the parent or guardian is
18 allowed to inspect or obtain copies of the mental health records of
19 the minor patient.

20 (d) Nothing in this section shall be construed to prevent or limit
21 a psychotherapist’s authority under subdivision (a) of Section
22 123115 of the Health and Safety Code to deny a parent’s or
23 guardian’s written request to inspect or obtain copies of the minor
24 patient’s mental health records, notwithstanding the fact that the
25 juvenile court has issued an order authorizing the parent or guardian
26 to sign an authorization for the release of the mental health records
27 or information about that minor patient, or to inspect or obtain
28 copies of the minor patient’s health records. Liability for a
29 psychotherapist’s decision not to release records, not to disclose
30 information about the minor patient, or not to allow the parent or
31 guardian to inspect or obtain copies of the mental health records
32 pursuant to the authority of subdivision (a) of Section 123115 of
33 the Health and Safety Code shall be governed by that section.

34 (e) Nothing in this section shall be construed to impose upon a
35 psychotherapist a duty to inquire or investigate whether a child
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 when a parent or guardian presents the
40 minor’s psychotherapist with an order authorizing the parent or

1 guardian to sign an authorization for the release of information or
2 the mental health records regarding the minor patient or authorizing
3 the parent or guardian to inspect or obtain copies of the mental
4 health records of the minor patient.

5 SEC. 210. Section 6254 of the Welfare and Institutions Code
6 is amended to read:

7 6254. Wherever provision is made in this code for an order of
8 commitment by a superior court, the order of commitment shall
9 be in substantially the following form:

10

In the Superior Court of the State of California
For the County of _____

11

12

13

14

The People

15

For the Best Interest and Protection of

16

17

as a _____,

18

19

and Concerning

20

_____ and

21

_____, Respondents

22

23

24

Order for Care,
Hospitalization
or Commitment

25

The petition dated _____, alleging that _____, having been presented
26 to this court on the _____ day of _____, 19__ 20__, and an order of
27 detention issued thereon by a judge of the superior court of this county, and
28 a return of the said order:

29

And it further appearing that the provisions of Sections 6250 to 6254,
30 inclusive, of the Welfare and Institutions Code have been complied with;

31

And it further appearing that Dr. _____ and Dr. _____, two regularly
32 appointed and qualified medical examiners of this county, have made a
33 personal examination of the alleged _____, and have made and signed the
34 certificate of the medical examiners, which certificate is attached hereto and
35 made a part hereof;

36

Now therefore, after examination and certificate made as aforesaid the court
37 is satisfied and believes that _____ is a _____ and is so _____.

38

It is ordered, adjudged and decreed:

39

That _____ is a _____ and that _he

- 1 * (a) Be cared for and detained in _____, a county psychiatric hospital,
- 2 a community mental health service, or a licensed sanitarium or hospital for
- 3 the care of the mentally disordered until the further order of the court, or
- 4 * (b) Be cared for at _____, until the further order of the court, or
- 5 * (c) Be committed to the State Department of State Hospitals for placement
- 6 in a state hospital, or
- 7 * (d) Be committed to a facility of the ~~Veterans Administration~~ *Department*
- 8 *of Veterans Affairs* or other agency of the United States, to wit: _____ at
- 9 _____.

10 It is further ordered and directed that _____ of this county, take, convey
 11 and deliver _____ to the proper authorities of the hospital or establishment
 12 designated herein to be cared for as provided by law.

13 Dated this _____ day of _____, ~~19~~ 20__.

14 _____
 15 Judge of the Superior Court

16 * Strike out when not applicable.

17
 18 SEC. 211. Section 7295 of the Welfare and Institutions Code
 19 is amended to read:

20 7295. (a) To ensure its safety and security, a state hospital that
 21 is under the jurisdiction of the State Department of State Hospitals,
 22 as listed in Section 4100, may develop a list of items that are
 23 deemed contraband and prohibited on hospital grounds; and control
 24 and eliminate contraband on hospital grounds.

25 (b) The State Department of State Hospitals shall develop a list
 26 of items that shall be deemed contraband at every state hospital.

27 (c) A state hospital shall form a contraband committee,
 28 comprised of hospital management and employees designated by
 29 the hospital’s director, to develop the list of contraband items. The
 30 committee shall develop the list with the participation of patient
 31 representatives, or the patient government of the hospital, if one
 32 is available, and the Office of Patients’ Rights.

33 (d) Each ~~hospital~~ *hospital’s* list of contraband items developed
 34 pursuant to subdivision (a), and the statewide list of contraband
 35 items developed pursuant to subdivision (b), are subject to review
 36 and approval by the Director of State Hospitals or his or her
 37 designee.

38 (e) A list of contraband items developed pursuant to subdivision
 39 (a) shall be updated and subject to review and approval by the

1 director of the department, or his or her designee, no less often
2 than every six months.

3 (f) If an item presents an emergent danger to the safety and
4 security of a facility, the item may be placed immediately on a
5 contraband list by the Director of State Hospitals or the executive
6 director of the state hospital, but this placement shall be reviewed
7 by the contraband committee, if applicable, and approved by the
8 Director of State Hospitals or his or her designee within six weeks.

9 (g) The lists of contraband items developed pursuant to this
10 section shall be posted prominently in every unit of the hospital
11 and throughout the hospital, and provided to a patient upon request.

12 (h) The lists of contraband items developed pursuant to this
13 section shall be posted on the hospital's Internet Web site.

14 (i) For the purposes of this section, "contraband" means
15 materials, articles, or goods that a patient is prohibited from having
16 in his or her possession because the materials, articles, or goods
17 present a risk to the safety and security of the facility.

18 (j) Notwithstanding Chapter 3.5 (commencing with Section
19 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
20 the hospital and the department may implement, interpret, or make
21 specific this section without taking regulatory action.

22 SEC. 212. Section 12306 of the Welfare and Institutions Code,
23 as amended by Section 36 of Chapter 439 of the Statutes of 2012,
24 is amended to read:

25 12306. (a) The state and counties shall share the annual cost
26 of providing services under this article as specified in this section.

27 (b) Except as provided in subdivisions (c) and (d), the state shall
28 pay to each county, from the General Fund and any federal funds
29 received under Title XX of the federal Social Security Act available
30 for that purpose, 65 percent of the cost of providing services under
31 this article, and each county shall pay 35 percent of the cost of
32 providing those services.

33 (c) For services eligible for federal funding pursuant to Title
34 XIX of the federal Social Security Act under the Medi-Cal program
35 and, except as provided in subdivisions (b) and (d), the state shall
36 pay to each county, from the General Fund and any funds available
37 for that purpose, 65 percent of the nonfederal cost of providing
38 services under this article, and each county shall pay 35 percent
39 of the nonfederal cost of providing those services.

1 (d) (1) For the period of July 1, 1992, to June 30, 1994,
2 inclusive, the state's share of the cost of providing services under
3 this article shall be limited to the amount appropriated for that
4 purpose in the annual Budget Act.

5 (2) The department shall restore the funding reductions required
6 by subdivision (c) of Section 12301, fully or in part, as soon as
7 administratively practicable, if the amount appropriated from the
8 General Fund for the 1992–93 fiscal year under this article is
9 projected to exceed the sum of the General Fund expenditures
10 under Section 14132.95 and the actual General Fund expenditures
11 under this article for the 1992–93 fiscal year. The entire amount
12 of the excess shall be applied to the restoration. Services shall not
13 be restored under this paragraph until the Department of Finance
14 has determined that the restoration of services would result in no
15 additional costs to the state or to the counties relative to the
16 combined state appropriation and county matching funds for
17 in-home supportive services under this article in the 1992–93 fiscal
18 year.

19 (e) This section shall become operative only if Chapter 45 of
20 the Statutes of 2012 is deemed inoperative pursuant to Section 15
21 of that chapter.

22 SEC. 213. Section 12306 of the Welfare and Institutions Code,
23 as amended by Section 37 of Chapter 439 of the Statutes of 2012,
24 is amended to read:

25 12306. (a) The state and counties shall share the annual cost
26 of providing services under this article as specified in this section.

27 (b) Except as provided in subdivisions (c) and (d), the state shall
28 pay to each county, from the General Fund and any federal funds
29 received under Title XX of the federal Social Security Act available
30 for that purpose, 65 percent of the cost of providing services under
31 this article, and each county shall pay 35 percent of the cost of
32 providing those services.

33 (c) For services eligible for federal funding pursuant to Title
34 XIX of the federal Social Security Act under the Medi-Cal program
35 and, except as provided in subdivisions (b) and (d), the state shall
36 pay to each county, from the General Fund and any funds available
37 for that purpose, 65 percent of the nonfederal cost of providing
38 services under this article, and each county shall pay 35 percent
39 of the nonfederal cost of providing those services.

1 (d) (1) For the period of July 1, 1992, to June 30, 1994,
2 inclusive, the state's share of the cost of providing services under
3 this article shall be limited to the amount appropriated for that
4 purpose in the annual Budget Act.

5 (2) The department shall restore the funding reductions required
6 by subdivision (c) of Section 12301, fully or in part, as soon as
7 administratively practicable, if the amount appropriated from the
8 General Fund for the 1992–93 fiscal year under this article is
9 projected to exceed the sum of the General Fund expenditures
10 under Section 14132.95 and the actual General Fund expenditures
11 under this article for the 1992–93 fiscal year. The entire amount
12 of the excess shall be applied to the restoration. Services shall not
13 be restored under this paragraph until the Department of Finance
14 has determined that the restoration of services would result in no
15 additional costs to the state or to the counties relative to the
16 combined state appropriation and county matching funds for
17 in-home supportive services under this article in the 1992–93 fiscal
18 year.

19 (e) For the period during which Section 12306.15 is operative,
20 each county's share of the costs of providing services pursuant to
21 this article specified in subdivisions (b) and (c) shall remain, but
22 the County IHSS Maintenance of Effort pursuant to Section
23 12306.15 shall be in lieu of that share.

24 (f) This section shall become inoperative only if Chapter 45 of
25 the Statutes of 2012 is deemed inoperative pursuant to Section 15
26 of that chapter.

27 SEC. 214. Section 14005.27 of the Welfare and Institutions
28 Code is amended to read:

29 14005.27. (a) Individuals enrolled in the Healthy Families
30 Program pursuant to Part 6.2 (commencing with Section 12693)
31 of Division 2 of the Insurance Code ~~on the effective date of the~~
32 ~~act that added this section~~ *June 27, 2012*, and who are determined
33 eligible to receive benefits pursuant to subdivisions (a) and (b) of
34 Section 14005.26, shall be transitioned into Medi-Cal, pursuant
35 to this section.

36 (b) To the extent necessary and for the purposes of carrying out
37 the provisions of this section, in performing initial eligibility
38 determinations for children enrolled in the Healthy Families
39 Program pursuant to Part 6.2 (commencing with Section 12693)
40 of Division 2 of the Insurance Code, the department shall adopt

1 the option pursuant to Section 1902(e)(13) of the federal Social
2 Security Act (42 U.S.C. Sec. 1396a(e)(13)) to allow the department
3 or county human services departments to rely upon findings made
4 by the Managed Risk Medical Insurance Board (MRMIB)
5 regarding one or more components of eligibility. The department
6 shall seek federal approval of a state plan amendment to implement
7 this subdivision.

8 (c) To the extent necessary, the department shall seek federal
9 approval of a state plan amendment or a waiver to provide
10 presumptive eligibility for the optional targeted low-income
11 category of eligibility pursuant to Section 14005.26 for individuals
12 presumptively eligible for or enrolled in the Healthy Families
13 Program pursuant to Part 6.2 (commencing with Section 12693)
14 of Division 2 of the Insurance Code. The presumptive eligibility
15 shall be based upon the most recent information contained in the
16 individual's Healthy Families Program file. The timeframe for the
17 presumptive eligibility shall begin no sooner than January 1, 2013,
18 and shall continue until a determination of Medi-Cal eligibility is
19 made, which determination shall be performed within one year of
20 the individual's Healthy Families Program annual review date.

21 (d) (1) The California Health and Human Services Agency, in
22 consultation with the Managed Risk Medical Insurance Board, the
23 State Department of Health Care Services, the Department of
24 Managed Health Care, and diverse stakeholders groups, shall
25 provide the fiscal and policy committees of the Legislature with
26 a strategic plan for the transition of the Healthy Families Program
27 pursuant to this section by no later than October 1, 2012. This
28 strategic plan shall, at a minimum, address all of the following:

29 (A) State, county, and local administrative components which
30 facilitate a successful subscriber transition such as communication
31 and outreach to subscribers and applicants, eligibility processing,
32 enrollment, communication, and linkage with health plan providers,
33 payments of applicable premiums, and overall systems operation
34 functions.

35 (B) Methods and processes for diverse stakeholder engagement
36 throughout the entire transition, including all phases of the
37 transition.

38 (C) State monitoring of managed care health plans' performance
39 and accountability for provision of services, and initial quality
40 indicators for children and adolescents transitioning to Medi-Cal.

1 (D) Health care and dental delivery system components such
2 as standards for informing and enrollment materials, network
3 adequacy, performance measures and metrics, fiscal solvency, and
4 related factors that ensure timely access to quality health and dental
5 care for children and adolescents transitioning to Medi-Cal.

6 (E) Inclusion of applicable operational steps, timelines, and key
7 milestones.

8 (F) A time certain for the transfer of the Healthy Families
9 Advisory Board, as described in Part 6.2 (commencing with Section
10 12693) of Division 2 of the Insurance Code, to the State
11 Department of Health Care Services.

12 (2) The intent of this strategic plan is to serve as an overall guide
13 for the development of each plan for each phase of this transition,
14 pursuant to paragraphs (1) to (8), inclusive, of subdivision (e), to
15 ensure clarity and consistency in approach and subscriber
16 continuity of care. This strategic plan may also be updated by the
17 California Health and Human Services Agency as applicable and
18 provided to the Legislature upon completion.

19 (e) (1) The department shall transition individuals from the
20 Healthy Families Program to the Medi-Cal program in four phases,
21 as follows:

22 (A) Phase 1. Individuals enrolled in a Healthy Families Program
23 health plan that is a Medi-Cal managed care health plan shall be
24 enrolled in the same plan no earlier than January 1, 2013, pursuant
25 to the requirements of this section and Section 14011.6, and to the
26 extent the individual is otherwise eligible under this chapter and
27 Chapter 8 (commencing with Section 14200).

28 (B) Phase 2. Individuals enrolled in a Healthy Families Program
29 managed care health plan that is a subcontractor of a Medi-Cal
30 managed health care plan, to the extent possible, shall be enrolled
31 into a Medi-Cal managed health care plan that includes the
32 individuals' current plan pursuant to the requirements of this
33 section and Section 14011.6, and to the extent the individuals are
34 otherwise eligible under this chapter and Chapter 8 (commencing
35 with Section 14200). The transition of individuals described in
36 this subparagraph shall begin no earlier than April 1, 2013.

37 (C) Phase 3. Individuals enrolled in a Healthy Families Program
38 plan that is not a Medi-Cal managed care plan and does not contract
39 or subcontract with a Medi-Cal managed care plan shall be enrolled
40 in a Medi-Cal managed care plan in that county. Enrollment shall

1 include consideration of the individuals' primary care providers
2 pursuant to the requirements of this section and Section 14011.6,
3 and to the extent the individuals are otherwise eligible under this
4 chapter and Chapter 8 (commencing with Section 14200). The
5 transition of individuals described in this subparagraph shall begin
6 no earlier than August 1, 2013.

7 (D) Phase 4.

8 (i) Individuals residing in a county that is not a Medi-Cal
9 managed care county shall be provided services under the Medi-Cal
10 fee-for-service delivery system, subject to clause (ii). The transition
11 of individuals described in this subparagraph shall begin no earlier
12 than September 1, 2013.

13 (ii) In the event the department creates a managed health care
14 system in the counties described in clause (i), individuals residing
15 in those counties shall be enrolled in managed health care plans
16 pursuant to this chapter and Chapter 8 (commencing with Section
17 14200).

18 (2) For the transition of individuals pursuant to subparagraphs
19 (A), (B), (C), and (D) of paragraph (1), implementation plans shall
20 be developed to ensure state and county systems readiness, health
21 plan network adequacy, and continuity of care with the goal of
22 ensuring there is no disruption of service and there is continued
23 access to coverage for all transitioning individuals. If an individual
24 is not retained with his or her current primary care provider, the
25 implementation plan shall require the managed care plan to report
26 to the department as to how continuity of care is being provided.
27 Transition of individuals described in subparagraphs (A), (B), (C),
28 and (D) of paragraph (1) shall not occur until 90 days after the
29 department has submitted an implementation plan to the fiscal and
30 policy committees of the Legislature. The implementation plans
31 shall include, but not be limited to, information on health and
32 dental plan network adequacy, continuity of care, eligibility and
33 enrollment requirements, consumer protections, and family
34 notifications.

