

AMENDED IN SENATE APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 383

Introduced by Assembly Member Wagner

February 14, 2013

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

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

1 SECTION 1. Section 1202 of the Business and Professions
2 Code is amended to read:
3 1202. As used in this chapter, “department” means the State
4 Department of Public Health.
5 SEC. 2. Section 4836.1 of the Business and Professions Code
6 is amended to read:
7 4836.1. (a) Notwithstanding any other law, a registered
8 veterinary technician or a veterinary assistant may administer a
9 drug, including, but not limited to, a drug that is a controlled
10 substance, under the direct or indirect supervision of a licensed
11 veterinarian when done pursuant to the order, control, and full
12 professional responsibility of a licensed veterinarian. However,
13 no person, other than a licensed veterinarian, may induce anesthesia
14 unless authorized by regulation of the board.
15 (b) Access to controlled substances by veterinary assistants
16 under this section is limited to persons who have undergone a
17 background check and who, to the best of the licensee manager’s
18 knowledge, do not have any drug- or alcohol-related felony
19 convictions.
20 (c) Notwithstanding subdivision (b), if the Veterinary Medical
21 Board, in consultation with the Board of Pharmacy, identifies a
22 dangerous drug, as defined in Section 4022, as a drug which has
23 an established pattern of being diverted, the Veterinary Medical
24 Board may restrict access to that drug by veterinary assistants.
25 (d) For purposes of this section, the following definitions apply:
26 (1) “Controlled substance” has the same meaning as that term
27 is defined in Section 11007 of the Health and Safety Code.
28 (2) “Direct supervision” has the same meaning as that term is
29 defined in subdivision (e) of Section 2034 of Title 16 of the
30 California Code of Regulations.
31 (3) “Drug” has the same meaning as that term is defined in
32 Section 11014 of the Health and Safety Code.
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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (A) Applied psychotherapeutic techniques.

20 (B) Assessment.

21 (C) Diagnosis.

22 (D) Prognosis.

23 (E) Treatment.

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

25 (G) Health and wellness promotion.

26 (H) Other recognized counseling interventions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 25502.2. (a) A person employed or engaged by an authorized
7 licensee may appear at a promotional event at the premises of an
8 off-sale retail licensee for the purposes of providing autographs
9 to consumers at the promotional event only under the following
10 conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33
 34 State of California)
 35 County of _____) ss.
 36

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

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

10 WITNESS my hand and official seal.

11 Signature _____ (Notary public seal)
 12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17

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

26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) The address of the requesting party.

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

23
 24 I hereby declare that this deposit account location request
 25 complies with Section 684.115 of the Code of Civil Procedure,
 26 that the account or accounts of the judgment debtor or other person
 27 or persons appropriately identified in the legal process and
 28 specified herein are subject to a valid writ of execution, or court
 29 order, that I have a reasonable belief, formed after an inquiry
 30 reasonable under the circumstances, that the financial institution
 31 receiving this deposit account location request has an account
 32 standing in the name of the judgment debtor or other person or
 33 persons appropriately identified in the legal process, and that
 34 information pertaining to the location of the account will assist the
 35 judgment creditor in enforcing the judgment.
 36

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

19 CHAPTER 4.5. UNIFORM LIMITED PARTNERSHIP ACT OF 2008

20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 an electronic registration form, under penalty of perjury, by the
2 owner or other head setting forth the following information for the
3 current year:
- 4 (1) All names, whether real or fictitious, of the person, firm,
5 association, partnership, or corporation under which it has done
6 and is doing business.
 - 7 (2) The address, including city and street, of the location at
8 which the heritage school delivers services to pupils.
 - 9 (3) The names and addresses, including city and street, of the
10 directors, if any, and principal officers of the person, firm,
11 association, partnership, or corporation.
 - 12 (4) The school enrollment, by grade span, number of teachers,
13 and coeducational or enrollment limited to boys or girls.
 - 14 (5) That the following records are maintained at the address
15 stated, and are true and accurate:
 - 16 (A) The courses of study offered by the institution.
 - 17 (B) The names and addresses, including city and street, of its
18 faculty, together with a record of the educational qualifications of
19 each faculty member.
 - 20 (6) Criminal record summary information that has been obtained
21 pursuant to Section 44237.
 - 22 (7) The heritage school telephone number.
 - 23 (8) Acknowledgment that the director of the heritage school
24 and all employees are mandated reporters and subject to the
25 requirements established by the Child Abuse and Neglect Reporting
26 Act (Article 2.5 (commencing with Section 11164) of Chapter 2
27 of Title 1 of Part 4 of the Penal Code) and, consistent with that
28 act, certification that:
 - 29 (A) The employer is aware that it is encouraged to provide its
30 employees with training in the duties imposed by the act.
 - 31 (B) Employees have signed a statement provided by the
32 employer that the employees have knowledge of the act and will
33 comply with its provisions.
 - 34 (C) Employees have been notified by the employer of their
35 reporting obligations and confidentiality rights, pursuant to Section
36 11165.9 of the Penal Code.
 - 37 (b) If two or more heritage schools are under the effective
38 control or supervision of a single administrative unit, the
39 administrative unit shall comply with the provisions of this section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (1) For health and safety emergencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) While on school grounds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 current school year and the date of graduation who were members
2 of the class that is graduating at the end of the current school year.

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

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

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

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

15 (E) The pupil data collected for the API that comes from the
16 achievement test administered pursuant to Section 60640 and the
17 high school exit examination administered pursuant to Section
18 60851, when fully implemented, shall be disaggregated by special
19 education status, English learners, socioeconomic status, gender,
20 and ethnic group. Only the test scores of pupils who were counted
21 as part of the enrollment in the annual data collection of the
22 California Basic Educational Data System for the current fiscal
23 year and who were continuously enrolled during that year may be
24 included in the test result reports in the API score of the school.

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

29 (ii) In addition to the elements required by this paragraph, the
30 Superintendent, with approval of the state board, may incorporate
31 into the index for secondary schools valid, reliable, and stable
32 measures of pupil preparedness for postsecondary education and
33 career.