35 (3) The following requirements shall be in place prior to
36 implementation of Phase 1, and shall be required for all phases of
37 the transition:

38 (A) Managed care plan performance measures shall be integrated
39 and coordinated with the Healthy Families Program performance
40 standards including, but not limited to, child-only Healthcare

1 Effectiveness Data and Information Set (HEDIS) measures, and
2 measures indicative of performance in serving children and
3 adolescents. These performance measures shall also be in
4 compliance with all performance requirements under the
5 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
6 (commencing with Section 1340) of Division 2 of the Health and
7 Safety Code) and existing Medi-Cal managed care performance
8 measurements and standards as set forth in this chapter and Chapter
9 8 (commencing with Section 14200), Title 22 of the California
10 Code of Regulations, and all-plan letters, including, but not limited
11 to, network adequacy and linguistic services, and shall be met prior
12 to the transition of individuals pursuant to Phase 1.

13 (B) Medi-Cal managed care health plans shall allow enrollees
14 to remain with their current primary care provider. If an individual
15 does not remain with the current primary care provider, the plan
16 shall report to the department as to how continuity of care is being
17 provided.

18 (4) (A) As individuals are transitioned pursuant to
19 subparagraphs (A), (B), (C), and (D) of paragraph (1), for
20 individuals residing in all counties except the Counties of
21 Sacramento and Los Angeles, their dental coverage shall transition
22 to fee-for-service dental coverage and may be provided by their
23 current provider if the provider is a Medi-Cal fee-for-service dental
24 provider.

25 (B) For individuals residing in the County of Sacramento, their
26 dental coverage shall continue to be provided by their current
27 dental managed care plan if their plan is a Medi-Cal dental
28 managed care plan. If their plan is not a Medi-Cal dental managed
29 care plan, they shall select a Medi-Cal dental managed care plan.
30 If they do not choose a Medi-Cal dental managed care plan, they
31 shall be assigned to a plan with preference to a plan with which
32 their current provider is a contracted provider. Any children in the
33 Healthy Families Program transitioned into Medi-Cal dental
34 managed care plans shall also have access to the beneficiary dental
35 exception process, pursuant to Section 14089.09. Further, the
36 Sacramento advisory committee, established pursuant to Section
37 14089.08, shall be consulted regarding the transition of children
38 in the Healthy Families Program into Medi-Cal dental managed
39 care plans.

1 (C) (i) For individuals residing in the County of Los Angeles,
2 for purposes of continuity of care, their dental coverage shall
3 continue to be provided by their current dental managed care plan
4 if that plan is a Medi-Cal dental managed care plan. If their plan
5 is not a Medi-Cal dental managed care plan, they may select a
6 Medi-Cal dental managed care plan or choose to move into
7 Medi-Cal fee-for-service dental coverage.

8 (ii) It is the intent of the Legislature that children transitioning
9 to Medi-Cal under this section have a choice in dental coverage,
10 as provided under existing law.

11 (5) Dental health plan performance measures and benchmarks
12 shall be in accordance with Section 14459.6.

13 (6) Medi-Cal managed care health and dental plans shall report
14 to the department, as frequently as specified by the department,
15 specified information pertaining to transition implementation,
16 enrollees, and providers, including, but not limited to, grievances
17 related to access to care, continuity of care requests and outcomes,
18 and changes to provider networks, including provider enrollment
19 and disenrollment changes. The plans shall report this information
20 by county, and in the format requested by the department.

21 (7) The department may develop supplemental implementation
22 plans to separately account for the transition of individuals from
23 the Healthy Families Program to specific Medi-Cal delivery
24 systems.

25 (8) The department shall consult with the Legislature and
26 stakeholders, including, but not limited to, consumers, families,
27 consumer advocates, counties, providers, and health and dental
28 plans, in the development of implementation plans described in
29 paragraph (3) for individuals who are transitioned to Medi-Cal in
30 Phase 2, Phase 3, and Phase 4, as described in subparagraphs (B),
31 (C), and (D) of paragraph (1).

32 (9) (A) The department shall consult and collaborate with the
33 Department of Managed Health Care in assessing Medi-Cal
34 managed care health plan network adequacy in accordance with
35 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
36 2.2 (commencing with Section 1340) of Division 2 of the Health
37 and Safety Code) for purposes of the developed transition plans
38 pursuant to paragraph (2) for each of the phases.

39 (B) For purposes of individuals transitioning in Phase 1, as
40 described in subparagraph (A) of paragraph (1), network adequacy

1 shall be assessed as described in this paragraph and findings from
2 this assessment shall be provided to the fiscal and appropriate
3 policy committees of the Legislature 60 days prior to the effective
4 date of implementing this transition.

5 (10) The department shall provide monthly status reports to the
6 fiscal and policy committees of the Legislature on the transition
7 commencing no later than February 15, 2013. This monthly status
8 transition report shall include, but not be limited to, information
9 on health plan grievances related to access to care, continuity of
10 care requests and outcomes, changes to provider networks,
11 including provider enrollment and disenrollment changes, and
12 eligibility performance standards pursuant to subdivision ~~(m)~~ (n).
13 A final comprehensive report shall be provided within 90 days
14 after completion of the last phase of transition.

15 (f) (1) The department and MRMIB shall work collaboratively
16 in the development of notices for individuals transitioned pursuant
17 to paragraph (1) of subdivision (e).

18 (2) The state shall provide written notice to individuals enrolled
19 in the Healthy Families Program of their transition to the Medi-Cal
20 program at least 60 days prior to the transition of individuals in
21 Phase 1, as described in subparagraph (A) of paragraph (1) of
22 subdivision (e), and at least 90 days prior to transition of
23 individuals in Phases 2, 3, and 4, as described in subparagraphs
24 (B) ~~and~~, (C), and (D) of paragraph (1) of subdivision (e).

25 (3) Notices developed pursuant to this subdivision shall ensure
26 individuals are informed regarding the transition, including, but
27 not limited to, how individuals' systems of care may change, when
28 the changes will occur, and whom they can contact for assistance
29 when choosing a Medi-Cal managed care plan, if applicable,
30 including a toll-free telephone number, and with problems they
31 may encounter. The department shall consult with stakeholders
32 regarding notices developed pursuant to this subdivision. These
33 notices shall be developed using plain language, and written
34 translation of the notices shall be available for those who are
35 limited English proficient or non-English speaking in all Medi-Cal
36 threshold languages.

37 (4) The department shall designate department liaisons
38 responsible for the coordination of the Healthy Families Program
39 and may establish a children's-focused section for this purpose

1 and to facilitate the provision of health care services for children
2 enrolled in Medi-Cal.

3 (5) The department shall provide a process for ongoing
4 stakeholder consultation and make information publicly available,
5 including the achievement of benchmarks, enrollment data,
6 utilization data, and quality measures.

7 (g) (1) In order to aid the transition of Healthy Families Program
8 enrollees, MRMIB, on the effective date of the act that added this
9 section and continuing through the completion of the transition of
10 Healthy Families Program enrollees to the Medi-Cal program,
11 shall begin requesting and collecting from health plans contracting
12 with MRMIB pursuant to Part 6.2 (commencing with Section
13 12693) of Division 2 of the Insurance Code, information about
14 each health plan's provider network, including, but not limited to,
15 the primary care and all specialty care providers assigned to
16 individuals enrolled in the health plan. MRMIB shall obtain this
17 information in a manner that coincides with the transition activities
18 described in subdivision (d), and shall provide all of the collected
19 information to the department within 60 days of the department's
20 request for this information to ensure timely transitions of the
21 Healthy Family Programs enrollees.

22 (2) The department shall analyze the existing Healthy Families
23 Program delivery system network and the Medi-Cal fee-for-service
24 provider networks, including, but not limited to, Medi-Cal dental
25 providers, to determine overlaps of the provider networks in each
26 county for which there are no Medi-Cal managed care plans or
27 dental managed care plans. To the extent there is a lack of existing
28 Medi-Cal fee-for-service providers available to serve the Healthy
29 Families Program enrollees, the department shall work with the
30 Healthy Families Program provider community to encourage
31 participation of those providers in the Medi-Cal program, and
32 develop a streamlined process to enroll them as Medi-Cal
33 providers.

34 (3) (A) MRMIB, within 60 days of a request by the department,
35 shall provide the department any data, information, or record
36 concerning the Healthy Families Program as is necessary to
37 implement the transition of enrollment required pursuant to this
38 section.

39 (B) Notwithstanding any other provision of law, all of the
40 following shall apply:

1 (i) The term “data, information, or record” shall include, but is
2 not limited to, personal information as defined in Section 1798.3
3 of the Civil Code.

4 (ii) Any data, information, or record shall be exempt from
5 disclosure under the California Public Records Act (Chapter 3.5
6 (commencing with Section 6250) of Division 7 *of Title 1* of the
7 Government Code) and any other law, to the same extent that it
8 was exempt from disclosure or privileged prior to the provision
9 of the data, information, or record to the department.

10 (iii) The provision of any such data, information, or record to
11 the department shall not constitute a waiver of any evidentiary
12 privilege or exemption from disclosure.

13 (iv) The department shall keep all data, information, or records
14 provided by MRMIB confidential to the full extent permitted by
15 law, including, but not limited to, the California Public Records
16 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
17 *of Title 1* of the Government Code), and consistent with MRMIB’s
18 contractual obligations to keep the data, information, or records
19 confidential.

20 (h) This section shall be implemented only to the extent that all
21 necessary federal approvals and waivers have been obtained and
22 the enhanced rate of federal financial participation under Title XXI
23 of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.)
24 is available for targeted low-income children pursuant to that act.

25 (i) (1) The department shall exercise the option pursuant to
26 Section 1916A of the federal Social Security Act (42 U.S.C. Sec.
27 1396o-1) to impose premiums for individuals described in
28 subdivision (a) of Section 14005.26 whose family income has been
29 determined to be above 150 percent and up to and including 200
30 percent of the federal poverty level, after application of the income
31 disregard pursuant to subdivision (b) of Section 14005.26. The
32 department shall not impose premiums under this subdivision for
33 individuals described in subdivision (a) of Section 14005.26 whose
34 family income has been determined to be at or below 150 percent
35 of the federal poverty level, after application of the income
36 disregard pursuant to subdivision (b) of Section 14005.26. The
37 department shall obtain federal approval for the implementation
38 of this subdivision.

39 (2) All premiums imposed under this section shall equal the
40 family contributions described in paragraph (2) of subdivision (d)

1 of Section 12693.43 of the Insurance Code and shall be reduced
2 in conformity with subdivisions (e) and (f) of Section 12693.43
3 of the Insurance Code.

4 (j) The department shall not enroll targeted low-income children
5 described in this section in the Medi-Cal program until all
6 necessary federal approvals and waivers have been obtained, or
7 no sooner than January 1, 2013.

8 (k) (1) To the extent the new budget methodology pursuant to
9 paragraph (6) of subdivision (a) of Section 14154 is not fully
10 operational, for the purposes of implementing this section, for
11 individuals described in subdivision (a) whose family income has
12 been determined to be at or below 150 percent of the federal
13 poverty level, as determined pursuant to subdivision (b), the
14 department shall utilize the budgeting methodology for this
15 population as contained in the November 2011 Medi-Cal Local
16 Assistance Estimate for Medi-Cal county administration costs for
17 eligibility operations.

18 (2) For purposes of implementing this section, the department
19 shall include in the Medi-Cal Local Assistance Estimate an amount
20 for Medi-Cal eligibility operations associated with the transfer of
21 Healthy Families Program enrollees eligible pursuant to subdivision
22 (a) of Section 14005.26 and whose family income is determined
23 to be above 150 percent and up to and including 200 percent of
24 the federal poverty level, after application of the income disregard
25 pursuant to subdivision (b) of Section 14005.26. In developing an
26 estimate for this activity, the department shall consider the
27 projected number of final eligibility determinations each county
28 will process and projected county costs. Within 60 days of the
29 passage of the annual Budget Act, the department shall notify each
30 county of their allocation for this activity based upon the amount
31 allotted in the annual Budget Act for this purpose.

32 (l) When the new budget methodology pursuant to paragraph
33 (6) of subdivision (a) of Section 14154 is fully operational, the
34 new budget methodology shall be utilized to reimburse counties
35 for eligibility determinations made for individuals pursuant to this
36 section.

37 (m) Except as provided in subdivision (b), eligibility
38 determinations and annual redeterminations made pursuant to this
39 section shall be performed by county eligibility workers.

1 (n) In conducting the eligibility determinations for individuals
2 pursuant to this section and Section 14005.26, the following
3 reporting and performance standards shall apply to all counties:

4 (1) Counties shall report to the department, in a manner and for
5 a time period determined by the department, in consultation with
6 the County Welfare Directors Association, the number of
7 applications processed on a monthly basis, a breakout of the
8 applications based on income using the federal percentage of
9 poverty levels, the final disposition of each application, including
10 information on the approved Medi-Cal program, if applicable, and
11 the average number of days it took to make the final eligibility
12 determination for applications submitted directly to the county and
13 from the single point of entry (SPE).

14 (2) Notwithstanding any other law, the following performance
15 standards shall be applied to counties for eligibility determinations
16 for individuals eligible pursuant to this section:

17 (A) For children whose applications are received by the county
18 human services department from the SPE, the following standards
19 shall apply:

20 (i) Applications for children who are granted accelerated
21 enrollment by the SPE shall be processed according to the
22 timeframes specified in subdivision (d) of Section 14154.

23 (ii) Applications for children who are not granted accelerated
24 enrollment by the SPE due to the existence of an already active
25 Medi-Cal case shall be processed according to the timeframes
26 specified in subdivision (d) of Section 14154.

27 (iii) For applications for children who are not described in clause
28 (i) or (ii), 90 percent shall be processed within 10 working days
29 of being received, complete and without client errors.

30 (iv) If an application described in this section also contains
31 adults, and the adult applicants are required to submit additional
32 information beyond the information provided for the children, the
33 county shall process the eligibility for the child or children without
34 delay, consistent with this section while gathering the necessary
35 information to process eligibility for the adults.

36 (B) The department, in consultation with the County Welfare
37 Directors Association, shall develop reporting requirements for
38 the counties to provide regular data to the state regarding the
39 timeliness and outcomes of applications processed by the counties
40 that are received from the SPE.

1 (C) Performance thresholds and corrective action standards as
2 set forth in Section 14154 shall apply.

3 (D) For applications received directly into the county, these
4 applications shall be processed by the counties in accordance with
5 the performance standards established under subdivision (d) of
6 Section 14154.

7 (3) This subdivision shall be implemented no sooner than
8 January 1, 2013.

9 (4) Twelve months after implementation of this section pursuant
10 to subdivision (e), the department shall provide enrollment
11 information regarding individuals determined eligible pursuant to
12 subdivision (a) to the fiscal and appropriate policy committees of
13 the Legislature.

14 (o) (1) Notwithstanding Chapter 3.5 (commencing with Section
15 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
16 for purposes of this transition, the department, without taking any
17 further regulatory action, shall implement, interpret, or make
18 specific this section by means of all-county letters, plan letters,
19 plan or provider bulletins, or similar instructions until the time
20 regulations are adopted. It is the intent of the Legislature that the
21 department be allowed temporary authority as necessary to
22 implement program changes until completion of the regulatory
23 process.

24 (2) To the extent otherwise required by Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3 of Title
26 2 of the Government Code, the department shall adopt emergency
27 regulations implementing this section no later than July 1, 2014.
28 The department may thereafter readopt the emergency regulations
29 pursuant to that chapter. The adoption and readoption, by the
30 department, of regulations implementing this section shall be
31 deemed to be an emergency and necessary to avoid serious harm
32 to the public peace, health, safety, or general welfare for purposes
33 of Sections 11346.1 and 11349.6 of the Government Code, and
34 the department is hereby exempted from the requirement that it
35 describe facts showing the need for immediate action and from
36 review by the Office of Administrative Law.

37 (p) To implement this section, the department may enter into
38 and continue contracts with the Healthy Families Program
39 administrative vendor, for the purposes of implementing and
40 maintaining the necessary systems and activities for providing

1 health care coverage to optional targeted low-income children in
2 the Medi-Cal program for purposes of accelerated enrollment
3 application processing by single point of entry,
4 noneligibility-related case maintenance and premium collection,
5 maintenance of the Health-E-App Web portal, call center staffing
6 and operations, certified application assistant services, and
7 reporting capabilities. To further implement this section, the
8 department may also enter into a contract with the Health Care
9 Options Broker of the department for purposes of managed care
10 enrollment activities. The contracts entered into or amended under
11 this section may initially be completed on a noncompetitive bid
12 basis and are exempt from the Public Contract Code. Contracts
13 thereafter shall be entered into or amended on a competitive bid
14 basis and shall be subject to the Public Contract Code.

15 (q) (1) If at any time the director determines that this section
16 or any part of this section may jeopardize the state's ability to
17 receive federal financial participation under the federal Patient
18 Protection and Affordable Care Act (Public Law 111-148), or any
19 amendment or extension of that act, or any additional federal funds
20 that the director, in consultation with the Department of Finance,
21 determines would be advantageous to the state, the director shall
22 give notice to the fiscal and policy committees of the Legislature
23 and to the Department of Finance. After giving notice, this section
24 or any part of this section shall become inoperative on the date
25 that the director executes a declaration stating that the department
26 has determined, in consultation with the Department of Finance,
27 that it is necessary to cease to implement this section or a part or
28 parts thereof in order to receive federal financial participation, any
29 increase in the federal medical assistance percentage available on
30 or after October 1, 2008, or any additional federal funds that the
31 director, in consultation with the Department of Finance, has
32 determined would be advantageous to the state.

33 (2) The director shall retain the declaration described in
34 paragraph (1), shall provide a copy of the declaration to the
35 Secretary of the State, the Secretary of the Senate, the Chief Clerk
36 of the Assembly, and the Legislative Counsel, and shall post the
37 declaration on the department's Internet Web site.

38 (3) In the event that the director makes a determination under
39 paragraph (1) and this section ceases to be implemented, the
40 children shall be enrolled back into the Healthy Families Program.

1 SEC. 215. Section 14043.25 of the Welfare and Institutions
2 Code, as added by Section 8 of Chapter 797 of the Statutes of
3 2012, is amended to read:

4 14043.25. (a) The application form for enrollment, the provider
5 agreement, and all attachments or changes to either, shall be signed
6 under penalty of perjury.

7 (b) The department may require that the application form for
8 enrollment, the provider agreement, and all attachments or changes
9 to either, submitted by an applicant or provider licensed pursuant
10 to Division 2 (commencing with Section 500) of the Business and
11 Professions Code, the Osteopathic Initiative Act, or the
12 Chiropractic Initiative Act, be notarized.

13 (c) Application forms for enrollment, provider agreements, and
14 all attachments or changes to either, submitted by an applicant or
15 provider not subject to subdivision (b) shall be notarized. This
16 subdivision shall not apply with respect to providers under the
17 In-Home Supportive Services program.

18 (d) The department shall collect an application fee for
19 enrollment, including enrollment at a new location or a change in
20 location. The application fee shall not be collected from individual
21 physicians or nonphysician practitioners, from providers that are
22 enrolled in Medicare or another state's Medicaid *program* or
23 Children's Health Insurance Program, from providers that submit
24 proof that they have paid the applicable fee to a Medicare
25 contractor or to another state's Medicaid program, or pursuant to
26 an exemption or waiver pursuant to federal law. The application
27 fee collected shall be in the amount calculated by the federal
28 Centers for Medicare and Medicaid Services in effect for the
29 calendar year during which the application for enrollment is
30 received by the department.

31 (e) (1) This section shall become operative on the effective date
32 of the state plan amendment necessary to implement this section,
33 as stated in the declaration executed by the director pursuant to
34 paragraph (2).

35 (2) Upon approval of the state plan amendment necessary to
36 implement this section, the director shall execute a declaration, to
37 be retained by the director and posted on the department's Internet
38 Web site, that states this approval has been obtained and the
39 effective date of the state plan amendment. The department shall
40 transmit a copy of the declaration to the Legislature.

1 SEC. 216. Section 14043.7 of the Welfare and Institutions
2 Code, as amended by Section 21 of Chapter 797 of the Statutes of
3 2012, is amended to read:

4 14043.7. (a) The department may make unannounced visits
5 to ~~any~~ *an* applicant or to ~~any~~ *a* provider for the purpose of
6 determining whether enrollment, continued enrollment, or
7 certification is warranted, or as necessary for the administration
8 of the Medi-Cal program. At the time of the visit, the applicant or
9 provider shall be required to demonstrate an established place of
10 business appropriate and adequate for the services billed or claimed
11 to the Medi-Cal program, as relevant to his or her scope of practice,
12 as indicated by, but not limited to, the following:

- 13 (1) Being open and available to the general public.
- 14 (2) Having regularly established and posted business hours.
- 15 (3) Having adequate supplies in stock on the premises.
- 16 (4) Meeting all local laws and ordinances regarding business
17 licensing and operations.
- 18 (5) Having the necessary equipment and facilities to carry out
19 day-to-day business for his or her practice.

20 (b) An unannounced visit pursuant to subdivision (a) shall be
21 prohibited with respect to clinics licensed under Section 1204 of
22 the Health and Safety Code, clinics exempt from licensure under
23 Section 1206 of the Health and Safety Code, health facilities
24 licensed under Chapter 2 (commencing with Section 1250) of
25 Division 2 of the Health and Safety Code, and natural persons
26 licensed or certified under Division 2 (commencing with Section
27 500) of the Business and Professions Code, the Osteopathic
28 Initiative Act, or the Chiropractic Initiative Act, unless the
29 department has reason to believe that the provider will defraud or
30 abuse the Medi-Cal program or lacks the organizational or
31 administrative capacity to provide services under the program.

32 (c) Failure to remediate significant discrepancies in information
33 provided to the department by the provider or significant
34 discrepancies that are discovered as a result of an announced or
35 unannounced visit to a provider, for purposes of enrollment,
36 continued enrollment, or certification pursuant to subdivision (a)
37 shall make the provider subject to temporary suspension from the
38 Medi-Cal program, which shall include temporary deactivation of
39 the provider's number, including all business addresses used by
40 the provider to obtain reimbursement from the Medi-Cal program.

1 The director shall notify in writing the provider of the temporary
2 suspension and deactivation of provider numbers, which shall take
3 effect 15 days from the date of the notification. Notwithstanding
4 Section 100171 of the Health and Safety Code, proceedings after
5 the imposition of sanctions in this ~~paragraph~~ *subdivision* shall be
6 in accordance with Section 14043.65.

7 (d) This section shall become inoperative on the effective date
8 of the necessary state plan amendment, as stated in the declaration
9 executed by the director pursuant to Section 14043.7 as added by
10 Section 22 of the act that added this subdivision, and is repealed
11 on the January 1 of the following year. The department shall post
12 the declaration on its Internet Web site and transmit a copy of the
13 declaration to the Legislature.

14 SEC. 217. Section 14043.7 of the Welfare and Institutions
15 Code, as added by Section 22 of Chapter 797 of the Statutes of
16 2012, is amended to read:

17 14043.7. (a) The department may make unannounced visits
18 to ~~any~~ *an* applicant or to ~~any~~ *a* provider for the purpose of
19 determining whether enrollment, continued enrollment, or
20 certification is warranted, or as necessary for the administration
21 of the Medi-Cal program. If an unannounced site visit is conducted
22 by the department for any enrolled provider, the provider shall
23 permit access to any and all of their provider locations. If a provider
24 fails to permit access for any site visit, the application shall be
25 denied and the provider shall be subject to deactivation. At the
26 time of the visit, the applicant or provider shall be required to
27 demonstrate an established place of business appropriate and
28 adequate for the services billed or claimed to the Medi-Cal
29 program, as relevant to his or her scope of practice, as indicated
30 by, but not limited to, the following:

- 31 (1) Being open and available to the general public.
- 32 (2) Having regularly established and posted business hours.
- 33 (3) Having adequate supplies in stock on the premises.
- 34 (4) Meeting all local laws and ordinances regarding business
35 licensing and operations.
- 36 (5) Having the necessary equipment and facilities to carry out
37 day-to-day business for his or her practice.

38 (b) An unannounced visit pursuant to subdivision (a) shall be
39 prohibited with respect to clinics licensed under Section 1204 of
40 the Health and Safety Code, clinics exempt from licensure under

1 Section 1206 of the Health and Safety Code, health facilities
2 licensed under Chapter 2 (commencing with Section 1250) of
3 Division 2 of the Health and Safety Code, and natural persons
4 licensed or certified under Division 2 (commencing with Section
5 500) of the Business and Professions Code, the Osteopathic
6 Initiative Act, or the Chiropractic Initiative Act, unless the
7 department has reason to believe that the provider will defraud or
8 abuse the Medi-Cal program or lacks the organizational or
9 administrative capacity to provide services under the program.

10 (c) Failure to remediate significant discrepancies in information
11 provided to the department by the provider or significant
12 discrepancies that are discovered as a result of an announced or
13 unannounced visit to a provider, for purposes of enrollment,
14 continued enrollment, or certification pursuant to subdivision (a)
15 shall make the provider subject to temporary suspension from the
16 Medi-Cal program, which shall include temporary deactivation of
17 the provider's number, including all business addresses used by
18 the provider to obtain reimbursement from the Medi-Cal program.
19 The director shall notify in writing the provider of the temporary
20 suspension and deactivation of provider numbers, which shall take
21 effect 15 days from the date of the notification. Notwithstanding
22 Section 100171 of the Health and Safety Code, proceedings after
23 the imposition of sanctions in this ~~paragraph~~ *subdivision* shall be
24 in accordance with Section 14043.65.

25 (d) (1) This section shall become operative on the effective
26 date of the state plan amendment necessary to implement this
27 section, as stated in the declaration executed by the director
28 pursuant to paragraph (2).

29 (2) Upon approval of the state plan amendment necessary to
30 implement this section under Section 455.416 of Title 42 of the
31 Code of Federal Regulations, the director shall execute a
32 declaration, to be retained by the director and posted on the
33 department's Internet Web site, that states that this approval has
34 been obtained and the effective date of the state plan amendment.
35 The department shall transmit a copy of the declaration to the
36 Legislature.

37 SEC. 218. Section 14132.275 of the Welfare and Institutions
38 Code is amended to read:

39 14132.275. (a) The department shall seek federal approval to
40 establish the demonstration project described in this section

1 pursuant to a Medicare or a Medicaid demonstration project or
2 waiver, or a combination thereof. Under a Medicare demonstration,
3 the department may contract with the federal Centers for Medicare
4 and Medicaid Services (CMS) and demonstration sites to operate
5 the Medicare and Medicaid benefits in a demonstration project
6 that is overseen by the state as a delegated Medicare benefit
7 administrator, and may enter into financing arrangements with
8 CMS to share in any Medicare program savings generated by the
9 demonstration project.

10 (b) After federal approval is obtained, the department shall
11 establish the demonstration project that enables dual eligible
12 beneficiaries to receive a continuum of services that maximizes
13 access to, and coordination of, benefits between the Medi-Cal and
14 Medicare programs and access to the continuum of long-term
15 services and supports and behavioral health services, including
16 mental health and substance use disorder treatment services. The
17 purpose of the demonstration project is to integrate services
18 authorized under the federal Medicaid Program (Title XIX of the
19 federal Social Security Act (42 U.S.C. Sec. 1396 et seq.)) and the
20 federal Medicare Program (Title XVIII of the federal Social
21 Security Act (42 U.S.C. Sec. 1395 et seq.)). The demonstration
22 project may also include additional services as approved through
23 a demonstration project or waiver, or a combination thereof.

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

26 (1) “Behavioral health” means Medi-Cal services provided
27 pursuant to Section 51341 of Title 22 of the California Code of
28 Regulations and Drug Medi-Cal substance abuse services provided
29 pursuant to Section 51341.1 of Title 22 of the California Code of
30 Regulations, and any mental health benefits available under the
31 Medicare Program.

32 (2) “Capitated payment model” means an agreement entered
33 into between CMS, the state, and a managed care health plan, in
34 which the managed care health plan receives a capitation payment
35 for the comprehensive, coordinated provision of Medi-Cal services
36 and benefits under Medicare Part C (42 U.S.C. Sec. 1395w-21 et
37 seq.) and Medicare Part D (42 U.S.C. Sec. 1395w-101 et seq.),
38 and CMS shares the savings with the state from improved provision
39 of Medi-Cal and Medicare services that reduces the cost of those
40 services. Medi-Cal services include long-term services and supports

1 as defined in Section 14186.1, behavioral health services, and any
2 additional services offered by the demonstration site.

3 (3) “Demonstration site” means a managed care health plan that
4 is selected to participate in the demonstration project under the
5 capitated payment model.

6 (4) “Dual eligible beneficiary” means an individual 21 years of
7 age or older who is enrolled for benefits under Medicare Part A
8 (42 U.S.C. Sec. 1395c et seq.) and Medicare Part B (42 U.S.C.
9 Sec. 1395j et seq.) and is eligible for medical assistance under the
10 Medi-Cal State Plan.

11 (d) No sooner than March 1, 2011, the department shall identify
12 health care models that may be included in the demonstration
13 project, shall develop a timeline and process for selecting,
14 financing, monitoring, and evaluating the demonstration sites, and
15 shall provide this timeline and process to the appropriate fiscal
16 and policy committees of the Legislature. The department may
17 implement these demonstration sites in phases.

18 (e) The department shall provide the fiscal and appropriate
19 policy committees of the Legislature with a copy of any report
20 submitted to CMS to meet the requirements under the
21 demonstration project.

22 (f) Goals for the demonstration project shall include all of the
23 following:

24 (1) Coordinate Medi-Cal and Medicare benefits across health
25 care settings and improve the continuity of care across acute care,
26 long-term care, behavioral health, including mental health and
27 substance use disorder services, and home- and community-based
28 services settings using a person-centered approach.

29 (2) Coordinate access to acute and long-term care services for
30 dual eligible beneficiaries.

31 (3) Maximize the ability of dual eligible beneficiaries to remain
32 in their homes and communities with appropriate services and
33 supports in lieu of institutional care.

34 (4) Increase the availability of and access to home- and
35 community-based services.

36 (5) Coordinate access to necessary and appropriate behavioral
37 health services, including mental health and substance use disorder
38 services.

39 (6) Improve the quality of care for dual eligible beneficiaries.

1 (7) Promote a system that is both sustainable and person and
2 family centered by providing dual eligible beneficiaries with timely
3 access to appropriate, coordinated health care services and
4 community resources that enable them to attain or maintain
5 personal health goals.

6 (g) No sooner than March 1, 2013, demonstration sites shall be
7 established in up to eight counties, and shall include at least one
8 county that provides Medi-Cal services via a two-plan model
9 pursuant to Article 2.7 (commencing with Section 14087.3) and
10 at least one county that provides Medi-Cal services under a county
11 organized health system pursuant to Article 2.8 (commencing with
12 Section 14087.5). The director shall consult with the Legislature,
13 CMS, and stakeholders when determining the implementation date
14 for this section. In determining the counties in which to establish
15 a demonstration site, the director shall consider the following:

16 (1) Local support for integrating medical care, long-term care,
17 and home- and community-based services networks.

18 (2) A local stakeholder process that includes health plans,
19 providers, mental health representatives, community programs,
20 consumers, designated representatives of in-home supportive
21 services personnel, and other interested stakeholders in the
22 development, implementation, and continued operation of the
23 demonstration site.

24 (h) In developing the process for selecting, financing,
25 monitoring, and evaluating the health care models for the
26 demonstration project, the department shall enter into a
27 memorandum of understanding with CMS. Upon completion, the
28 memorandum of understanding shall be provided to the fiscal and
29 appropriate policy committees of the Legislature and posted on
30 the department's Internet Web site.

31 (i) The department shall negotiate the terms and conditions of
32 the memorandum of understanding, which shall address, but are
33 not limited to, the following:

34 (1) Reimbursement methods for a capitated payment model.
35 Under the capitated payment model, the demonstration sites shall
36 meet all of the following requirements:

37 (A) Have Medi-Cal managed care health plan and Medicare
38 dual eligible-special needs plan contract experience, or evidence
39 of the ability to meet these contracting requirements.

1 (B) Be in good financial standing and meet licensure
2 requirements under the Knox-Keene Health Care Service Plan Act
3 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division
4 2 of the Health and Safety Code), except for county organized
5 health system plans that are exempt from licensure pursuant to
6 Section 14087.95.

7 (C) Meet quality measures, which may include Medi-Cal and
8 Medicare Healthcare Effectiveness Data and Information Set
9 measures and other quality measures determined or developed by
10 the department or CMS.

11 (D) Demonstrate a local stakeholder process that includes dual
12 eligible beneficiaries, managed care health plans, providers, mental
13 health representatives, county health and human services agencies,
14 designated representatives of in-home supportive services
15 personnel, and other interested stakeholders that advise and consult
16 with the demonstration site in the development, implementation,
17 and continued operation of the demonstration project.

18 (E) Pay providers reimbursement rates sufficient to maintain
19 an adequate provider network and ensure access to care for
20 beneficiaries.

21 (F) Follow final policy guidance determined by CMS and the
22 department with regard to reimbursement rates for providers
23 pursuant to paragraphs (4) to (7), inclusive, of subdivision (o).

24 (G) To the extent permitted under the demonstration, pay
25 noncontracted hospitals prevailing Medicare fee-for-service rates
26 for traditionally Medicare covered benefits and prevailing Medi-Cal
27 fee-for-service rates for traditionally Medi-Cal covered benefits.

28 (2) Encounter data reporting requirements for both Medi-Cal
29 and Medicare services provided to beneficiaries enrolling in the
30 demonstration project.

31 (3) Quality assurance withholding from the demonstration site
32 payment, to be paid only if quality measures developed as part of
33 the memorandum of understanding and plan contracts are met.

34 (4) Provider network adequacy standards developed by the
35 department and CMS, in consultation with the Department of
36 Managed Health Care, the demonstration site, and stakeholders.

37 (5) Medicare and Medi-Cal appeals and hearing process.

38 (6) Unified marketing requirements and combined review
39 process by the department and CMS.

1 (7) Combined quality management and consolidated reporting
2 process by the department and CMS.

3 (8) Procedures related to combined federal and state contract
4 management to ensure access, quality, program integrity, and
5 financial solvency of the demonstration site.

6 (9) To the extent permissible under federal requirements,
7 implementation of the provisions of Sections 14182.16 and
8 14182.17 that are applicable to beneficiaries simultaneously eligible
9 for full-scope benefits under Medi-Cal and the Medicare Program.

10 (10) (A) In consultation with the hospital industry, CMS
11 approval to ensure that Medicare supplemental payments for direct
12 graduate medical education and Medicare add-on payments,
13 including indirect medical education and disproportionate share
14 hospital adjustments continue to be made available to hospitals
15 for services provided under the demonstration.