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

37 (H) It is the intent of the Legislature that the state's system of
38 public school accountability be more closely aligned with both the
39 public's expectations for public education and the workforce needs
40 of the state's economy. It is therefore necessary that the

1 accountability system evolve beyond its narrow focus on pupil test
2 scores to encompass other valuable information about school
3 performance, including, but not limited to, pupil preparedness for
4 college and career, as well as the high school graduation rates
5 already required by law.

6 (I) The Superintendent shall annually determine the accuracy
7 of the graduation rate data. Notwithstanding any other law,
8 graduation rates for pupils in dropout recovery high schools shall
9 not be included in the API. For purposes of this subparagraph,
10 “dropout recovery high school” means a high school in which 50
11 percent or more of its pupils have been designated as dropouts
12 pursuant to the exit/withdrawal codes developed by the department
13 or left a school and were not otherwise enrolled in a school for a
14 period of at least 180 days.

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

21 (K) The Superintendent shall annually provide to local
22 educational agencies and the public a transparent and
23 understandable explanation of the individual components of the
24 API and their relative values within the API.

25 (L) An additional element chosen by the Superintendent and
26 the state board for inclusion in the API pursuant to this paragraph
27 shall not be incorporated into the API until at least one full school
28 year after the state board’s decision to include the element into the
29 API.

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

33 (1) The standards-based achievement tests provided for in
34 Section 60642.5.

35 (2) The high school exit examination.

36 (c) Based on the API, the Superintendent shall develop, and the
37 state board shall adopt, expected annual percentage growth targets
38 for all schools based on their API baseline score from the previous
39 year. Schools are expected to meet these growth targets through
40 effective allocation of available resources. For schools below the

1 statewide API performance target adopted by the state board
2 pursuant to subdivision (d), the minimum annual percentage growth
3 target shall be 5 percent of the difference between the actual API
4 score of a school and the statewide API performance target, or one
5 API point, whichever is greater. Schools at or above the statewide
6 API performance target shall have, as their growth target,
7 maintenance of their API score above the statewide API
8 performance target. However, the state board may set differential
9 growth targets based on grade level of instruction and may set
10 higher growth targets for the lowest performing schools because
11 they have the greatest room for improvement. To meet its growth
12 target, a school shall demonstrate that the annual growth in its API
13 is equal to or more than its schoolwide annual percentage growth
14 target and that all numerically significant pupil subgroups, as
15 defined in subdivision (a), are making comparable improvement.

16 (d) Upon adoption of state performance standards by the state
17 board, the Superintendent shall recommend, and the state board
18 shall adopt, a statewide API performance target that includes
19 consideration of performance standards and represents the
20 proficiency level required to meet the state performance target.
21 When the API is fully developed, schools, at a minimum, shall
22 meet their annual API growth targets to be eligible for the
23 Governor's Performance Award Program as set forth in Section
24 52057. The state board may establish additional criteria that schools
25 must meet to be eligible for the Governor's Performance Award
26 Program.

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

30 (2) A school annually shall receive an API score, unless the
31 Superintendent determines that an API score would be an invalid
32 measure of the performance of the school for one or more of the
33 following reasons:

- 34 (A) Irregularities in testing procedures occurred.
- 35 (B) The data used to calculate the API score of the school are
36 not representative of the pupil population at the school.
- 37 (C) Significant demographic changes in the pupil population
38 render year-to-year comparisons of pupil performance invalid.
- 39 (D) The department discovers or receives information indicating
40 that the integrity of the API score has been compromised.

1 (E) Insufficient pupil participation in the assessments included
2 in the API.

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

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

13 (g) The Superintendent, with the approval of the state board,
14 shall develop an alternative accountability system for schools under
15 the jurisdiction of a county board of education or a county
16 superintendent of schools, community day schools, nonpublic,
17 nonsectarian schools pursuant to Section 56366, and alternative
18 schools serving high-risk pupils, including continuation high
19 schools and opportunity schools. Schools in the alternative
20 accountability system may receive an API score, but shall not be
21 included in the API rankings.

22 SEC. 46. Section 60200.8 of the Education Code is amended
23 to read:

24 60200.8. (a) Notwithstanding Section 60200.7, the state board
25 may consider the adoption of a revised curriculum framework and
26 evaluation criteria for instructional materials in history-social
27 science.

28 (b) The department shall conduct work necessary to revise the
29 curriculum framework and evaluation criteria for instructional
30 materials in history-social science only after it has completed work
31 related to the development of curriculum frameworks for the
32 common core academic content standards pursuant to Section
33 60207.

34 SEC. 47. Section 60209 of the Education Code is amended to
35 read:

36 60209. For purposes of conducting an adoption of basic
37 instructional materials for mathematics pursuant to Section 60207,
38 all of the following shall apply:

39 (a) The department shall provide notice, pursuant to subdivision
40 (b), to all publishers or manufacturers known to produce basic

1 instructional materials in that subject, post an appropriate notice
2 on the Internet Web site of the department, and take other
3 reasonable measures to ensure that appropriate notice is widely
4 circulated to potentially interested publishers and manufacturers.

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

10 (c) The fee assessed pursuant to subdivision (d) shall be in an
11 amount that does not exceed the reasonable costs to the department
12 in conducting the adoption process. The department shall take
13 reasonable steps to limit costs of the adoption and to keep the fee
14 modest.

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

20 (1) After a publisher or manufacturer declares the intent to
21 submit one or more programs and the grade levels to be covered
22 by each program, the department shall assess a fee that shall be
23 payable by the publisher or manufacturer even if the publisher or
24 manufacturer subsequently chooses to withdraw a program or
25 reduce the number of grade levels covered.

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

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

32 (2) For purposes of this section, “small publisher” and “small
33 manufacturer” mean an independently owned or operated publisher
34 or manufacturer that is not dominant in its field of operation and
35 that, together with its affiliates, has 100 or fewer employees, and
36 has average annual gross receipts of ten million dollars
37 (\$10,000,000) or less over the previous three years.

38 (f) If the department determines that there is little or no interest
39 in participating in an adoption by publishers and manufacturers,
40 the department shall recommend to the state board whether or not

1 the adoption shall be conducted, and the state board may choose
2 not to conduct the adoption.

3 (g) Revenue derived from fees assessed pursuant to subdivision
4 (d) shall be budgeted as reimbursements and subject to review
5 through the annual budget process, and may be used to pay for
6 costs associated with any adoption and for any costs associated
7 with the review of instructional materials, including reimbursement
8 of substitute costs for teacher reviewers and may be used to cover
9 stipends for content review experts.

10 SEC. 48. Section 60605.87 of the Education Code is amended
11 to read:

12 60605.87. (a) The department shall recommend, and the state
13 board shall approve, evaluation criteria to guide the development
14 and review of supplemental instructional materials for English
15 learners.

16 (b) Notwithstanding any other law, and on a one-time basis, the
17 department, on or before March 1, 2014, shall develop a list of
18 supplemental instructional materials for beginning through
19 advanced levels of proficiency for use in kindergarten and grades
20 1 to 8, inclusive, that are aligned with the revised English language
21 development standards adopted pursuant to Section 60811.3. The
22 supplemental instructional materials shall provide a bridge between
23 the current English language development standards and the revised
24 English language development standards pursuant to Section
25 60811.3 with the purpose of ensuring the supplemental instructional
26 materials address the unique features of the English language
27 development standards and remain consistent with the relevant
28 elements of the evaluation criteria for English language arts
29 supplemental instructional materials adopted pursuant to Section
30 60605.86.

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

35 (2) The majority of content review experts approved pursuant
36 to paragraph (1) shall be elementary and secondary schoolteachers
37 who are credentialed in English language arts, possess the
38 appropriate state English learner authorization, and have five years
39 of classroom experience instructing English learners. The content
40 review experts also shall include appropriate persons possessing

1 English learner expertise from postsecondary educational
2 institutions and school and school district curriculum administrators
3 possessing English learner expertise, and other persons who are
4 knowledgeable in English language arts and English language
5 development.

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

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

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

16 (2) If the state board rejects all, or a portion, of the list of
17 supplemental instructional materials proposed by the department,
18 or adds an item to the list, the state board, in a public meeting held
19 pursuant to the Bagley-Keene Open Meeting Act (Article 9
20 commencing with Section 11120) of Chapter 1 of Part 1 of
21 Division 3 of Title 2 of the Government Code), shall provide
22 written reasons for the removal or addition of an item on the list.
23 The state board shall not approve a supplemental instructional
24 material it adds to the list at the same time it provides its written
25 reason for adding the material; instead, the state board shall
26 approve the added material at a subsequent public meeting.

27 (e) (1) The governing board of a school district and a county
28 board of education may approve supplemental instructional
29 materials other than those approved by the state board pursuant to
30 subdivision (d) if the governing board of a school district or county
31 board of education determines that other supplemental instructional
32 materials are aligned with the revised English language
33 development standards adopted pursuant to Section 60811.3 and
34 meet the needs of pupils of the district who are English learners.
35 The governing board of a school district or the county board of
36 education may only approve supplemental instructional materials
37 that comply with all of the following:

38 (A) The evaluation criteria approved pursuant to subdivision
39 (a).

40 (B) Section 60226.

1 (C) Subdivision (h).

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

3 (2) (A) A supplemental instructional material approved by a
4 governing board of a school district or county board of education
5 pursuant to this subdivision that is in the subject area of English
6 language development shall be reviewed by content review experts
7 chosen by the governing board.

8 (B) The majority of the content review experts chosen pursuant
9 to subparagraph (A) shall be elementary and secondary
10 schoolteachers who are credentialed in English language arts,
11 possess the appropriate state English learner authorization, and
12 have five years of classroom experience instructing English
13 learners.

14 (C) The content review experts also shall include appropriate
15 persons possessing English learner expertise from postsecondary
16 educational institutions and school and school district curriculum
17 administrators possessing English learner expertise, and other
18 persons who are knowledgeable in English language arts and
19 English language development.

20 (f) Publishers choosing to submit supplemental instructional
21 materials for approval by the state board shall submit standards
22 maps.

23 (g) (1) Before approving supplemental instructional materials
24 pursuant to this section, the state board shall review those
25 instructional materials for academic content, social content, and
26 instructional support to teachers and pupils. Supplemental
27 instructional materials approved by the state board pursuant to this
28 section shall meet required program criteria for grade-level
29 programs and shall include materials for use by teachers.

30 (2) Before approving supplemental instructional materials
31 pursuant to this section, the governing board of a school district
32 or county board of education shall review those instructional
33 materials for academic content and instructional support to teachers
34 and pupils who are English learners. Supplemental instructional
35 materials approved by the governing board of a school district or
36 county board of education pursuant to this section shall meet
37 required program criteria for grade-level programs and shall include
38 materials for use by teachers.

1 (h) Supplemental instructional materials approved pursuant to
2 this section shall comply with the social content review
3 requirements pursuant to Section 60050.

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

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

11 SEC. 49. Section 60852.1 of the Education Code is amended
12 to read:

13 60852.1. (a) The Superintendent shall recommend, and the
14 state board shall select, members of a panel that shall convene to
15 make recommendations regarding alternative means for eligible
16 pupils with disabilities to demonstrate that they have achieved the
17 same level of academic achievement in the content standards in
18 English language arts or mathematics, or both, required for passage
19 of the high school exit examination.

20 (1) The panel shall be composed of educators and other
21 individuals who have experience with the population of pupils
22 with disabilities eligible for alternative means of demonstrating
23 academic achievement, as defined in Section 60852.2, and
24 educators and other individuals who have expertise with multiple
25 forms of assessment. The panel shall consult with experts in other
26 states that offer alternative means for pupils with disabilities to
27 demonstrate academic achievement. A majority of the panel shall
28 be classroom teachers.

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

31 (A) Specific options for alternative assessments, submission of
32 evidence, or other alternative means by which eligible pupils with
33 disabilities may demonstrate that they have achieved the same
34 level of academic achievement in the content standards in English
35 language arts or mathematics, or both, required for passage of the
36 high school exit examination.

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

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

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

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

10 (b) For those portions of, or those academic content standards
11 assessed by, the high school exit examination for which the state
12 board determines it is feasible to create alternative means by which
13 eligible pupils with disabilities may demonstrate the same level
14 of academic achievement required for passage of the high school
15 exit examination, the state board, taking into consideration the
16 findings and recommendations of the panel, shall adopt regulations
17 for alternative means by which eligible pupils with disabilities, as
18 defined in Section 60852.2, may demonstrate that they have
19 achieved the same level of academic achievement in the content
20 standards required for passage of the high school exit examination.
21 The regulations shall include appropriate timelines and the manner
22 in which eligible pupils with disabilities and school districts shall
23 be timely notified of the results.