16 (B) The department shall seek CMS approval for CMS to
17 continue these payments either outside the capitation rates or, if
18 contained within the capitation rates, and to the extent permitted
19 under the demonstration project, shall require demonstration sites
20 to provide this reimbursement to hospitals.

21 (11) To the extent permitted under the demonstration project,
22 the default rate for non-contracting providers of physician services
23 shall be the prevailing Medicare fee schedule for services covered
24 by the Medicare program and the prevailing Medi-Cal fee schedule
25 for services covered by the Medi-Cal program.

26 (j) (1) The department shall comply with and enforce the terms
27 and conditions of the memorandum of understanding with CMS,
28 as specified in subdivision (i). To the extent that the terms and
29 conditions do not address the specific selection, financing,
30 monitoring, and evaluation criteria listed in subdivision (i), the
31 department:

32 (A) Shall require the demonstration site to do all of the
33 following:

34 (i) Comply with additional site readiness criteria specified by
35 the department.

36 (ii) Comply with long-term services and supports requirements
37 in accordance with Article 5.7 (commencing with Section 14186).

38 (iii) To the extent permissible under federal requirements,
39 comply with the provisions of Sections 14182.16 and 14182.17

1 that are applicable to beneficiaries simultaneously eligible for
2 full-scope benefits under both Medi-Cal and the Medicare Program.

3 (iv) Comply with all transition of care requirements for Medicare
4 Part D benefits as described in Chapters 6 and 14 of the Medicare
5 Managed Care Manual, published by CMS, including transition
6 timeframes, notices, and emergency supplies.

7 (B) May require the demonstration site to forgo charging
8 premiums, coinsurance, copayments, and deductibles for Medicare
9 Part C and Medicare Part D services.

10 (2) The department shall notify the Legislature within 30 days
11 of the implementation of each provision in paragraph (1).

12 (k) The director may enter into exclusive or nonexclusive
13 contracts on a bid or negotiated basis and may amend existing
14 managed care contracts to provide or arrange for services provided
15 under this section. Contracts entered into or amended pursuant to
16 this section shall be exempt from the provisions of Chapter 2
17 (commencing with Section 10290) of Part 2 of Division 2 of the
18 Public Contract Code and Chapter 6 (commencing with Section
19 14825) of Part 5.5 of Division 3 of Title 2 of the Government
20 Code.

21 (l) (1) (A) Except for the exemptions provided for in this
22 section, the department shall enroll dual eligible beneficiaries into
23 a demonstration site unless the beneficiary makes an affirmative
24 choice to opt out of enrollment or is already enrolled on or before
25 June 1, 2013, in a managed care organization licensed under 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) that has previously contracted with the department
29 as a primary care case management plan pursuant to Article 2.9
30 (commencing with Section 14088) to provide services to
31 beneficiaries who are HIV positive or who have been diagnosed
32 with AIDS or in any entity with a contract with the department
33 pursuant to Chapter 8.75 (commencing with Section 14591).

34 (B) Dual eligible beneficiaries who opt out of enrollment into
35 a demonstration site may choose to remain enrolled in
36 fee-for-service Medicare or a Medicare Advantage plan for their
37 Medicare benefits, but shall be mandatorily enrolled into a
38 Medi-Cal managed care health plan pursuant to Section 14182.16,
39 except as exempted under subdivision (c) of Section 14182.16.

1 (C) (i) Persons meeting requirements for the Program of
2 All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
3 8.75 (commencing with Section 14591) or a managed care
4 organization licensed under the Knox-Keene Health Care Service
5 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
6 of Division 2 of the Health and Safety Code) that has previously
7 contracted with the department as a primary care case management
8 plan pursuant to Article 2.9 (commencing with Section 14088) of
9 Chapter 7 to provide services to beneficiaries who are HIV positive
10 or who have been diagnosed with AIDS may select either of these
11 managed care health plans for their Medicare and Medi-Cal benefits
12 if one is available in that county.

13 (ii) In areas where a PACE plan is available, the PACE plan
14 shall be presented as an enrollment option, included in all
15 enrollment materials, enrollment assistance programs, and outreach
16 programs related to the demonstration project, and made available
17 to beneficiaries whenever enrollment choices and options are
18 presented. Persons meeting the age qualifications for PACE and
19 who choose PACE shall remain in the fee-for-service Medi-Cal
20 and Medicare programs, and shall not be assigned to a managed
21 care health plan for the lesser of 60 days or until they are assessed
22 for eligibility for PACE and determined not to be eligible for a
23 PACE plan. Persons enrolled in a PACE plan shall receive all
24 Medicare and Medi-Cal services from the PACE program pursuant
25 to the three-way agreement between the PACE program, the
26 department, and the *federal* Centers for Medicare and Medicaid
27 Services.

28 (2) To the extent that federal approval is obtained, the
29 department may require that any beneficiary, upon enrollment in
30 a demonstration site, remain enrolled in the Medicare portion of
31 the demonstration project on a mandatory basis for six months
32 from the date of initial enrollment. After the sixth month, a dual
33 eligible beneficiary may elect to enroll in a different demonstration
34 site, a different Medicare Advantage plan, fee-for-service Medicare,
35 PACE, or a managed care organization licensed under the
36 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
37 (commencing with Section 1340) of Division 2 of the Health and
38 Safety Code) that has previously contracted with the department
39 as a primary care case management plan pursuant to Article 2.9
40 (commencing with Section 14088) to provide services to

1 beneficiaries who are HIV positive or who have been diagnosed
2 with AIDS, for his or her Medicare benefits.

3 (A) During the six-month mandatory enrollment in a
4 demonstration site, a beneficiary may continue receiving services
5 from an out-of-network Medicare provider for primary and
6 specialty care services only if all of the following criteria are met:

7 (i) The dual eligible beneficiary demonstrates an existing
8 relationship with the provider prior to enrollment in a
9 demonstration site.

10 (ii) The provider is willing to accept payment from the
11 demonstration site based on the current Medicare fee schedule.

12 (iii) The demonstration site would not otherwise exclude the
13 provider from its provider network due to documented quality of
14 care concerns.

15 (B) The department shall develop a process to inform providers
16 and beneficiaries of the availability of continuity of services from
17 an existing provider and ensure that the beneficiary continues to
18 receive services without interruption.

19 (3) (A) Notwithstanding subparagraph (A) of paragraph (1) of
20 ~~subdivision (t)~~, a dual eligible beneficiary shall be excluded from
21 enrollment in the demonstration project if the beneficiary meets
22 any of the following:

23 (i) The beneficiary has a prior diagnosis of end-stage renal
24 disease. This clause shall not apply to beneficiaries diagnosed with
25 end-stage renal disease subsequent to enrollment in the
26 demonstration project. The director may, with stakeholder input
27 and federal approval, authorize beneficiaries with a prior diagnosis
28 of end-stage renal disease in specified counties to voluntarily enroll
29 in the demonstration project.

30 (ii) The beneficiary has other health coverage, as defined in
31 paragraph (4) of subdivision (b) of Section 14182.16.

32 (iii) The beneficiary is enrolled in a home- and community-based
33 waiver that is a Medi-Cal benefit under Section 1915(c) of the
34 federal Social Security Act (42 U.S.C. Sec. ~~1396n~~ et seq. *1396n(c)*),
35 except for persons enrolled in Multipurpose Senior Services
36 Program services.

37 (iv) The beneficiary is receiving services through a regional
38 center or state developmental center.

1 (v) The beneficiary resides in a geographic area or ZIP Code
2 not included in managed care, as determined by the department
3 and CMS.

4 (vi) The beneficiary resides in one of the Veterans' Homes of
5 California, as described in Chapter 1 (commencing with Section
6 1010) of Division 5 of the Military and Veterans Code.

7 (B) (i) Beneficiaries who have been diagnosed with HIV/AIDS
8 may opt out of the demonstration project at the beginning of any
9 month. The State Department of Public Health may share relevant
10 data relating to a beneficiary's enrollment in the AIDS Drug
11 Assistance Program with the department, and the department may
12 share relevant data relating to HIV-positive beneficiaries with the
13 State Department of Public Health.

14 (ii) The information provided by the State Department of Public
15 Health pursuant to this subparagraph shall not be further disclosed
16 by the State Department of Health Care Services, and shall be
17 subject to the confidentiality protections of subdivisions (d) and
18 (e) of Section 121025 of the Health and Safety Code, except this
19 information may be further disclosed as follows:

20 (I) To the person to whom the information pertains or the
21 designated representative of that person.

22 (II) To the Office of AIDS within the State Department of Public
23 Health.

24 (C) Beneficiaries who are Indians receiving Medi-Cal services
25 in accordance with Section 55110 of Title 22 of the California
26 Code of Regulations may opt out of the demonstration project at
27 the beginning of any month.

28 (D) The department, with stakeholder input, may exempt specific
29 categories of dual eligible beneficiaries from enrollment
30 requirements in this section based on extraordinary medical needs
31 of specific patient groups or to meet federal requirements.

32 (4) For the 2013 calendar year, the department shall offer federal
33 Medicare Improvements for Patients and Providers Act of 2008
34 (Public Law 110-275) compliant contracts to existing Medicare
35 Advantage Special Needs Plans (D-SNP plans) to continue to
36 provide Medicare benefits to their enrollees in their service areas
37 as approved on January 1, 2012. In the 2013 calendar year,
38 beneficiaries in Medicare Advantage and D-SNP plans shall be
39 exempt from the enrollment provisions of subparagraph (A) of
40 paragraph (1), but may voluntarily choose to enroll in the

1 demonstration project. Enrollment into the demonstration project's
2 managed care health plans shall be reassessed in 2014 depending
3 on federal reauthorization of the D-SNP model and the
4 department's assessment of the demonstration plans.

5 (5) For the 2013 calendar year, demonstration sites shall not
6 offer to enroll dual eligible beneficiaries eligible for the
7 demonstration project into the demonstration site's D-SNP.

8 (6) The department shall not terminate contracts in a
9 demonstration site with a managed care organization licensed
10 under the Knox-Keene Health Care Service Plan Act of 1975
11 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
12 the Health and Safety Code) that has previously contracted with
13 the department as a primary care case management plan pursuant
14 to Article 2.9 (commencing with Section 14088) to provide services
15 to beneficiaries who are HIV positive beneficiaries or who have
16 been diagnosed with AIDS and with any entity with a contract
17 pursuant to Chapter 8.75 (commencing with Section 14591), except
18 as provided in the contract or pursuant to state or federal law.

19 (m) Notwithstanding Section 10231.5 of the Government Code,
20 the department shall conduct an evaluation, in partnership with
21 CMS, to assess outcomes and the experience of dual eligibles in
22 these demonstration sites and shall provide a report to the
23 Legislature after the first full year of demonstration operation, and
24 annually thereafter. A report submitted to the Legislature pursuant
25 to this subdivision shall be submitted in compliance with Section
26 9795 of the Government Code. The department shall consult with
27 stakeholders regarding the scope and structure of the evaluation.

28 (n) This section shall be implemented only if and to the extent
29 that federal financial participation or funding is available.

30 (o) It is the intent of the Legislature that:

31 (1) In order to maintain adequate provider networks,
32 demonstration sites shall reimburse providers at rates sufficient to
33 ensure access to care for beneficiaries.

34 (2) Savings under the demonstration project are intended to be
35 achieved through shifts in utilization, and not through reduced
36 reimbursement rates to providers.

37 (3) Reimbursement policies shall not prevent demonstration
38 sites and providers from entering into payment arrangements that
39 allow for the alignment of financial incentives and provide
40 opportunities for shared risk and shared savings in order to promote

1 appropriate utilization shifts, which encourage the use of home-
2 and community-based services and quality of care for dual eligible
3 beneficiaries enrolled in the demonstration sites.

4 (4) To the extent permitted under the demonstration project,
5 and to the extent that a public entity voluntarily provides an
6 intergovernmental transfer for this purpose, both of the following
7 shall apply:

8 (A) The department shall work with CMS in ensuring that the
9 capitation rates under the demonstration project are inclusive of
10 funding currently provided through certified public expenditures
11 supplemental payment programs that would otherwise be impacted
12 by the demonstration project.

13 (B) Demonstration sites shall pay to a public entity voluntarily
14 providing intergovernmental transfers that previously received
15 reimbursement under a certified public expenditures supplemental
16 payment program, rates that include the additional funding under
17 the capitation rates that are funded by the public entity's
18 intergovernmental transfer.

19 (5) The department shall work with CMS in developing other
20 reimbursement policies and shall inform demonstration sites,
21 providers, and the Legislature of the final policy guidance.

22 (6) The department shall seek approval from CMS to permit
23 the provider payment requirements contained in subparagraph (G)
24 of paragraph (1) and paragraphs (10) and (11) of subdivision (i),
25 and Section 14132.276.

26 (7) Demonstration sites that contract with hospitals for hospital
27 services on a fee-for-service basis that otherwise would have been
28 traditionally Medicare services will achieve savings through
29 utilization changes and not by paying hospitals at rates lower than
30 prevailing Medicare fee-for-service rates.

31 (p) The department shall enter into an interagency agreement
32 with the Department of Managed Health Care to perform some or
33 all of the department's oversight and readiness review activities
34 specified in this section. These activities may include providing
35 consumer assistance to beneficiaries affected by this section and
36 conducting financial audits, medical surveys, and a review of the
37 adequacy of provider networks of the managed care health plans
38 participating in this section. The interagency agreement shall be
39 updated, as necessary, on an annual basis in order to maintain
40 functional clarity regarding the roles and responsibilities of the

1 Department of Managed Health Care and the department. The
2 department shall not delegate its authority under this section as
3 the single state Medicaid agency to the Department of Managed
4 Health Care.

5 (q) (1) Beginning with the May Revision to the 2013–14
6 Governor’s Budget, and annually thereafter, the department shall
7 report to the Legislature on the enrollment status, quality measures,
8 and state costs of the actions taken pursuant to this section.

9 (2) (A) By January 1, 2013, or as soon thereafter as practicable,
10 the department shall develop, in consultation with CMS and
11 stakeholders, quality and fiscal measures for health plans to reflect
12 the short- and long-term results of the implementation of this
13 section. The department shall also develop quality thresholds and
14 milestones for these measures. The department shall update these
15 measures periodically to reflect changes in this program due to
16 implementation factors and the structure and design of the benefits
17 and services being coordinated by managed care health plans.

18 (B) The department shall require health plans to submit
19 Medicare and Medi-Cal data to determine the results of these
20 measures. If the department finds that a health plan is not in
21 compliance with one or more of the measures set forth in this
22 section, the health plan shall, within 60 days, submit a corrective
23 action plan to the department for approval. The corrective action
24 plan shall, at a minimum, include steps that the health plan shall
25 take to improve its performance based on the standard or standards
26 with which the health plan is out of compliance. The plan shall
27 establish interim benchmarks for improvement that shall be
28 expected to be met by the health plan in order to avoid a sanction
29 pursuant to Section 14304. Nothing in this subparagraph is intended
30 to limit Section 14304.

31 (C) The department shall publish the results of these measures,
32 including via posting on the department’s Internet Web site, on a
33 quarterly basis.

34 (r) Notwithstanding Chapter 3.5 (commencing with Section
35 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
36 the department may implement, interpret, or make specific this
37 section and any applicable federal waivers and state plan
38 amendments by means of all-county letters, plan letters, plan or
39 provider bulletins, or similar instructions, without taking regulatory
40 action. Prior to issuing any letter or similar instrument authorized

1 pursuant to this section, the department shall notify and consult
2 with stakeholders, including advocates, providers, and
3 beneficiaries. The department shall notify the appropriate policy
4 and fiscal committees of the Legislature of its intent to issue
5 instructions under this section at least five days in advance of the
6 issuance.

7 SEC. 219. Section 14132.276 of the Welfare and Institutions
8 Code is amended to read:

9 14132.276. For nursing facility services provided under the
10 demonstration project as established in Section 14132.275, to the
11 extent these provisions are authorized under the memorandum of
12 understanding specified in subdivision (j) of Section 14132.275,
13 the following shall apply:

14 (a) The demonstration site shall not combine the rates of
15 payment for post-acute skilled and rehabilitation care provided by
16 a nursing facility and long-term and chronic care provided by a
17 nursing facility in order to establish a single payment rate for dual
18 eligible beneficiaries requiring skilled nursing services.

19 (b) The demonstration site shall pay nursing facilities providing
20 post-acute skilled and rehabilitation care or long-term and chronic
21 care rates that reflect the different level of services and intensity
22 required to provide these services.

23 (c) For the purposes of determining the appropriate rate for the
24 type of care identified in subdivision (b), the demonstration site
25 shall pay no less than the recognized rates under Medicare and
26 Medi-Cal for these service types.

27 (d) With respect to services under this section, the demonstration
28 site shall not offer, and the nursing facility shall not accept, any
29 discounts, rebates, or refunds as compensation or inducements for
30 the referral of patients or residents.

31 (e) It is the intent of the Legislature that savings under the
32 demonstration ~~projects~~ *project* be achieved through shifts in
33 utilization, and not through reduced reimbursement rates to
34 providers.

35 (f) In order to encourage quality improvement and promote
36 appropriate utilization incentives, including reduced
37 rehospitalization and shorter lengths of stay, for nursing facilities
38 providing the services under this section, the demonstration sites
39 may do any of the following:

1 (1) Utilize incentive or bonus payment programs that are in
2 addition to the rates identified in subdivisions (b) and (c).