24 SEC. 50. Section 66407 of the Education Code is amended to
25 read:

26 66407. (a) (1) The publisher of a textbook, or an agent or
27 employee of the publisher, shall provide a prospective purchaser
28 of the textbook with all of the following:

29 (A) A list of all the products offered for sale by the publisher
30 germane to the prospective purchaser’s subject area of interest.

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

34 (C) For each new edition of a product listed pursuant to
35 subparagraph (A), a list of the substantial content differences or
36 changes between the new edition and the previous edition of the
37 textbook.

38 (2) The publisher shall make the lists required by paragraph (1)
39 available to a prospective purchaser at the commencement of a
40 sales interaction, including, but not necessarily limited to, a sales

1 interaction conducted in person, by telephone, or electronically.
2 The publisher shall also post in a prominent position on its Internet
3 Web site the lists required by paragraph (1).

4 (b) As used in this section, the following terms have the
5 following meanings:

6 (1) “Product” means each version, including, but not necessarily
7 limited to, a version in a digital format, of a textbook, or set of
8 textbooks, in a particular subject area, including, but not necessarily
9 limited to, a supplemental item, whether or not the supplemental
10 item is sold separately or together with a textbook.

11 (2) “Publisher” has the same meaning as defined in subdivision
12 (b) of Section 66406.7.

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

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

18 SEC. 51. Section 81378.1 of the Education Code is amended
19 to read:

20 81378.1. (a) The governing board of a community college
21 district may, without complying with any other provision of this
22 article, let, in the name of the district, any buildings, grounds, or
23 space therein, together with any personal property located thereon,
24 not needed for academic activities, upon the terms and conditions
25 agreed upon by the governing board and the lessee for a period of
26 more than five days but less than five years, as determined by the
27 governing board. Before executing the lease, the governing board
28 shall include in an agenda of a meeting of the board open to the
29 public a description of the proposed lease and an explanation of
30 the methodology used to establish the lease rate and for determining
31 the fair market value of the lease.

32 (b) The governing board shall give public notice before taking
33 any action pursuant to subdivision (a). The notice shall include a
34 description of the governing board’s intended action. The notice
35 shall be printed once a week for three successive weeks prior to
36 the board meeting described in subdivision (a) in a newspaper of
37 general circulation that is published at least once a week.

38 (c) The governing board shall include, as a condition in any
39 agreement to let any buildings, grounds, or space therein, together
40 with any personal property located thereon, a provision that the

1 agreement shall be subject to renegotiation and may be rescinded
2 after 60 days' notice to the lessee if the governing board determines
3 at any time during the term of the agreement that the buildings,
4 grounds, or space therein subject to the agreement are needed for
5 academic activities. Any revenue derived pursuant to the agreement
6 shall be retained for the exclusive use of the community college
7 district whose buildings, grounds, or space therein are the basis of
8 the agreement and shall be used to supplement, but not supplant,
9 any state funding. Any buildings, grounds, or space therein let by
10 the district shall be included as space actually available for use by
11 the college in any calculations related to any plan for capital
12 construction submitted to the board of governors pursuant to
13 Chapter 4 (commencing with Section 81800), or any other law.

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

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

20 SEC. 52. Section 88620 of the Education Code is amended to
21 read:

22 88620. The following definitions govern the construction of
23 this part:

24 (a) "Board of governors" means the Board of Governors of the
25 California Community Colleges.

26 (b) "Business Resource Assistance and Innovation Network"
27 means the network of projects and programs that comprise the
28 California Community Colleges Economic and Workforce
29 Development Program.

30 (c) "California Community Colleges Economic and Workforce
31 Development Program" and "economic and workforce development
32 program" mean the program.

33 (d) "Career pathways," and "career ladders," or "career lattices"
34 mean an identified series of positions, work experiences, or
35 educational benchmarks or credentials that offer occupational and
36 financial advancement within a specified career field or related
37 fields over time.

38 (e) (1) "Center" means a comprehensive program of services
39 offered by one or more community colleges to an economic region
40 of the state in accordance with criteria established by the

1 chancellor’s office for designation as an economic and workforce
2 development program center. Center services shall be designed to
3 respond to the statewide strategic priorities pursuant to the mission
4 of the community colleges’ economic and workforce development
5 program, and to be consistent with programmatic priorities,
6 competitive and emerging industry sectors and industry clusters,
7 identified economic development, career technical education,
8 business development, and continuous workforce training needs
9 of a region. Centers shall provide a foundation for ~~the~~ a long-term,
10 sustained relationship with businesses, labor, colleges, and other
11 workforce education and training delivery systems, such as local
12 workforce investment boards, in the region.

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

33 (f) “Chancellor” means the Chancellor of the California
34 Community Colleges.

35 (g) “Economic security” means, with respect to a worker,
36 earning a wage sufficient to adequately support a family and to,
37 over time, save money for emergency expenses and adequate
38 retirement income, the sufficiency of which is determined
39 considering a variety of factors including household size, the cost

1 of living in the worker’s community, and other factors that may
2 vary by region.

3 (h) “High-priority occupation” means an occupation that has a
4 significant presence in a targeted industry sector or industry cluster,
5 is in demand by employers, and pays or leads to payment of high
6 wages.

7 (i) “Industry cluster” means a geographic concentration or
8 emerging concentration of interdependent industries with direct
9 service, supplier, and research relationships, or independent
10 industries that share common resources in a given regional
11 economy or labor market. An industry cluster is a group of
12 employers closely linked by a common product or services,
13 workforce needs, similar technologies, and supply chains in a given
14 regional economy or labor market.

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

27 (k) “Industry sector” means those firms that produce similar
28 products or provide similar services using somewhat similar
29 business processes.

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

1 an initiative shall coordinate services statewide and within regions
2 of the state, as appropriate.

3 (m) “Job development incentive training” means programs that
4 provide incentives to employers to create entry-level positions in
5 their businesses, or through their suppliers or prime customers, for
6 welfare recipients and the working poor.

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

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

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

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

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

32 (p) “Program” means the California Community Colleges
33 Economic and Workforce Development Program established under
34 this part.