3 (2) Opt to direct beneficiaries to facilities that demonstrate better
4 performance on quality or appropriate utilization factors.

5 SEC. 220. Section 14169.32 of the Welfare and Institutions
6 Code is amended to read:

7 14169.32. (a) There shall be imposed on each general acute
8 care hospital that is not an exempt facility a quality assurance fee,
9 provided that a quality assurance fee under this article shall not be
10 imposed on a converted hospital.

11 (b) The quality assurance fee shall be computed starting on July
12 1, 2011, and continue through and including December 31, 2013.

13 (c) Subject to Section 14169.34, upon receipt of federal
14 approval, the following shall become operative:

15 (1) Within 10 business days following receipt of the notice of
16 federal approval from the federal government, the department shall
17 send notice to each hospital subject to the quality assurance fee,
18 and publish on its Internet Web site, the following information:

19 (A) The date that the state received notice of federal approval.

20 (B) The fee percentage for each subject fiscal year.

21 (2) The notice to each hospital subject to the quality assurance
22 fee shall also state the following:

23 (A) The aggregate quality assurance fee after the application of
24 the fee percentage for each subject fiscal year.

25 (B) The aggregate quality assurance fee.

26 (C) The amount of each payment due from the hospital with
27 respect to the aggregate quality assurance fee.

28 (D) The date on which each payment is due.

29 (3) The hospitals shall pay the aggregate quality assurance fee
30 after application of the fee percentage for all subject fiscal years
31 in 10 installments. The department shall establish the date that
32 each installment is due, provided that the first installment shall be
33 due no earlier than 20 days following the department sending the
34 notice pursuant to paragraph (1), and the installments shall be paid
35 at least one month apart, but if possible, the installments shall be
36 paid on a quarterly basis.

37 (4) Notwithstanding any other provision of this section, the
38 amount of each hospital’s aggregate quality assurance fee after
39 the application of the fee percentage for each subject fiscal year
40 that has not been paid by the hospital before December 15, 2013,

1 pursuant to paragraphs (3) and (8), shall be paid by the hospital
2 no later than December 15, 2013.

3 (5) (A) Notwithstanding subdivision (l) of Section 14169.31,
4 for the purpose of determining the installments under paragraph
5 (3), the department shall use an interim fee percentage as follows:

6 (i) One hundred percent for subject fiscal year 2011–12 until
7 the federal government has approved or disapproved additional
8 capitation payments described in Section 14169.5 for that subject
9 fiscal year.

10 (ii) One hundred percent for subject fiscal year 2012–13 until
11 the federal government has approved or disapproved additional
12 capitation payments described in Section 14169.5 for that subject
13 fiscal year.

14 (iii) Fifty percent for subject fiscal year 2013–14 until the federal
15 government has approved or disapproved additional capitation
16 payments described in Section 14169.5 for that subject fiscal year.

17 (B) The director may use a lower interim fee percentage for
18 each subject fiscal year under this paragraph as the director, in his
19 or her discretion, determines is reasonable in order to generate
20 sufficient but not excessive installment payments to make the
21 payments described in subdivision (b) of Section 14169.33.

22 (6) The director shall determine the final fee percentage for each
23 subject fiscal year within 15 days of the approval or disapproval,
24 in whole or in part, by the federal government of all changes to
25 the capitation rates of managed health care plans requested by the
26 department to implement Section 14169.5 for that subject fiscal
27 year, but in no event later than December 1, 2013. At the time the
28 director determines the final fee percentage for a subject fiscal
29 year, the director shall also determine the amount of future
30 installment payments of the quality assurance fee for each hospital
31 subject to the fee, if any are due. The amount of each future
32 installment payment shall be established by the director with the
33 objective that the total of the installment payments of the quality
34 assurance fee due from a hospital shall equal the director's estimate
35 for each subject fiscal year for the hospital of the aggregate quality
36 assurance fee after the application of the fee percentage.

37 (7) The director, within 15 days of determining the final fee
38 percentage for a subject fiscal year pursuant to paragraph (6), shall
39 send notice to each hospital subject to the quality assurance fee of
40 the following information:

- 1 (A) The final fee percentage for each subject fiscal year for
- 2 which the final fee percentage has been determined.
- 3 (B) The fee percentage determined under paragraph (5) for each
- 4 subject fiscal year for which the final fee percentage has not been
- 5 determined.
- 6 (C) The aggregate quality assurance fee after application of the
- 7 fee percentage for each subject fiscal year.
- 8 (D) The director’s estimate of total quality assurance fee
- 9 payments due from the hospital under this article whether or not
- 10 paid. This amount shall be the sum of the aggregate quality
- 11 assurance fee after application of the fee percentage for each
- 12 subject fiscal year using the fee percentages contained in the notice.
- 13 (E) The total quality assurance fee payments that the hospital
- 14 has made under this article.
- 15 (F) The amount, if any, by which the total quality assurance fee
- 16 payments due from the hospital under this article as described in
- 17 subparagraph (C) exceed the total quality assurance fee payments
- 18 that the hospital has made under this article.
- 19 (G) The amount of each remaining installment of the quality
- 20 assurance fee, if any, due from the hospital and the date each
- 21 installment is due. This amount shall be the amount described in
- 22 subparagraph ~~(E)~~ (F) divided by the number of installment
- 23 payments remaining.
- 24 (8) Each hospital that is sent a notice under paragraph (7) shall
- 25 pay the additional installments of the quality assurance fee that
- 26 are due, if any, in the amounts and at the times set forth in the
- 27 notice unless superseded by a subsequent notice from the
- 28 department.
- 29 (9) The department shall refund to a hospital paying the quality
- 30 assurance fee the amount, if any, by which the total quality
- 31 assurance fee payments that the hospital has made under this article
- 32 for all subject fiscal years exceed the total quality assurance fee
- 33 payments due from the hospital under this article within 30 days
- 34 of the date on which the notice is sent to the hospital under
- 35 paragraph (7).
- 36 (d) The quality assurance fee, as paid pursuant to this section,
- 37 shall be paid by each hospital subject to the fee to the department
- 38 for deposit in the Hospital Quality Assurance Revenue Fund.
- 39 Deposits may be accepted at any time and will be credited toward
- 40 the program period.

1 (e) This section shall become inoperative if the federal Centers
2 for Medicare and Medicaid Services denies approval for, or does
3 not approve before July 1, 2014, the implementation of the quality
4 assurance fee pursuant to this article or the supplemental payments
5 to private hospitals described in Sections 14169.2 and 14169.3,
6 and either or both provisions cannot be modified by the department
7 pursuant to subdivision (d) of Section 14169.33 in order to meet
8 the requirements of federal law or to obtain federal approval.

9 (f) In no case shall the aggregate fees collected in a federal fiscal
10 year pursuant to this section, Section 14167.32, and Section
11 14168.32 exceed the maximum percentage of the annual aggregate
12 net patient revenue for hospitals subject to the fee that is prescribed
13 pursuant to federal law and regulations as necessary to preclude a
14 finding that an indirect guarantee has been created.

15 (g) (1) Interest shall be assessed on quality assurance fees not
16 paid on the date due at the greater of 10 percent per annum or the
17 rate at which the department assesses interest on Medi-Cal program
18 overpayments to hospitals that are not repaid when due. Interest
19 shall begin to accrue the day after the date the payment was due
20 and shall be deposited in the Hospital Quality Assurance Revenue
21 Fund.

22 (2) In the event that any fee payment is more than 60 days
23 overdue, a penalty equal to the interest charge described in
24 paragraph (1) shall be assessed and due for each month for which
25 the payment is not received after 60 days.

26 (h) When a hospital fails to pay all or part of the quality
27 assurance fee on or before the date that payment is due, the
28 department may immediately begin to deduct the unpaid assessment
29 and interest from any Medi-Cal payments owed to the hospital,
30 or, in accordance with Section 12419.5 of the Government Code,
31 from any other state payments owed to the hospital until the full
32 amount is recovered. All amounts, except penalties, deducted by
33 the department under this subdivision shall be deposited in the
34 Hospital Quality Assurance Revenue Fund. The remedy provided
35 to the department by this section is in addition to other remedies
36 available under law.

37 (i) The payment of the quality assurance fee shall not be
38 considered as an allowable cost for Medi-Cal cost reporting and
39 reimbursement purposes.

1 (j) The department shall work in consultation with the hospital
2 community to implement this article and Article 5.228
3 (commencing with Section 14169.1).

4 (k) This subdivision creates a contractually enforceable promise
5 on behalf of the state to use the proceeds of the quality assurance
6 fee, including any federal matching funds, solely and exclusively
7 for the purposes set forth in this article as they existed on ~~the~~
8 ~~effective date of this article~~ *September 16, 2011*, to limit the
9 amount of the proceeds of the quality assurance fee to be used to
10 pay for the health care coverage of children to the amounts
11 specified in this article, to limit any payments for the department's
12 costs of administration to the amounts set forth in this article on
13 ~~the effective date of this article~~ *September 16, 2011*, to maintain
14 and continue prior reimbursement levels as set forth in Section
15 14169.12 on ~~the effective date of that article~~ *September 16, 2011*,
16 and to otherwise comply with all its obligations set forth in Article
17 5.228 (commencing with Section 14169.1) and this article provided
18 that amendments that arise from, or have as a basis, a decision,
19 advice, or determination by the federal Centers for Medicare and
20 Medicaid Services relating to federal approval of the quality
21 assurance fee or the payments set forth in this article or Article
22 5.228 (commencing with Section 14169.1) shall control for the
23 purposes of this subdivision.

24 (l) (1) Effective January 1, 2014, the rates payable to hospitals
25 and managed health care plans under Medi-Cal shall be the rates
26 then payable without the supplemental and increased capitation
27 payments set forth in Article 5.228 (commencing with Section
28 14169.1).

29 (2) The supplemental payments and other payments under
30 Article 5.228 (commencing with Section 14169.1) shall be regarded
31 as quality assurance payments, the implementation or suspension
32 of which does not affect a determination of the adequacy of any
33 rates under federal law.

34 (m) (1) Subject to paragraph (2), the director may waive any
35 or all interest and penalties assessed under this article in the event
36 that the director determines, in his or her sole discretion, that the
37 hospital has demonstrated that imposition of the full quality
38 assurance fee on the timelines applicable under this article has a
39 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 ~~shall~~ *is* not
11 be 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 5.226 (commencing with Section 14168.1) and Article~~
26 5.227 (commencing with Section 14168.31), are remitted to the
27 department under a payment plan or for any other reason, and the
28 final date for calculating the final supplemental payments under
29 those articles has passed, ~~then~~ those fee payments shall be
30 deposited in the fund to support the uses established by this article.

31 SEC. 221. Section 14182 of the Welfare and Institutions Code
32 is amended to read:

33 14182. (a) (1) In furtherance of the waiver or demonstration
34 project developed pursuant to Section 14180, the department may
35 require seniors and persons with disabilities who do not have other
36 health coverage to be assigned as mandatory enrollees into new
37 or existing managed care health plans. To the extent that enrollment
38 is required by the department, an enrollee's access to
39 fee-for-service Medi-Cal shall not be terminated until the enrollee
40 has been assigned to a managed care health plan.

1 (2) For purposes of this section:

2 (A) “Other health coverage” means health coverage providing
3 the same full or partial benefits as the Medi-Cal program, health
4 coverage under another state or federal medical care program, or
5 health coverage under contractual or legal entitlement, including,
6 but not limited to, a private group or indemnification insurance
7 program.

8 (B) “Managed care health plan” means an individual,
9 organization, or entity that enters into a contract with the
10 department pursuant to Article 2.7 (commencing with Section
11 14087.3), Article 2.81 (commencing with Section 14087.96),
12 Article 2.91 (commencing with Section 14089), or Chapter 8
13 (commencing with Section 14200).

14 (b) In exercising its authority pursuant to subdivision (a), the
15 department shall do all of the following:

16 (1) Assess and ensure the readiness of the managed care health
17 plans to address the unique needs of seniors or persons with
18 disabilities pursuant to the applicable readiness evaluation criteria
19 and requirements set forth in paragraphs (1) to (8), inclusive, of
20 subdivision (b) of Section 14087.48.

21 (2) Ensure the managed care health plans provide access to
22 providers that comply with applicable state and federal laws,
23 including, but not limited to, physical accessibility and the
24 provision of health plan information in alternative formats.

25 (3) Develop and implement an outreach and education program
26 for seniors and persons with disabilities, not currently enrolled in
27 Medi-Cal managed care, to inform them of their enrollment options
28 and rights under the demonstration project. Contingent upon
29 available private or public dollars other than moneys from the
30 General Fund, the department or its designated agent for enrollment
31 and outreach may partner or contract with community-based,
32 nonprofit consumer or health insurance assistance organizations
33 with expertise and experience in assisting seniors and persons with
34 disabilities in understanding their health care coverage options.
35 Contracts entered into or amended pursuant to this paragraph shall
36 be exempt from Chapter 2 (commencing with Section 10290) of
37 Part 2 of Division 2 of the Public Contract Code and any
38 implementing regulations or policy directives.

39 (4) At least three months prior to enrollment, inform
40 beneficiaries who are seniors or persons with disabilities, through

1 a notice written at no more than a sixth grade reading level, about
2 the forthcoming changes to their delivery of care, including, at a
3 minimum, how their system of care will change, when the changes
4 will occur, and who they can contact for assistance with choosing
5 a delivery system or with problems they encounter. In developing
6 this notice, the department shall consult with consumer
7 representatives and other stakeholders.

8 (5) Implement an appropriate cultural awareness and sensitivity
9 training program regarding serving seniors and persons with
10 disabilities for managed care health plans and plan providers and
11 staff in the Medi-Cal Managed Care Division of the department.

12 (6) Establish a process for assigning enrollees into an organized
13 delivery system for beneficiaries who do not make an affirmative
14 selection of a managed care health plan. The department shall
15 develop this process in consultation with stakeholders and in a
16 manner consistent with the waiver or demonstration project
17 developed pursuant to Section 14180. The department shall base
18 plan assignment on an enrollee's existing or recent utilization of
19 providers, to the extent possible. If the department is unable to
20 make an assignment based on the enrollee's affirmative selection
21 or utilization history, the department shall base plan assignment
22 on factors, including, but not limited to, plan quality and the
23 inclusion of local health care safety net system providers in the
24 plan's provider network.

25 (7) Review and approve the mechanism or algorithm that has
26 been developed by the managed care health plan, in consultation
27 with their stakeholders and consumers, to identify, within the
28 earliest possible timeframe, persons with higher risk and more
29 complex health care needs pursuant to paragraph (11) of
30 subdivision (c).

31 (8) Provide managed care health plans with historical utilization
32 data for beneficiaries upon enrollment in a managed care health
33 plan so that the plans participating in the demonstration project
34 are better able to assist beneficiaries and prioritize assessment and
35 care planning.

36 (9) Develop and provide managed care health plans participating
37 in the demonstration project with a facility site review tool for use
38 in assessing the physical accessibility of providers, including
39 specialists and ancillary service providers that provide care to a
40 high volume of seniors and persons with disabilities, at a clinic or

1 provider site, to ensure that there are sufficient physically
2 accessible providers. Every managed care health plan participating
3 in the demonstration project shall make the results of the facility
4 site review tool publicly available on their Internet Web site and
5 shall regularly update the results to the department's satisfaction.

6 (10) Develop a process to enforce legal sanctions, including,
7 but not limited to, financial penalties, withholding of Medi-Cal
8 payments, enrollment termination, and contract termination, in
9 order to sanction any managed care health plan in the
10 demonstration project that consistently or repeatedly fails to meet
11 performance standards provided in statute or contract.

12 (11) Ensure that managed care health plans provide a mechanism
13 for enrollees to request a specialist or clinic as a primary care
14 provider. A specialist or clinic may serve as a primary care provider
15 if the specialist or clinic agrees to serve in a primary care provider
16 role and is qualified to treat the required range of conditions of the
17 enrollee.

18 (12) Ensure that managed care health plans participating in the
19 demonstration project are able to provide communication access
20 to seniors and persons with disabilities in alternative formats or
21 through other methods that ensure communication, including
22 assistive listening systems, sign language interpreters, captioning,
23 written communication, plain language or written translations and
24 oral interpreters, including for those who are limited
25 English-proficient, or non-English speaking, and that all managed
26 care health plans are in compliance with applicable cultural and
27 linguistic requirements.

28 (13) Ensure that managed care health plans participating in the
29 demonstration project provide access to out-of-network providers
30 for new individual members enrolled under this section who have
31 an ongoing relationship with a provider if the provider will accept
32 the health plan's rate for the service offered, or the applicable
33 Medi-Cal fee-for-service rate, whichever is higher, and the health
34 plan determines that the provider meets applicable professional
35 standards and has no disqualifying quality of care issues.

36 (14) Ensure that managed care health plans participating in the
37 demonstration project comply with continuity of care requirements
38 in Section 1373.96 of the Health and Safety Code.

39 (15) Ensure that the medical exemption criteria applied in
40 counties operating under Chapter 4.1 (commencing with Section

1 53800) or Chapter 4.5 (commencing with Section 53900) of
2 Subdivision 1 of Division 3 of Title 22 of the California Code of
3 Regulations are applied to seniors and persons with disabilities
4 served under this section.

5 (16) Ensure that managed care health plans participating in the
6 demonstration project take into account the behavioral health needs
7 of enrollees and include behavioral health services as part of the
8 enrollee's care management plan when appropriate.

9 (17) Develop performance measures that are required as part
10 of the contract to provide quality indicators for the Medi-Cal
11 population enrolled in a managed care health plan and for the
12 subset of enrollees who are seniors and persons with disabilities.
13 These performance measures may include measures from the
14 Healthcare Effectiveness Data and Information Set (HEDIS) or
15 measures indicative of performance in serving special needs
16 populations, such as the National Committee for Quality Assurance
17 (NCQA) Structure and Process measures, or both.

18 (18) Conduct medical audit reviews of participating managed
19 care health plans that include elements specifically related to the
20 care of seniors and persons with disabilities. These medical audits
21 shall include, but not be limited to, evaluation of the delivery
22 model's policies and procedures, performance in utilization
23 management, continuity of care, availability and accessibility,
24 member rights, and quality management.

25 (19) Conduct financial audit reviews to ensure that a financial
26 statement audit is performed on managed care health plans annually
27 pursuant to the Generally Accepted Auditing Standards, and
28 conduct other risk-based audits for the purpose of detecting fraud
29 and irregular transactions.

30 (20) Ensure that managed care health plans maintain a dedicated
31 liaison to coordinate with the department, affected providers, and
32 new individual members for all of the following purposes:

33 (A) To ensure a mechanism for new members to obtain
34 continuity of care as described in paragraph (13).

35 (B) To receive notice, including that a new member has been
36 denied a medical exemption as described in paragraph (15), which
37 is required to include the name or names of the requesting provider,
38 and ensure that the provider's ability to treat the member is
39 continued as described in paragraphs (11) and (13), if applicable,

1 or, if not applicable, ensure the member is immediately referred
2 to a qualified provider or specialty care center.

3 (C) To assist new members in maintaining an ongoing
4 relationship with a specialist or specialty care center when the
5 specialist is contracting with the plan and the assigned primary
6 care provider has approved a standing referral pursuant to Section
7 1374.16 of the Health and Safety Code.

8 (21) Ensure that written notice is provided to the beneficiary
9 and the requesting provider if a request for exemption from plan
10 enrollment is denied. The notice shall set out with specificity the
11 reasons for the denial or failure to unconditionally approve the
12 request for exemption from plan enrollment. The notice shall
13 inform the beneficiary and the provider of the right to appeal the
14 decision, how to appeal the decision, and if the decision is not
15 appealed, that the beneficiary shall enroll in a Medi-Cal plan and
16 how that enrollment shall occur. The notice shall also include
17 information of the possibility of continued access to an
18 out-of-network provider pursuant to paragraph (13). A beneficiary
19 who has not been enrolled in a plan shall remain in fee-for-service
20 Medi-Cal if a request for an exemption from plan enrollment or
21 appeal is submitted, until the final resolution. The department shall
22 also require the plans to ensure that these beneficiaries receive
23 continuity of care.

24 (22) Develop a process to track a beneficiary who has been
25 denied a request for exemption from plan enrollment and to notify
26 the plan, if applicable, of the denial, including information
27 identifying the provider. Notwithstanding paragraph (12) of
28 subdivision (c), the plan shall immediately refer the beneficiary
29 for a risk assessment survey and an individual care plan shall be
30 developed within 10 days, including authorization for 30 days of
31 continuity of prescription drugs.

32 (c) Prior to exercising its authority under this section and Section
33 14180, the department shall ensure that each managed care health
34 plan participating in the demonstration project is able to do all of
35 the following:

36 (1) Comply with the applicable readiness evaluation criteria
37 and requirements set forth in paragraphs (1) to (8), inclusive, of
38 subdivision (b) of Section 14087.48.

39 (2) Ensure and monitor an appropriate provider network,
40 including primary care physicians, specialists, professional, allied,

1 and medical supportive personnel, and an adequate number of
2 accessible facilities within each service area. Managed care health
3 plans shall maintain an updated, accurate, and accessible listing
4 of a provider's ability to accept new patients and shall make it
5 available to enrollees, at a minimum, by phone, written material,
6 and Internet Web site.

7 (3) Assess the health care needs of beneficiaries who are seniors
8 or persons with disabilities and coordinate their care across all
9 settings, including coordination of necessary services within and,
10 where necessary, outside of the plan's provider network.

11 (4) Ensure that the provider network and informational materials
12 meet the linguistic and other special needs of seniors and persons
13 with disabilities, including providing information in an
14 understandable manner in plain language, maintaining toll-free
15 telephone lines, and offering member or ombudsperson services.

16 (5) Provide clear, timely, and fair processes for accepting and
17 acting upon complaints, grievances, and disenrollment requests,
18 including procedures for appealing decisions regarding coverage
19 or benefits. Each managed care health plan participating in the
20 demonstration project shall have a grievance process that complies
21 with Section 14450, and Sections 1368 and 1368.01 of the Health
22 and Safety Code.

23 (6) Solicit stakeholder and member participation in advisory
24 groups for the planning and development activities related to the
25 provision of services for seniors and persons with disabilities.

26 (7) Contract with safety net and traditional providers as defined
27 in subdivisions (hh) and (jj) of Section 53810, of Title 22 of the
28 California Code of Regulations, to ensure access to care and
29 services. The managed care health plan shall establish participation
30 standards to ensure participation and broad representation of
31 traditional and safety net providers within a service area.

32 (8) Inform seniors and persons with disabilities of procedures
33 for obtaining transportation services to service sites that are offered
34 by the plan or are available through the Medi-Cal program.

35 (9) Monitor the quality and appropriateness of care for children
36 with special health care needs, including children eligible for, or
37 enrolled in, the California ~~Children~~ *Children's* Services Program,
38 and seniors and persons with disabilities.

39 (10) Maintain a dedicated liaison to coordinate with each
40 regional center operating within the plan's service area to assist

1 members with developmental disabilities in understanding and
2 accessing services and act as a central point of contact for
3 questions, access and care concerns, and problem resolution.

4 (11) At the time of enrollment apply the risk stratification
5 mechanism or algorithm described in paragraph (7) of subdivision
6 (b) approved by the department to determine the health risk level
7 of beneficiaries.

8 (12) (A) Managed care health plans shall assess an enrollee's
9 current health risk by administering a risk assessment survey tool
10 approved by the department. This risk assessment survey shall be
11 performed within the following timeframes:

12 (i) Within 45 days of plan enrollment for individuals determined
13 to be at higher risk pursuant to paragraph (11).

14 (ii) Within 105 days of plan enrollment for individuals
15 determined to be at lower risk pursuant to paragraph (11).

16 (B) Based on the results of the current health risk assessment,
17 managed care health plans shall develop individual care plans for
18 higher risk beneficiaries that shall include the following minimum
19 components:

20 (i) Identification of medical care needs, including primary care,
21 specialty care, durable medical equipment, medications, and other
22 needs with a plan for care coordination as needed.

23 (ii) Identification of needs and referral to appropriate community
24 resources and other agencies as needed for services outside the
25 scope of responsibility of the managed care health plan.

26 (iii) Appropriate involvement of caregivers.

27 (iv) Determination of timeframes for reassessment and, if
28 necessary, circumstances or conditions that require redetermination
29 of risk level.

30 (13) (A) Establish medical homes to which enrollees are
31 assigned that include, at a minimum, all of the following elements,
32 which shall be considered in the provider contracting process:

33 (i) A primary care physician who is the primary clinician for
34 the beneficiary and who provides core clinical management
35 functions.

36 (ii) Care management and care coordination for the beneficiary
37 across the health care system including transitions among levels
38 of care.

1 (iii) Provision of referrals to qualified professionals, community
2 resources, or other agencies for services or items outside the scope
3 of responsibility of the managed care health plan.

4 (iv) Use of clinical data to identify beneficiaries at the care site
5 with chronic illness or other significant health issues.

6 (v) Timely preventive, acute, and chronic illness treatment in
7 the appropriate setting.

8 (vi) Use of clinical guidelines or other evidence-based medicine
9 when applicable for treatment of beneficiaries' health care issues
10 or timing of clinical preventive services.

11 (B) In implementing this section, and the Special Terms and
12 Conditions of the demonstration project, the department may alter
13 the medical home elements described in this paragraph as necessary
14 to secure the increased federal financial participation associated
15 with the provision of medical assistance in conjunction with a
16 health home, as made available under the federal Patient Protection
17 and Affordable Care Act (Public Law 111-148), as amended by
18 the federal Health Care and Education Reconciliation Act of 2010
19 (Public Law 111-152), and codified in Section 1945 of Title XIX
20 of the federal Social Security Act. The department shall notify the
21 appropriate policy and fiscal committees of the Legislature of its
22 intent to alter medical home elements under this section at least
23 five days in advance of taking this action.

24 (14) Perform, at a minimum, the following care management
25 and care coordination functions and activities for enrollees who
26 are seniors or persons with disabilities:

27 (A) Assessment of each new enrollee's risk level and health
28 needs shall be conducted through a standardized risk assessment
29 survey by means such as telephonic, Web-based, or in-person
30 communication or by other means as determined by the department.

31 (B) Facilitation of timely access to primary care, specialty care,
32 durable medical equipment, medications, and other health services
33 needed by the enrollee, including referrals to address any physical
34 or cognitive barriers to access.

35 (C) Active referral to community resources or other agencies
36 for needed services or items outside the managed care health plans
37 responsibilities.

38 (D) Facilitating communication among the beneficiaries' health
39 care providers, including mental health and substance abuse
40 providers when appropriate.

1 (E) Other activities or services needed to assist beneficiaries in
2 optimizing their health status, including assisting with
3 self-management skills or techniques, health education, and other
4 modalities to improve health status.

5 (d) Except in a county where Medi-Cal services are provided
6 by a county organized health system, and notwithstanding any
7 other provision of law, in any county in which fewer than two
8 existing managed care health plans contract with the department
9 to provide Medi-Cal services under this chapter, the department
10 may contract with additional managed care health plans to provide
11 Medi-Cal services for seniors and persons with disabilities and
12 other Medi-Cal beneficiaries.

13 (e) Beneficiaries enrolled in managed care health plans pursuant
14 to this section shall have the choice to continue an established
15 patient-provider relationship in a managed care health plan
16 participating in the demonstration project if his or her treating
17 provider is a primary care provider or clinic contracting with the
18 managed care health plan and agrees to continue to treat that
19 beneficiary.

20 (f) The department may contract with existing managed care
21 health plans to operate under the demonstration project to provide
22 or arrange for services under this section. Notwithstanding any
23 other provision of law, the department may enter into the contract
24 without the need for a competitive bid process or other contract
25 proposal process, provided the managed care health plan provides
26 written documentation that it meets all qualifications and
27 requirements of this section.

28 (g) This section shall be implemented only to the extent that
29 federal financial participation is available.

30 (h) (1) The development of capitation rates for managed care
31 health plan contracts shall include the analysis of data specific to
32 the seniors and persons with disabilities population. For the
33 purposes of developing capitation rates for payments to managed
34 care health plans, the director may require managed care health
35 plans, including existing managed care health plans, to submit
36 financial and utilization data in a form, time, and substance as
37 deemed necessary by the department.

38 (2) (A) Notwithstanding Section 14301, the department may
39 incorporate, on a one-time basis for a three-year period, a
40 risk-sharing mechanism in a contract with the local initiative health

1 plan in the county with the highest normalized fee-for-service risk
2 score over the normalized managed care risk score listed in Table
3 1.0 of the Medi-Cal Acuity Study Seniors and Persons with
4 Disabilities (SPD) report written by Mercer Government Human
5 Services Consulting and dated September 28, 2010, if the local
6 initiative health plan meets the requirements of subparagraph (B).
7 The Legislature finds and declares that this risk-sharing mechanism
8 will limit the risk of beneficial or adverse effects associated with
9 a contract to furnish services pursuant to this section on an at-risk
10 basis.

11 (B) The local initiative health plan shall pay the nonfederal
12 share of all costs associated with the development, implementation,
13 and monitoring of the risk-sharing mechanism established pursuant
14 to subparagraph (A) by means of intergovernmental transfers. The
15 nonfederal share includes the state costs of staffing, state
16 contractors, or administrative costs directly attributable to
17 implementing subparagraph (A).

18 (C) This subdivision shall be implemented only to the extent
19 federal financial participation is not jeopardized.

20 (i) Persons meeting participation requirements for the Program
21 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
22 8.75 (commencing with Section 14591), may select a PACE plan
23 if one is available in that county.

24 (j) Persons meeting the participation requirements in effect on
25 January 1, 2010, for a Medi-Cal primary care case management
26 (PCCM) plan in operation on that date, may select that PCCM
27 plan or a successor health care plan that is licensed pursuant to the
28 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
29 (commencing with Section 1340) of Division 2 of the Health and
30 Safety Code) to provide services within the same geographic area
31 that the PCCM plan served on January 1, 2010.

32 (k) Notwithstanding Chapter 3.5 (commencing with Section
33 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
34 the department may implement, interpret, or make specific this
35 section and any applicable federal waivers and state plan
36 amendments by means of all-county letters, plan letters, plan or
37 provider bulletins, or similar instructions, without taking regulatory
38 action. Prior to issuing any letter or similar instrument authorized
39 pursuant to this section, the department shall notify and consult
40 with stakeholders, including advocates, providers, and

1 beneficiaries. The department shall notify the appropriate policy
2 and fiscal committees of the Legislature of its intent to issue
3 instructions under this section at least five days in advance of the
4 issuance.

5 (l) Consistent with state law that exempts Medi-Cal managed
6 care contracts from Chapter 2 (commencing with Section 10290)
7 of Part 2 of Division 2 of the Public Contract Code, and in order
8 to achieve maximum cost savings, the Legislature hereby
9 determines that an expedited contract process is necessary for
10 contracts entered into or amended pursuant to this section. The
11 contracts and amendments entered into or amended pursuant to
12 this section shall be exempt from Chapter 2 (commencing with
13 Section 10290) of Part 2 of Division 2 of the Public Contract Code
14 and the requirements of State Administrative Management Manual
15 Memo 03-10. The department shall make the terms of a contract
16 available to the public within 30 days of the contract's effective
17 date.

18 (m) In the event of a conflict between the Special Terms and
19 Conditions of the approved demonstration project, including any
20 attachment thereto, and any provision of this part, the Special
21 Terms and Conditions shall control. If the department identifies a
22 specific provision of this article that conflicts with a term or
23 condition of the approved waiver or demonstration project, or an
24 attachment thereto, the term or condition shall control, and the
25 department shall so notify the appropriate fiscal and policy
26 committees of the Legislature within 15 business days.

27 (n) In the event of a conflict between the provisions of this
28 article and any other provision of this part, the provisions of this
29 article shall control.

30 (o) Any otherwise applicable provisions of this chapter, Chapter
31 8 (commencing with Section 14200), or Chapter 8.75 (commencing
32 with Section ~~14500~~ 14591) not in conflict with this article or with
33 the terms and conditions of the demonstration project shall apply
34 to this section.

35 (p) To the extent that the director utilizes state plan amendments
36 or waivers to accomplish the purposes of this article in addition
37 to waivers granted under the demonstration project, the terms of
38 the state plan amendments or waivers shall control in the event of
39 a conflict with any provision of this part.

1 (q) (1) Enrollment of seniors and persons with disabilities into
2 a managed care health plan under this section shall be accomplished
3 using a phased-in process to be determined by the department and
4 shall not commence until necessary federal approvals have been
5 acquired or until June 1, 2011, whichever is later.

6 (2) Notwithstanding paragraph (1), and at the director's
7 discretion, enrollment in Los Angeles County of seniors and
8 persons with disabilities may be phased-in over a 12-month period
9 using a geographic region method that is proposed by Los Angeles
10 County subject to approval by the department.

11 (r) A managed care health plan established pursuant to this
12 section, or under the Special Terms and Conditions of the
13 demonstration project pursuant to Section 14180, shall be subject
14 to, and comply with, the requirement for submission of encounter
15 data specified in Section 14182.1.

16 (s) (1) Commencing January 1, 2011, and until January 1, 2014,
17 the department shall provide the fiscal and policy committees of
18 the Legislature with semiannual updates regarding core activities
19 for the enrollment of seniors and persons with disabilities into
20 managed care health plans pursuant to the pilot program. The
21 semiannual updates shall include key milestones, progress toward
22 the objectives of the pilot program, relevant or necessary changes
23 to the program, submittal of state plan amendments to the federal
24 Centers for Medicare and Medicaid Services, submittal of any
25 federal waiver documents, and other key activities related to the
26 mandatory enrollment of seniors and persons with disabilities into
27 managed care health plans. The department shall also include
28 updates on the transition of individuals into managed care health
29 plans, the health outcomes of enrollees, the care management and
30 coordination process, and other information concerning the success
31 or overall status of the pilot program.

32 (2) (A) The requirement for submitting a report imposed under
33 paragraph (1) is inoperative on January 1, 2015, pursuant to Section
34 10231.5 of the Government Code.

35 (B) A report to be submitted pursuant to paragraph (1) shall be
36 submitted in compliance with Section 9795 of the Government
37 Code.