35 (q) “Region” means a geographic area of the state defined by
36 economic and labor market factors containing at least one industry
37 cluster and the cities, counties, or community college districts, or
38 all of them, in the industry cluster’s geographic area. For the
39 purposes of this chapter, “California Community College economic
40 development regions” shall be designated by the board of governors

1 based on factors, including, but not necessarily limited to, all of
2 the following:

3 (1) Regional economic development and training needs of
4 business and industry.

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

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

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

32 (s) “Skills panel” means a collaboration which brings together
33 multiple employers from an industry sector or industry cluster with
34 career technical educators, including, but not limited to, community
35 college career technical education faculty, and other stakeholders
36 which may include workers and organized labor to address
37 common workforce needs. Skills panels assess workforce training
38 and education needs through the identification of assets relevant
39 to industry need, produce curricula models, perform job task
40 analysis, define how curricula articulate into career pathways or

1 career lattices or a system of stackable credentials, calibrate career
2 readiness, develop other assessment tools, and produce career
3 guidance tools.

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

7 SEC. 53. Section 2162 of the Elections Code is amended to
8 read:

9 2162. (a) No affidavits of registration other than those provided
10 by the Secretary of State to the county elections officials or the
11 national voter registration forms authorized pursuant to the federal
12 National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg
13 et seq.) shall be used for the registration of voters.

14 (b) A voter registration card shall not be altered, defaced, or
15 changed in any way, other than by the insertion of a mailing
16 address and the affixing of postage, if mailed, or as otherwise
17 specifically authorized by the Secretary of State, prior to
18 distribution of the cards.

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

24 SEC. 54. Section 2224 of the Elections Code is amended to
25 read:

26 2224. (a) If a voter has not voted in an election within the
27 preceding four years, and his or her residence address, name, or
28 party affiliation has not been updated during that time, the county
29 elections official may send an alternate residency confirmation
30 postcard. The use of this postcard may be sent subsequent to NCOA
31 or sample ballot returns, but shall not be used in the residency
32 confirmation process conducted under Section 2220. The postcard
33 shall be forwardable, including a postage-paid and preaddressed
34 return form to enable the voter to verify or correct the address
35 information, and shall be in substantially the following form:

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

39 “IMPORTANT NOTICE”

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

6 “If confirmation has not been received within 15 days, you may
7 be required to provide proof of your residence address in order to
8 vote at future elections. If you no longer live in ____ County, you
9 must reregister at your new residence address in order to vote in
10 the next election. California residents may obtain a mail registration
11 form by calling the county elections office or the Secretary of
12 State’s office.”

13 (b) The use of a toll-free number to confirm the old residence
14 address is optional. Any change to a voter’s address shall be
15 received in writing.

16 (c) A county using the alternate residency confirmation
17 procedure shall notify all voters of the procedure in the sample
18 ballot pamphlet or in a separate mailing.

19 SEC. 55. Section 2225 of the Elections Code is amended to
20 read:

21 2225. (a) Based on change-of-address data received from the
22 United States Postal Service or its licensees, the county elections
23 official shall send a forwardable notice, including a postage-paid
24 and preaddressed return form, to enable the voter to verify or
25 correct address information.

26 Notification received through NCOA or Operation Mail that a
27 voter has moved and has given no forwarding address shall not
28 require the mailing of a forwardable notice to that voter.

29 (b) If postal service change-of-address data indicates that the
30 voter has moved to a new residence address in the same county,
31 the forwardable notice shall be in substantially the following form:

32
33 “We have received notification that the voter has moved to a
34 new residence address in ____ County. You will be registered to
35 vote at your new address unless you notify our office within 15
36 days that the address to which this card was mailed is not a change
37 of your permanent residence. You must notify our office by either
38 returning the attached postage-paid postcard, or by calling toll
39 free. If this is not a permanent residence, and if you do not notify

1 us within 15 days, you may be required to provide proof of your
2 residence address in order to vote at future elections.”

3
4 (c) If postal service change-of-address data indicates that the
5 voter has moved to a new address in another county, the
6 forwardable notice shall be in substantially the following form:

7
8 “We have received notification that you have moved to a new
9 address not in ____ County. Please use the attached postage-paid
10 postcard to: (1) advise us if this is or is not a permanent change of
11 residence address, or (2) to advise us if our information is incorrect.
12 If you do not return this card within 15 days and continue to reside
13 in ____ County, you may be required to provide proof of your
14 residence address in order to vote at future elections and, if you
15 do not offer to vote at any election in the period between the date
16 of this notice and the second federal general election following
17 this notice, your voter registration will be canceled and you will
18 have to reregister in order to vote. If you no longer live in ____
19 County, you must reregister at your new residence address in order
20 to vote in the next election. California residents may obtain a mail
21 registration form by calling the county elections officer or
22 1-800-345-VOTE.”

23
24 (d) If postal service change-of-address data received from a
25 nonforwardable mailing indicates that a voter has moved and left
26 no forwarding address, a forwardable notice shall be sent in
27 substantially the following form:

28
29 “We are attempting to verify postal notification that the voter to
30 whom this card is addressed has moved and left no forwarding
31 address. If the person receiving this card is the addressed voter,
32 please confirm your continued residence or provide current
33 residence information on the attached postage-paid postcard within
34 15 days. If you do not return this card and continue to reside in
35 ____ County, you may be required to provide proof of your
36 residence address in order to vote at future elections and, if you
37 do not offer to vote at any election in the period between the date
38 of this notice and the second federal general election following
39 this notice, your voter registration will be cancelled and you will
40 have to reregister in order to vote. If you no longer live in ____

1 County, you must reregister at your new residence address in order
2 to vote in the next election. California residents may obtain a mail
3 registration form by calling the county elections office or the
4 Secretary of State's office.”

5

6 (e) The use of a toll-free number to confirm the old residence
7 address is optional. Any change to the voter address must be
8 received in writing.