38 (t) The department, in collaboration with the State Department
39 of Social Services and county welfare departments, shall monitor
40 the utilization and caseload of the In-Home Supportive Services

1 (IHSS) program before and during the implementation of the pilot
2 program. This information shall be monitored in order to identify
3 the impact of the pilot program on the IHSS program for the
4 affected population.

5 (u) Services under Section 14132.95 or 14132.952, or Article
6 7 (commencing with Section 12300) of Chapter 3 that are provided
7 to individuals assigned to managed care health plans under this
8 section shall be provided through direct hiring of personnel,
9 contract, or establishment of a public authority or nonprofit
10 consortium, in accordance with and subject to the requirements of
11 Section 12302 or 12301.6, as applicable.

12 (v) The department shall, at a minimum, monitor on a quarterly
13 basis the adequacy of provider networks of the managed care health
14 plans.

15 (w) The department shall suspend new enrollment of seniors
16 and persons with disabilities into a managed care health plan if it
17 determines that the managed care health plan does not have
18 sufficient primary or specialty providers to meet the needs of their
19 enrollees.

20 SEC. 222. Section 14182.16 of the Welfare and Institutions
21 Code is amended to read:

22 14182.16. (a) The department shall require Medi-Cal
23 beneficiaries who have dual eligibility in Medi-Cal and the
24 Medicare Program to be assigned as mandatory enrollees into new
25 or existing Medi-Cal managed care health plans for their Medi-Cal
26 benefits in counties participating in the demonstration project
27 pursuant to Section 14132.275.

28 (b) For the purposes of this section and Section 14182.17, the
29 following definitions shall apply:

30 (1) “Dual eligible beneficiary” means an individual 21 years of
31 age or older who is enrolled for benefits under Medicare Part A
32 (42 U.S.C. Sec. 1395c et seq.) or Medicare Part B (42 U.S.C. Sec.
33 1395j et seq.), or both, and is eligible for medical assistance under
34 the Medi-Cal State Plan.

35 (2) “Full-benefit dual eligible beneficiary” means an individual
36 21 years of age or older who is eligible for benefits under Medicare
37 Part A (42 U.S.C. Sec. 1395c et seq.), Medicare Part B (42 U.S.C.
38 Sec. 1395j et seq.), and Medicare Part D (42 U.S.C. Sec.
39 1395w-101), and is eligible for medical assistance under the
40 Medi-Cal State Plan.

1 (3) “Managed care health plan” means an individual,
2 organization, or entity that enters into a contract with the
3 department pursuant to Article 2.7 (commencing with Section
4 14087.3), Article 2.81 (commencing with Section 14087.96), or
5 Article 2.91 (commencing with Section 14089), of this chapter,
6 or Chapter 8 (commencing with Section 14200).

7 (4) “Other health coverage” means health coverage providing
8 the same full or partial benefits as the Medi-Cal program, health
9 coverage under another state or federal medical care program
10 except for the Medicare Program (Title XVIII of the federal Social
11 Security Act (42 U.S.C. Sec. 1395 et seq.)), or health coverage
12 under a contractual or legal entitlement, including, but not limited
13 to, a private group or indemnification insurance program.

14 (5) “Out-of-network Medi-Cal provider” means a health care
15 provider that does not have an existing contract with the
16 beneficiary’s managed care health plan or its subcontractors.

17 (6) “Partial-benefit dual eligible beneficiary” means an
18 individual 21 years of age or older who is enrolled for benefits
19 under Medicare Part A (42 U.S.C. Sec. 1395c et seq.), but not
20 Medicare Part B (42 U.S.C. Sec. 1395j et seq.), or who is eligible
21 for Medicare Part B (42 U.S.C. Sec. 1395j et seq.), but not
22 Medicare Part A (42 U.S.C. Sec. 1395c et seq.), and is eligible for
23 medical assistance under the Medi-Cal State Plan.

24 (c) (1) Notwithstanding subdivision (a), a dual eligible
25 beneficiary is exempt from mandatory enrollment in a managed
26 care health plan if the dual eligible beneficiary meets any of the
27 following:

28 (A) Except in counties with county organized health systems
29 operating pursuant to Article 2.8 (commencing with Section
30 14087.5), the beneficiary has other health coverage.

31 (B) The beneficiary receives services through a foster care
32 program, including the program described in Article 5
33 (commencing with Section 11400) of Chapter 2.

34 (C) The beneficiary is under 21 years of age.

35 (D) The beneficiary is not eligible for enrollment in managed
36 care health plans for medically necessary reasons determined by
37 the department.

38 (E) The beneficiary resides in one of the ~~Veterans~~ *Veterans’*
39 Homes of California, as described in Chapter 1 (commencing with
40 Section 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) ~~of~~
10 ~~Chapter 7.~~

11 (2) A beneficiary who has been diagnosed with HIV/AIDS is
12 not exempt from mandatory enrollment, but may opt out of
13 managed care enrollment at the beginning of any month.

14 (d) Implementation of this section shall incorporate the
15 provisions of Section 14182.17 that are applicable to beneficiaries
16 eligible for benefits under Medi-Cal and the Medicare Program.

17 (e) At the director's sole discretion, in consultation with
18 stakeholders, the department may determine and implement a
19 phased-in enrollment approach that may include Medi-Cal
20 beneficiary enrollment into managed care health plans immediately
21 upon implementation of this section in a specific county, over a
22 12-month period, or other phased approach. The phased-in
23 enrollment shall commence no sooner than March 1, 2013, and
24 not until all necessary federal approvals have been obtained.

25 (f) To the extent that mandatory enrollment is required by the
26 department, an enrollee's access to fee-for-service Medi-Cal shall
27 not be terminated until the enrollee has selected or been assigned
28 to a managed care health plan.

29 (g) Except in a county where Medi-Cal services are provided
30 by a county organized health system, and notwithstanding any
31 other law, in any county in which fewer than two existing managed
32 health care plans contract with the department to provide Medi-Cal
33 services under this chapter that are available to dual eligible
34 beneficiaries, including long-term services and supports, the
35 department may contract with additional managed care health plans
36 to provide Medi-Cal services.

37 (h) For partial-benefit dual eligible beneficiaries, the department
38 shall inform these beneficiaries of their rights to continuity of care
39 from out-of-network Medi-Cal providers pursuant to subparagraph
40 (G) of paragraph (5) of subdivision (d) of Section 14182.17, and

1 that the need for medical exemption criteria applied to counties
2 operating under Chapter 4.1 (commencing with Section 53800) of
3 Subdivision 1 of Division 3 of Title 22 of the California Code of
4 Regulations may not be necessary to continue receiving Medi-Cal
5 services from an out-of-network provider.

6 (i) The department may contract with existing managed care
7 health plans to provide or arrange for services under this section.
8 Notwithstanding any other law, the department may enter into the
9 contract without the need for a competitive bid process or other
10 contract proposal process, provided that the managed care health
11 plan provides written documentation that it meets all of the
12 qualifications and requirements of this section and Section
13 14182.17.

14 (j) The development of capitation rates for managed care health
15 plan contracts shall include the analysis of data specific to the dual
16 eligible population. For the purposes of developing capitation rates
17 for payments to managed care health plans, the department shall
18 require all managed care health plans, including existing managed
19 care health plans, to submit financial, encounter, and utilization
20 data in a form, at a time, and including substance as deemed
21 necessary by the department. Failure to submit the required data
22 shall result in the imposition of penalties pursuant to Section
23 14182.1.

24 (k) Persons meeting participation requirements for the Program
25 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
26 8.75 (commencing with Section 14591) may select a PACE plan
27 if one is available in that county.

28 (l) Except for dual eligible beneficiaries participating in the
29 demonstration project pursuant to Section 14132.275, persons
30 meeting the participation requirements in effect on January 1,
31 2010, for a Medi-Cal primary case management plan in operation
32 on that date, may select that primary care case management plan
33 or a successor health care plan that is licensed pursuant to 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) to provide services within the same geographic area
37 that the primary care case management plan served on January 1,
38 2010.

39 (m) The department may implement an intergovernmental
40 transfer arrangement with a public entity that elects to transfer

1 public funds to the state to be used solely as the nonfederal share
2 of Medi-Cal payments to managed care health plans for the
3 provision of services to dual eligible beneficiaries pursuant to
4 Section 14182.15.

5 (n) To implement this section, the department may contract with
6 public or private entities. Contracts or amendments entered into
7 under this section may be on an exclusive or nonexclusive basis
8 and on a noncompetitive bid basis and shall be exempt from all of
9 the following:

10 (1) Part 2 (commencing with Section 10100) of Division 2 of
11 the Public Contract Code and any policies, procedures, or
12 regulations authorized by that part.

13 (2) Article 4 (commencing with Section 19130) of Chapter 5
14 of Part 2 of Division 5 of Title 2 of the Government Code.

15 (3) Review or approval of contracts by the Department of
16 General Services.

17 (o) Any otherwise applicable provisions of this chapter, Chapter
18 8 (commencing with Section 14200), or Chapter 8.75 (commencing
19 with Section 14591) not in conflict with this section or with the
20 Special Terms and Conditions of the waiver shall apply to this
21 section.

22 (p) The department shall, in coordination with and consistent
23 with an interagency agreement with the Department of Managed
24 Health Care, at a minimum, monitor on a quarterly basis the
25 adequacy of provider networks of the managed care health plans.

26 (q) The department shall suspend new enrollment of dual eligible
27 beneficiaries into a managed care health plan if it determines that
28 the managed care health plan does not have sufficient primary or
29 specialty care providers and long-term-service *services* and supports
30 to meet the needs of its enrollees.

31 (r) Managed care health plans shall pay providers in accordance
32 with Medicare and Medi-Cal coordination of benefits.

33 (s) This section shall be implemented only to the extent that all
34 federal approvals and waivers are obtained and only if and to the
35 extent that federal financial participation is available.

36 (t) Notwithstanding Chapter 3.5 (commencing with Section
37 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
38 the department may implement, interpret, or make specific this
39 section and any applicable federal waivers and state plan
40 amendments by means of all-county letters, plan letters, plan or

1 provider bulletins, or similar instructions, without taking regulatory
2 action. Prior to issuing any letter or similar instrument authorized
3 pursuant to this section, the department shall notify and consult
4 with stakeholders, including advocates, providers, and
5 beneficiaries. The department shall notify the appropriate policy
6 and fiscal committees of the Legislature of its intent to issue
7 instructions under this section at least five days in advance of the
8 issuance.

9 (u) A managed care health plan that contracts with the
10 department for the provision of services under this section shall
11 ensure that beneficiaries have access to the same categories of
12 licensed providers that are available under fee-for-service
13 Medicare. Nothing in this section shall prevent a managed care
14 health plan from contracting with selected providers within a
15 category of licensure.

16 SEC. 223. Section 15630 of the Welfare and Institutions Code
17 is amended to read:

18 15630. (a) Any person who has assumed full or intermittent
19 responsibility for the care or custody of an elder or dependent
20 adult, whether or not he or she receives compensation, including
21 administrators, supervisors, and any licensed staff of a public or
22 private facility that provides care or services for elder or dependent
23 adults, or any elder or dependent adult care custodian, health
24 practitioner, clergy member, or employee of a county adult
25 protective services agency or a local law enforcement agency, is
26 a mandated reporter.

27 (b) (1) Any mandated reporter who, in his or her professional
28 capacity, or within the scope of his or her employment, has
29 observed or has knowledge of an incident that reasonably appears
30 to be physical abuse, as defined in Section 15610.63, abandonment,
31 abduction, isolation, financial abuse, or neglect, or is told by an
32 elder or dependent adult that he or she has experienced behavior,
33 including an act or omission, constituting physical abuse, as defined
34 in Section 15610.63, abandonment, abduction, isolation, financial
35 abuse, or neglect, or reasonably suspects that abuse, shall report
36 the known or suspected instance of abuse by telephone or through
37 a confidential Internet reporting tool, as authorized by Section
38 15658, immediately or as soon as practicably possible. If reported
39 by telephone, a written report shall be sent, or an Internet report

1 shall be made through the confidential Internet reporting tool
2 established in Section 15658, within two working days:

3 (A) If the suspected or alleged abuse is physical abuse, as
4 defined in Section 15610.63, and the abuse occurred in a long-term
5 care facility, except a state mental health hospital or a state
6 developmental center, the following shall occur:

7 (i) If the suspected abuse results in serious bodily injury, a
8 telephone report shall be made to the local law enforcement agency
9 immediately, and no later than within two hours of the mandated
10 reporter observing, obtaining knowledge of, or suspecting the
11 physical abuse, and a written report shall be made to the local
12 ombudsman, the corresponding licensing agency, and the local
13 law enforcement agency within two hours of the mandated reporter
14 observing, obtaining knowledge of, or suspecting the physical
15 abuse.

16 (ii) If the suspected abuse does not result in serious bodily injury,
17 a telephone report shall be made to the local law enforcement
18 agency within 24 hours of the mandated reporter observing,
19 obtaining knowledge of, or suspecting the physical abuse, and a
20 written report shall be made to the local ombudsman, the
21 corresponding licensing agency, and the local law enforcement
22 agency within 24 hours of the mandated reporter observing,
23 obtaining knowledge of, or suspecting the physical abuse.

24 (iii) When the suspected abuse is allegedly caused by a resident
25 with a physician's diagnosis of dementia, and there is no serious
26 bodily injury, as reasonably determined by the mandated reporter,
27 drawing upon his or her training or experience, the reporter shall
28 report to the local ombudsman or law enforcement agency by
29 telephone, immediately or as soon as practicably possible, and by
30 written report, within 24 hours.

31 (iv) When applicable, reports made pursuant to clauses (i) and
32 (ii) shall be deemed to satisfy the reporting requirements of the
33 federal Elder Justice Act of 2009, as set out in Subtitle H of *Title*
34 *VI* of the federal Patient Protection and Affordable Care Act (Public
35 Law 111-148), Section 1418.91 of the Health and Safety Code,
36 and Section 72541 of Title 22 of California Code of Regulations.
37 When a local law enforcement agency receives an initial report of
38 suspected abuse in a long-term care facility pursuant to this
39 subparagraph, the local law enforcement agency may coordinate
40 efforts with the local ombudsman to provide the most immediate

1 and appropriate response warranted to investigate the mandated
2 report. The local ombudsman and local law enforcement agencies
3 may collaborate to develop protocols to implement this
4 subparagraph.

5 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
6 (commencing with Section 11340) of Part 1 of Division 3 of Title
7 2 of the Government Code, or any other law, the department may
8 implement subparagraph (A), in whole or in part, by means of
9 all-county letters, provider bulletins, or other similar instructions
10 without taking regulatory action.

11 (C) If the suspected or alleged abuse is abuse other than physical
12 abuse, and the abuse occurred in a long-term care facility, except
13 a state mental health hospital or a state developmental center, a
14 telephone report and a written report shall be made to the local
15 ombudsman or the local law enforcement agency.

16 (D) With regard to abuse reported pursuant to subparagraphs
17 (A) and (C), the local ombudsman and the local law enforcement
18 agency shall, as soon as practicable, except in the case of an
19 emergency or pursuant to a report required to be made pursuant
20 to clause (v), in which case these actions shall be taken
21 immediately, do all of the following:

22 (i) Report to the State Department of Public Health any case of
23 known or suspected abuse occurring in a long-term health care
24 facility, as defined in subdivision (a) of Section 1418 of the Health
25 and Safety Code.

26 (ii) Report to the State Department of Social Services any case
27 of known or suspected abuse occurring in a residential care facility
28 for the elderly, as defined in Section 1569.2 of the Health and
29 Safety Code, or in an adult day program, as defined in paragraph
30 (2) of subdivision (a) of Section 1502 of the Health and Safety
31 Code.

32 (iii) Report to the State Department of Public Health and the
33 California Department of Aging any case of known or suspected
34 abuse occurring in an adult day health care center, as defined in
35 subdivision (b) of Section 1570.7 of the Health and Safety Code.

36 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
37 any case of known or suspected criminal activity.

38 (v) Report all cases of known or suspected physical abuse and
39 financial abuse to the local district attorney's office in the county
40 where the abuse occurred.

1 (E) If the suspected or alleged abuse occurred in a state mental
2 hospital or a state developmental center, the report shall be made
3 to designated investigators of the State Department of State
4 Hospitals or the State Department of Developmental Services, or
5 to the local law enforcement agency.

6 (i) Except in an emergency, the local law enforcement agency
7 shall, as soon as practicable, report any case of known or suspected
8 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

9 (ii) Mandated reporters of the State Department of
10 Developmental Services shall immediately report suspected abuse
11 to the Office of Protective Services or to the local law enforcement
12 agency.

13 (F) If the abuse has occurred any place other than one described
14 in subparagraph (A), the report shall be made to the adult protective
15 services agency or the local law enforcement agency.

16 (2) (A) A mandated reporter who is a clergy member who
17 acquires knowledge or reasonable suspicion of elder or dependent
18 adult abuse during a penitential communication is not subject to
19 paragraph (1). For purposes of this subdivision, “penitential
20 communication” means a communication that is intended to be in
21 confidence, including, but not limited to, a sacramental confession
22 made to a clergy member who, in the course of the discipline or
23 practice of his or her church, denomination, or organization is
24 authorized or accustomed to hear those communications and under
25 the discipline tenets, customs, or practices of his or her church,
26 denomination, or organization, has a duty to keep those
27 communications secret.

28 (B) This subdivision shall not be construed to modify or limit
29 a clergy member’s duty to report known or suspected elder and
30 dependent adult abuse if he or she is acting in the capacity of a
31 care custodian, health practitioner, or employee of an adult
32 protective services agency.

33 (C) Notwithstanding any other provision in this section, a clergy
34 member who is not regularly employed on either a full-time or
35 part-time basis in a long-term care facility or does not have care
36 or custody of an elder or dependent adult shall not be responsible
37 for reporting abuse or neglect that is not reasonably observable or
38 discernible to a reasonably prudent person having no specialized
39 training or experience in elder or dependent care.

1 (3) (A) A mandated reporter who is a physician and surgeon,
2 a registered nurse, or a psychotherapist, as defined in Section 1010
3 of the Evidence Code, shall not be required to report, pursuant to
4 paragraph (1), an incident if all of the following conditions exist:

5 (i) The mandated reporter has been told by an elder or dependent
6 adult that he or she has experienced behavior constituting physical
7 abuse, as defined in Section 15610.63, abandonment, abduction,
8 isolation, financial abuse, or neglect.

9 (ii) The mandated reporter is not aware of any independent
10 evidence that corroborates the statement that the abuse has
11 occurred.

12 (iii) The elder or dependent adult has been diagnosed with a
13 mental illness or dementia, or is the subject of a court-ordered
14 conservatorship because of a mental illness or dementia.

15 (iv) In the exercise of clinical judgment, the physician and
16 surgeon, the registered nurse, or the psychotherapist, as defined
17 in Section 1010 of the Evidence Code, reasonably believes that
18 the abuse did not occur.

19 (B) This paragraph shall not be construed to impose upon
20 mandated reporters a duty to investigate a known or suspected
21 incident of abuse and shall not be construed to lessen or restrict
22 any existing duty of mandated reporters.

23 (4) (A) In a long-term care facility, a mandated reporter shall
24 not be required to report as a suspected incident of abuse, as defined
25 in Section 15610.07, an incident if all of the following conditions
26 exist:

27 (i) The mandated reporter is aware that there is a proper plan
28 of care.

29 (ii) The mandated reporter is aware that the plan of care was
30 properly provided or executed.

31 (iii) A physical, mental, or medical injury occurred as a result
32 of care provided pursuant to clause (i) or (ii).

33 (iv) The mandated reporter reasonably believes that the injury
34 was not the result of abuse.

35 (B) This paragraph shall not be construed to require a mandated
36 reporter to seek, nor to preclude a mandated reporter from seeking,
37 information regarding a known or suspected incident of abuse prior
38 to reporting. This paragraph shall apply only to those categories
39 of mandated reporters that the State Department of Public Health
40 determines, upon approval by the Bureau of Medi-Cal Fraud and

1 ~~Elder Abuse~~ and the state long-term care ombudsman, have access
2 to plans of care and have the training and experience necessary to
3 determine whether the conditions specified in this section have
4 been met.

5 (c) (1) Any mandated reporter who has knowledge, or
6 reasonably suspects, that types of elder or dependent adult abuse
7 for which reports are not mandated have been inflicted upon an
8 elder or dependent adult, or that his or her emotional well-being
9 is endangered in any other way, may report the known or suspected
10 instance of abuse.

11 (2) If the suspected or alleged abuse occurred in a long-term
12 care facility other than a state mental health hospital or a state
13 developmental center, the report may be made to the long-term
14 care ombudsman program. Except in an emergency, the local
15 ombudsman shall report any case of known or suspected abuse to
16 the State Department of Public Health and any case of known or
17 suspected criminal activity to the Bureau of Medi-Cal Fraud ~~and~~
18 ~~Elder Abuse~~, as soon as is practicable.

19 (3) If the suspected or alleged abuse occurred in a state mental
20 health hospital or a state developmental center, the report may be
21 made to the designated investigator of the State Department of
22 State Hospitals or the State Department of Developmental Services
23 or to a local law enforcement agency. Except in an emergency,
24 the local law enforcement agency shall report any case of known
25 or suspected criminal activity to the Bureau of Medi-Cal Fraud
26 ~~and Elder Abuse~~, as soon as is practicable.

27 (4) If the suspected or alleged abuse occurred in a place other
28 than a place described in paragraph (2) or (3), the report may be
29 made to the county adult protective services agency.

30 (5) If the conduct involves criminal activity not covered in
31 subdivision (b), it may be immediately reported to the appropriate
32 law enforcement agency.

33 (d) If two or more mandated reporters are present and jointly
34 have knowledge or reasonably suspect that types of abuse of an
35 elder or a dependent adult for which a report is or is not mandated
36 have occurred, and there is agreement among them, the telephone
37 report or Internet report, as authorized by Section 15658, may be
38 made by a member of the team selected by mutual agreement, and
39 a single report may be made and signed by the selected member
40 of the reporting team. Any member who has knowledge that the

1 member designated to report has failed to do so shall thereafter
2 make the report.

3 (e) A telephone report or Internet report, as authorized by
4 Section 15658, of a known or suspected instance of elder or
5 dependent adult abuse shall include, if known, the name of the
6 person making the report, the name and age of the elder or
7 dependent adult, the present location of the elder or dependent
8 adult, the names and addresses of family members or any other
9 adult responsible for the elder's or dependent adult's care, the
10 nature and extent of the elder's or dependent adult's condition, the
11 date of the incident, and any other information, including
12 information that led that person to suspect elder or dependent adult
13 abuse, as requested by the agency receiving the report.

14 (f) The reporting duties under this section are individual, and
15 no supervisor or administrator shall impede or inhibit the reporting
16 duties, and no person making the report shall be subject to any
17 sanction for making the report. However, internal procedures to
18 facilitate reporting, ensure confidentiality, and apprise supervisors
19 and administrators of reports may be established, provided they
20 are not inconsistent with this chapter.

21 (g) (1) Whenever this section requires a county adult protective
22 services agency to report to a law enforcement agency, the law
23 enforcement agency shall, immediately upon request, provide a
24 copy of its investigative report concerning the reported matter to
25 that county adult protective services agency.

26 (2) Whenever this section requires a law enforcement agency
27 to report to a county adult protective services agency, the county
28 adult protective services agency shall, immediately upon request,
29 provide to that law enforcement agency a copy of its investigative
30 report concerning the reported matter.

31 (3) The requirement to disclose investigative reports pursuant
32 to this subdivision shall not include the disclosure of social services
33 records or case files that are confidential, nor shall this subdivision
34 be construed to allow disclosure of any reports or records if the
35 disclosure would be prohibited by any other provision of state or
36 federal law.

37 (h) Failure to report, or impeding or inhibiting a report of,
38 physical abuse, as defined in Section 15610.63, abandonment,
39 abduction, isolation, financial abuse, or neglect of an elder or
40 dependent adult, in violation of this section, is a misdemeanor,

1 punishable by not more than six months in the county jail, by a
2 fine of not more than one thousand dollars (\$1,000), or by both
3 that fine and imprisonment. Any mandated reporter who willfully
4 fails to report, or impedes or inhibits a report of, physical abuse,
5 as defined in Section 15610.63, abandonment, abduction, isolation,
6 financial abuse, or neglect of an elder or dependent adult, in
7 violation of this section, if that abuse results in death or great bodily
8 injury, shall be punished by not more than one year in a county
9 jail, by a fine of not more than five thousand dollars (\$5,000), or
10 by both that fine and imprisonment. If a mandated reporter
11 intentionally conceals his or her failure to report an incident known
12 by the mandated reporter to be abuse or severe neglect under this
13 section, the failure to report is a continuing offense until a law
14 enforcement agency specified in paragraph (1) of subdivision (b)
15 of ~~Section 15630~~ discovers the offense.

16 (i) For purposes of this section, “dependent adult” shall have
17 the same meaning as in Section 15610.23.

18 SEC. 224. Section 15650 of the Welfare and Institutions Code
19 is amended to read:

20 15650. (a) Investigation of reports of known or suspected
21 instances of abuse in long-term care facilities shall be the
22 responsibility of the bureau, the local law enforcement agency,
23 and the long-term care ombudsman program.

24 (b) Investigations of known or suspected instances of abuse
25 outside of long-term care facilities shall be the responsibility of
26 the county adult protective services agency, unless another public
27 agency is given responsibility for investigation in that jurisdiction,
28 and the local law enforcement agency.

29 (c) The investigative responsibilities set forth in this section are
30 in addition to, and not in derogation of or substitution for, the
31 investigative and regulatory responsibilities of licensing agencies,
32 such as the State Department of Social Services Community Care
33 Licensing Division and the State Department of *Public Health*
34 ~~Services~~ Licensing and Certification Division and their authorized
35 representatives.

36 (d) Other public agencies involved in the investigation of abuse
37 or advocacy of respective client populations, or both, include, but
38 shall not be limited to, the State Department of State Hospitals and
39 the State Department of Developmental Services. Other public
40 agencies shall conduct or assist in, or both, the investigation of

1 reports of abuse of elder and dependent adults within their
2 jurisdiction in conjunction with county adult protective services,
3 local ombudsman programs, and local law enforcement agencies.

4 (e) Each county adult protective services agency shall maintain
5 an inventory of all public and private service agencies available
6 to assist victims of abuse, as defined by Section 15610.07. This
7 inventory shall be used to refer victims in the event that the county
8 adult protective services agency cannot resolve the immediate
9 needs of the victim, and to serve the victim on a long-term,
10 followup basis. The intent of this section is to acknowledge that
11 limited funds are available to resolve all suspected cases of abuse
12 reported to a county adult protective services agency.

13 (f) Each local ombudsman program shall maintain an inventory
14 of all public and private agencies available to assist long-term care
15 residents who are victims of abuse, as defined by Section 15610.07.
16 This inventory shall be used to refer cases of abuse in the event
17 that another agency has jurisdiction over the resident, the abuse is
18 verified and further investigation is needed by a law enforcement
19 or licensing agency, or the program does not have sufficient
20 resources to provide immediate assistance. The intent of this section
21 is to acknowledge that ombudsman responsibility in abuse cases
22 is to receive reports, determine the validity of reports, refer verified
23 abuse cases to appropriate agencies for further action as necessary,
24 and follow up to complete the required report information. Other
25 ombudsman services shall be provided to the resident, as
26 appropriate.

27 SEC. 225. Section 18969 of the Welfare and Institutions Code
28 is amended to read:

29 18969. (a) There is hereby created in the State Treasury a fund
30 which shall be known as the State Children's Trust Fund. The fund
31 shall consist of funds received from a county pursuant to Section
32 18968, funds collected by the state and transferred to the fund
33 pursuant to subdivision (b) of Section 103625 of the Health and
34 Safety Code and Article 2 (commencing with Section 18711) of
35 Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation
36 Code, grants, gifts, or bequests made to the state from private
37 sources to be used for innovative and distinctive child abuse and
38 neglect prevention and intervention projects, and money
39 appropriated to the fund for this purpose by the Legislature. The
40 State Registrar may retain a percentage of the fees collected

1 pursuant to Section ~~10605~~ 103625 of the Health and Safety Code,
2 not to 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~~
28 *well-designed* posters, pamphlets, booklets, videos, and other media
29 tools.

30 (3) Research and demonstration projects that explore the nature
31 and incidence and the development of long-term solutions to the
32 problem of child abuse.

33 (4) The development of a mechanism to provide ongoing public
34 awareness through activities that will promote the charitable tax
35 deduction for the trust fund and seek continued contributions.
36 These activities may include convening a philanthropic roundtable,
37 developing literature for use by the State Bar for dissemination,
38 and whatever other activities are deemed necessary and appropriate
39 to promote the trust fund.

1 SEC. 226. Section 1 of Chapter 357 of the Statutes of 2012 is
2 amended to read:

3 SECTION 1. (a) The sum of six hundred twenty-four thousand
4 six hundred seventy-one dollars and eighty-six cents (\$624,671.86)
5 is hereby appropriated from the fund specified in subdivision (b)
6 to the Executive Officer of the California Victim Compensation
7 and Government Claims Board for the payment of claims accepted
8 by the board pursuant to the schedule set forth in subdivision (b).

9 (b) Pursuant to subdivision (a), claims accepted by the California
10 Victim Compensation and Government Claims Board shall be paid
11 pursuant to the following schedule:

13	Total for Fund: General Fund (0001)	
14		\$593,372.28
15	Total for Fund: Item 2660-001-0042	\$9,330.35
16	Budget Act of 2012, Program 20.10	
17	Total for Fund: Item 2740-001-0044	\$3,055.15
18	Budget Act of 2012, Program 11	
19	Total for Fund: Item 4260-001-0001	\$6,131.34
20	Budget Act of 2012, Program 20	
21	Total for Fund: Item 5180-111-0001	\$3,117.59
22	Budget Act of 2012, Program 25.15	
23	Total for Fund: Item 7100-001-0185	\$9,665.15
24	Budget Act of 2012, Program 21	

25
26 SEC. 227. Section 1 of Chapter 513 of the Statutes of 2012 is
27 amended to read:

28 SECTION 1. This *act* shall be known and may be cited as
29 Kathy’s Law.

30 SEC. 228. Section 1 of Chapter 541 of the Statutes of 2012 is
31 amended to read:

32 SECTION 1. The Legislature finds and declares all of the
33 following:

34 (a) The coho salmon (*Oncorhynchus kisutch*) is a fish native to
35 many northern California coastal streams and consists of two
36 distinct Evolutionary Significant Units (ESU), the Southern
37 Oregon/Northern California Coast (SONCC) and the Central
38 California Coast (CCC) ESUs. The historical range of the SONCC
39 ESU includes coastal rivers and tributaries in Del Norte, Siskiyou,
40 Humboldt, Trinity, Mendocino, and Lake Counties. The historical

1 range for the CCC ESU includes coastal rivers and tributaries in
2 parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano,
3 Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara,
4 and Santa Cruz Counties.

5 (b) All coho salmon runs in California have declined
6 dramatically over the past 40 to 50 years. Population numbers,
7 including hatchery stocks, were estimated at 6 to 15 percent of
8 1940 levels in 2004. Since 2004, populations in all monitored
9 streams have continued to decline with an estimated 1 percent
10 remaining of the original population. While a few coastal rivers
11 such as the Russian River did show an increase in population for
12 2011, it is not yet known whether the increase is sustainable, and
13 the species remains at critical risk of extinction.

14 (c) Both the SONCC and the CCC ESUs are listed pursuant to
15 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
16 et seq.) and the California Endangered Species Act (Chapter 1.5
17 commencing with Section 2050) of Division 3 *of the Fish and*
18 *Game Code*). The populations south of the San Francisco Bay are
19 listed as endangered and considered to be virtually extinct. The
20 populations between San Francisco Bay and Punta Gorda to the
21 north are listed as endangered, and the populations from Punta
22 Gorda to the Oregon border are listed as threatened.

23 (d) California's salmon populations need freshwater habitat that
24 includes cold and clean water, appropriate water depth, quantity,
25 and flow velocities, upland and riparian vegetation to stabilize soil
26 and shade, clean gravel for spawning and egg rearing, large woody
27 debris to provide resting and hiding places, adequate food, and
28 varied channel forms.

29 (e) An urgency exists due to the extraordinarily small numbers
30 of coho salmon remaining in California. In order to prevent their
31 extinction from northern California waters, it is imperative that
32 habitat restoration efforts be expedited and increased as soon as
33 possible.

34 (f) Therefore, it is the intent of the Legislature in enacting this
35 policy that the ~~department~~ *Department of Fish and Wildlife* seek
36 agreements and partnerships with state and federal agencies to
37 efficiently and effectively permit habitat enhancement projects
38 necessary to prevent the extinction of coho salmon populations in
39 California coastal watersheds and that the ~~department~~ *Department*
40 *of Fish and Wildlife* expedite and streamline the permitting and

1 approval of coho salmon habitat enhancement projects, including,
2 in particular, large woody debris restoration projects, in northern
3 California streams.

4 (g) By eliminating barriers to fish passage, stabilizing banks,
5 increasing stream channel complexity, and otherwise restoring and
6 enhancing habitat, these projects will result in a net benefit to coho
7 salmon and other species.

8 SEC. 229. Section 2 of Chapter 719 of the Statutes of 2012 is
9 amended to read:

10 SEC. 2. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 This authorization is required to begin construction on the
15 memorial as quickly as possible to coincide with the Portuguese
16 Heritage Month, established by *Resolution* Chapter 24 of the
17 Statutes of 2010.

18 SEC. 230. Any section of any act enacted by the Legislature
19 during the 2013 calendar year that takes effect on or before January
20 1, 2014, and that amends, amends and renumbers, adds, repeals
21 and adds, or repeals a section that is amended, amended and
22 renumbered, added, repealed and added, or repealed by this act,
23 shall prevail over this act, whether that act is enacted prior to, or
24 subsequent to, the enactment of this act. The repeal, or repeal and
25 addition, of any article, chapter, part, title, or division of any code
26 by this act shall not become operative if any section of any other
27 act that is enacted by the Legislature during the 2013 calendar year
28 and takes effect on or before January 1, 2014, amends, amends
29 and renumbers, adds, repeals and adds, or repeals any section
30 contained in that article, chapter, part, title, or division.