9 SEC. 56. Section 3111 of the Elections Code is amended to
10 read:

11 3111. If a military or overseas voter is unable to appear at his
12 or her polling place because of being recalled to service after the
13 final day for making application for a vote by mail ballot, but
14 before 5 p.m. on the day before the day of election, he or she may
15 appear before the elections official in the county in which the
16 military or overseas voter is registered or, if within the state, in
17 the county in which he or she is recalled to service and make
18 application for a vote by mail ballot, which may be submitted by
19 facsimile, or by electronic mail or online transmission if the
20 elections official makes the transmission option available. The
21 elections official shall deliver to him or her a vote by mail ballot
22 which may be voted in the elections official's office or voted
23 outside the elections official's office on or before the close of the
24 polls on the day of election and returned as are other vote by mail
25 ballots. To be counted, the ballot shall be returned to the elections
26 official's office in person, by facsimile transmission, or by an
27 authorized person on or before the close of the polls on the day of
28 the election. If the military or overseas voter appears in the county
29 in which he or she is recalled to service, rather than the county to
30 which he or she is registered, the elections official shall coordinate
31 with the elections official in the county in which the military or
32 overseas voter is registered to provide the ballot that contains the
33 appropriate measures and races for the precinct in which the
34 military or overseas voter is registered.

35 SEC. 57. Section 13115 of the Elections Code is amended to
36 read:

37 13115. The order in which all state measures that are to be
38 submitted to the voters shall appear on the ballot is as follows:

39 (a) Bond measures, including those proposed by initiative, in
40 the order in which they qualify.

1 (b) Constitutional amendments, including those proposed by
2 initiative, in the order in which they qualify.

3 (c) Legislative measures, other than those described in
4 subdivision (a) or (b), in the order in which they are approved by
5 the Legislature.

6 (d) Initiative measures, other than those described in subdivision
7 (a) or (b), in the order in which they qualify.

8 (e) Referendum measures, in the order in which they qualify.

9 SEC. 58. Section 21000 of the Elections Code is amended to
10 read:

11 21000. The county elections official in each county shall
12 compile and make available to the Legislature or any appropriate
13 committee of the Legislature any information and statistics that
14 may be necessary for use in connection with the reapportionment
15 of legislative districts, including, but not limited to, precinct maps
16 indicating the boundaries of municipalities, school districts, judicial
17 districts, Assembly districts, senatorial districts, and congressional
18 districts, lists showing the election returns for each precinct, and
19 election returns for each precinct reflecting the vote total for all
20 ballots cast, including both vote by mail ballots and ballots cast at
21 polling places, compiled pursuant to Section 15321 in the county
22 at each statewide election. If the county elections official stores
23 the information and statistics in data-processing files, he or she
24 shall make the files available, along with whatever documentation
25 shall be necessary in order to allow the use of the files by the
26 appropriate committee of the Legislature and shall retain these
27 files until the next reapportionment has been completed.

28 SEC. 59. Section 3047 of the Family Code is amended to read:

29 3047. (a) A party's absence, relocation, or failure to comply
30 with custody and visitation orders shall not, by itself, be sufficient
31 to justify a modification of a custody or visitation order if the
32 reason for the absence, relocation, or failure to comply is the party's
33 activation to military duty or temporary duty, mobilization in
34 support of combat or other military operation, or military
35 deployment out of state.

36 (b) (1) If a party with sole or joint physical custody or visitation
37 receives temporary duty, deployment, or mobilization orders from
38 the military that require the party to move a substantial distance
39 from his or her residence or otherwise has a material effect on the
40 ability of the party to exercise custody or visitation rights, any

1 necessary modification of the existing custody order shall be
2 deemed a temporary custody order made without prejudice, which
3 shall be subject to review and reconsideration upon the return of
4 the party from military deployment, mobilization, or temporary
5 duty.

6 (2) If the temporary order is reviewed upon return of the party
7 from military deployment, mobilization, or temporary duty, there
8 shall be a presumption that the custody order shall revert to the
9 order that was in place before the modification, unless the court
10 determines that it is not in the best interest of the child. The court
11 shall not, as part of its review of the temporary order upon the
12 return of the deploying party, order a child custody evaluation
13 under Section 3111 of this code or Section 730 of the Evidence
14 Code, unless the party opposing reversion of the order makes a
15 prima facie showing that reversion is not in the best interest of the
16 child.

17 (3) (A) If the court makes a temporary custody order, it shall
18 consider any appropriate orders to ensure that the relocating party
19 can maintain frequent and continuing contact with the child by
20 means that are reasonably available.

21 (B) Upon a motion by the relocating party, the court may grant
22 reasonable visitation rights to a stepparent, grandparent, or other
23 family member if the court does all of the following:

24 (i) Finds that there is a preexisting relationship between the
25 family member and the child that has engendered a bond such that
26 visitation is in the best interest of the child.

27 (ii) Finds that the visitation will facilitate the child's contact
28 with the relocating party.

29 (iii) Balances the interest of the child in having visitation with
30 the family member against the right of the parents to exercise
31 parental authority.

32 (C) Nothing in this paragraph shall increase the authority of the
33 persons described in subparagraph (B) to seek visitation orders
34 independently.

35 (D) The granting of visitation rights to a nonparent pursuant to
36 subparagraph (B) shall not impact the calculation of child support.

37 (c) If a party's deployment, mobilization, or temporary duty
38 will have a material effect on his or her ability, or anticipated
39 ability, to appear in person at a regularly scheduled hearing, the
40 court shall do either of the following:

1 (1) Upon motion of the party, hold an expedited hearing to
2 determine custody and visitation issues prior to the departure of
3 the party.

4 (2) Upon motion of the party, allow the party to present
5 testimony and evidence and participate in court-ordered child
6 custody mediation by electronic means, including, but not limited
7 to, telephone, video teleconferencing, or the Internet, to the extent
8 that this technology is reasonably available to the court and protects
9 the due process rights of all parties.

10 (d) A relocation by a nondeploying parent during a period of a
11 deployed parent's absence while a temporary modification order
12 for a parenting plan is in effect shall not, by itself, terminate the
13 exclusive and continuing jurisdiction of the court for purposes of
14 later determining custody or parenting time under this chapter.

15 (e) When a court of this state has issued a custody or visitation
16 order, the absence of a child from this state during the deployment
17 of a parent shall be considered a "temporary absence" for purposes
18 of the Uniform Child Custody Jurisdiction and Enforcement Act
19 (Part 3 (commencing with Section 3400)), and the court shall retain
20 exclusive continuing jurisdiction under Section 3422.

21 (f) The deployment of a parent shall not be used as a basis to
22 assert inconvenience of the forum under Section 3427.

23 (g) For purposes of this section, the following terms have the
24 following meanings:

25 (1) "Deployment" means the temporary transfer of a member
26 of the Armed Forces in active-duty status in support of combat or
27 some other military operation.

28 (2) "Mobilization" means the transfer of a member of the
29 National Guard or Military Reserve to extended active-duty status,
30 but does not include National Guard or Military Reserve annual
31 training.

32 (3) "Temporary duty" means the transfer of a service member
33 from one military base to a different location, usually another base,
34 for a limited period of time to accomplish training or to assist in
35 the performance of a noncombat mission.

36 (h) It is the intent of the Legislature that this section provide a
37 fair, efficient, and expeditious process to resolve child custody
38 and visitation issues when a party receives temporary duty,
39 deployment, or mobilization orders from the military, as well as
40 at the time that the party returns from service and files a motion

1 to revert back to the custody order in place before the deployment.
2 The Legislature intends that family courts shall, to the extent
3 feasible within existing resources and court practices, prioritize
4 the calendaring of these cases, avoid unnecessary delay or
5 continuances, and ensure that parties who serve in the military are
6 not penalized for their service by a delay in appropriate access to
7 their children.

8 SEC. 60. Section 3200.5 of the Family Code is amended to
9 read:

10 3200.5. (a) Any standards for supervised visitation providers
11 adopted by the Judicial Council pursuant to Section 3200 shall
12 conform to this section. A provider, as described in Section 3200,
13 shall be a professional provider or nonprofessional provider.

14 (b) In any case in which the court has determined that there is
15 domestic violence or child abuse or neglect, as defined in Section
16 11165.6 of the Penal Code, and the court determines supervision
17 is necessary, the court shall consider whether to use a professional
18 or nonprofessional provider based upon the child's best interest.

19 (c) For the purposes of this section, the following definitions
20 apply:

21 (1) "Nonprofessional provider" means any person who is not
22 paid for providing supervised visitation services. Unless otherwise
23 ordered by the court or stipulated by the parties, the
24 nonprofessional provider shall:

25 (A) Have no record of a conviction for child molestation, child
26 abuse, or other crimes against a person.

27 (B) Have proof of automobile insurance if transporting the child.

28 (C) Have no current or past court order in which the provider
29 is the person being supervised.

30 (D) Agree to adhere to and enforce the court order regarding
31 supervised visitation.

32 (2) "Professional provider" means any person paid for providing
33 supervised visitation services, or an independent contractor,
34 employee, intern, or volunteer operating independently or through
35 a supervised visitation center or agency. The professional provider
36 shall:

37 (A) Be at least 21 years of age.

38 (B) Have no record of a conviction for driving under the
39 influence (DUI) within the last five years.

40 (C) Not have been on probation or parole for the last 10 years.

- 1 (D) Have no record of a conviction for child molestation, child
- 2 abuse, or other crimes against a person.
- 3 (E) Have proof of automobile insurance if transporting the child.
- 4 (F) Have no civil, criminal, or juvenile restraining orders within
- 5 the last 10 years.
- 6 (G) Have no current or past court order in which the provider
- 7 is the person being supervised.
- 8 (H) Be able to speak the language of the party being supervised
- 9 and of the child, or the provider must provide a neutral interpreter
- 10 over 18 years of age who is able to do so.
- 11 (I) Agree to adhere to and enforce the court order regarding
- 12 supervised visitation.
- 13 (J) Meet the training requirements set forth in subdivision (d).
- 14 (d) (1) Professional providers shall have received 24 hours of
- 15 training that includes training in the following subjects:
- 16 (A) The role of a professional provider.
- 17 (B) Child abuse reporting laws.
- 18 (C) Recordkeeping procedures.
- 19 (D) Screening, monitoring, and termination of visitation.
- 20 (E) Developmental needs of children.
- 21 (F) Legal responsibilities and obligations of a provider.
- 22 (G) Cultural sensitivity.
- 23 (H) Conflicts of interest.
- 24 (I) Confidentiality.
- 25 (J) Issues relating to substance abuse, child abuse, sexual abuse,
- 26 and domestic violence.
- 27 (K) Basic knowledge of family and juvenile law.
- 28 (2) Professional providers shall sign a declaration or any Judicial
- 29 Council form that they meet the training and qualifications of a
- 30 provider.
- 31 (e) The ratio of children to a professional provider shall be
- 32 contingent on:
- 33 (1) The degree of risk factors present in each case.
- 34 (2) The nature of supervision required in each case.
- 35 (3) The number and ages of the children to be supervised during
- 36 a visit.
- 37 (4) The number of people visiting the child during the visit.
- 38 (5) The duration and location of the visit.
- 39 (6) The experience of the provider.
- 40 (f) Professional providers of supervised visitation shall:

- 1 (1) Advise the parties before commencement of supervised
- 2 visitation that no confidential privilege exists.
- 3 (2) Report suspected child abuse to the appropriate agency, as
- 4 provided by law, and inform the parties of the provider’s obligation
- 5 to make those reports.
- 6 (3) Suspend or terminate visitation under subdivision (h).
- 7 (g) Professional providers shall:
- 8 (1) Prepare a written contract to be signed by the parties before
- 9 commencement of the supervised visitation. The contract should
- 10 inform each party of the terms and conditions of supervised
- 11 visitation.
- 12 (2) Review custody and visitation orders relevant to the
- 13 supervised visitation.
- 14 (3) Keep a record for each case, including, at least, all of the
- 15 following:
- 16 (A) A written record of each contact and visit.
- 17 (B) Who attended the visit.
- 18 (C) Any failure to comply with the terms and conditions of the
- 19 visitation.
- 20 (D) Any incidence of abuse, as required by law.
- 21 (h) (1) Each provider shall make every reasonable effort to
- 22 provide a safe visit for the child and the noncustodial party.
- 23 (2) If a provider determines that the rules of the visit have been
- 24 violated, the child has become acutely distressed, or the safety of
- 25 the child or the provider is at risk, the visit may be temporarily
- 26 interrupted, rescheduled at a later date, or terminated.
- 27 (3) All interruptions or terminations of visits shall be recorded
- 28 in the case file.
- 29 (4) All providers shall advise both parties of the reasons for the
- 30 interruption or termination of a visit.
- 31 (i) A professional provider shall state the reasons for temporary
- 32 suspension or termination of supervised visitation in writing and
- 33 shall provide the written statement to both parties, their attorneys,
- 34 the attorney for the child, and the court.
- 35 SEC. 61. Section 4055 of the Family Code, as amended by
- 36 Section 1 of Chapter 646 of the Statutes of 2012, is amended to
- 37 read:
- 38 4055. (a) The statewide uniform guideline for determining
- 39 child support orders is as follows: $CS = K[HN - (H\%)(TN)]$.
- 40 (b) (1) The components of the formula are as follows:

1 (A) CS = child support amount.
 2 (B) K = amount of both parents' income to be allocated for child
 3 support as set forth in paragraph (3).

4 (C) HN = high earner's net monthly disposable income.

5 (D) H% = approximate percentage of time that the high earner
 6 has or will have primary physical responsibility for the children
 7 compared to the other parent. In cases in which parents have
 8 different time-sharing arrangements for different children, H%
 9 equals the average of the approximate percentages of time the high
 10 earner parent spends with each child.

11 (E) TN = total net monthly disposable income of both parties.

12 (2) To compute net disposable income, see Section 4059.

13 (3) K (amount of both parents' income allocated for child
 14 support) equals one plus H% (if H% is less than or equal to 50
 15 percent) or two minus H% (if H% is greater than 50 percent) times
 16 the following fraction:

17		
18	Total Net Disposable	
19	Income Per Month	K
20	\$0-800	$0.20 + TN/16,000$
21	\$801-6,666	0.25
22	\$6,667-10,000	$0.10 + 1,000/TN$
23	Over \$10,000	$0.12 + 800/TN$
24		

25 For example, if H% equals 20 percent and the total monthly net
 26 disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$,
 27 or 0.30. If H% equals 80 percent and the total monthly net
 28 disposable income of the parents is \$1,000, $K = (2 - 0.80) \times 0.25$,
 29 or 0.30.

30 (4) For more than one child, multiply CS by:

31		
32	2 children	1.6
33	3 children	2
34	4 children	2.3
35	5 children	2.5
36	6 children	2.625
37	7 children	2.75
38	8 children	2.813
39	9 children	2.844
40	10 children	2.86

1 (5) If the amount calculated under the formula results in a
2 positive number, the higher earner shall pay that amount to the
3 lower earner. If the amount calculated under the formula results
4 in a negative number, the lower earner shall pay the absolute value
5 of that amount to the higher earner.

6 (6) In any default proceeding where proof is by affidavit
7 pursuant to Section 2336, or in any proceeding for child support
8 in which a party fails to appear after being duly noticed, H% shall
9 be set at zero in the formula if the noncustodial parent is the higher
10 earner or at 100 if the custodial parent is the higher earner, where
11 there is no evidence presented demonstrating the percentage of
12 time that the noncustodial parent has primary physical
13 responsibility for the children. H% shall not be set as described
14 above if the moving party in a default proceeding is the
15 noncustodial parent or if the party who fails to appear after being
16 duly noticed is the custodial parent. A statement by the party who
17 is not in default as to the percentage of time that the noncustodial
18 parent has primary physical responsibility for the children shall
19 be deemed sufficient evidence.

20 (7) In all cases in which the net disposable income per month
21 of the obligor is less than one thousand five hundred dollars
22 (\$1,500), adjusted annually for cost-of-living increases, there shall
23 be a rebuttable presumption that the obligor is entitled to a
24 low-income adjustment. On March 1, 2013, and annually thereafter,
25 the Judicial Council shall determine the amount of the net
26 disposable income adjustment based on the change in the annual
27 California Consumer Price Index for All Urban Consumers,
28 published by the California Department of Industrial Relations,
29 Division of Labor Statistics and Research. The presumption may
30 be rebutted by evidence showing that the application of the
31 low-income adjustment would be unjust and inappropriate in the
32 particular case. In determining whether the presumption is rebutted,
33 the court shall consider the principles provided in Section 4053,
34 and the impact of the contemplated adjustment on the respective
35 net incomes of the obligor and the obligee. The low-income
36 adjustment shall reduce the child support amount otherwise
37 determined under this section by an amount that is no greater than
38 the amount calculated by multiplying the child support amount
39 otherwise determined under this section by a fraction, the

1 numerator of which is 1,500 minus the obligor's net disposable
2 income per month, and the denominator of which is 1,500.

3 (8) Unless the court orders otherwise, the order for child support
4 shall allocate the support amount so that the amount of support for
5 the youngest child is the amount of support for one child, and the
6 amount for the next youngest child is the difference between that
7 amount and the amount for two children, with similar allocations
8 for additional children. However, this paragraph does not apply
9 to cases in which there are different time-sharing arrangements
10 for different children or where the court determines that the
11 allocation would be inappropriate in the particular case.

12 (c) If a court uses a computer to calculate the child support
13 order, the computer program shall not automatically default
14 affirmatively or negatively on whether a low-income adjustment
15 is to be applied. If the low-income adjustment is applied, the
16 computer program shall not provide the amount of the low-income
17 adjustment. Instead, the computer program shall ask the user
18 whether or not to apply the low-income adjustment, and if
19 answered affirmatively, the computer program shall provide the
20 range of the adjustment permitted by paragraph (7) of subdivision
21 (b).

22 (d) This section shall remain in effect only until January 1, 2018,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2018, deletes or extends that date.

25 SEC. 62. Section 4055 of the Family Code, as added by Section
26 2 of Chapter 646 of the Statutes of 2012, is amended to read:

27 4055. (a) The statewide uniform guideline for determining
28 child support orders is as follows: $CS = K[HN - (H\%)(TN)]$.

29 (b) (1) The components of the formula are as follows:

30 (A) CS = child support amount.

31 (B) K = amount of both parents' income to be allocated for child
32 support as set forth in paragraph (3).

33 (C) HN = high earner's net monthly disposable income.

34 (D) H% = approximate percentage of time that the high earner
35 has or will have primary physical responsibility for the children
36 compared to the other parent. In cases in which parents have
37 different time-sharing arrangements for different children, H%
38 equals the average of the approximate percentages of time the high
39 earner parent spends with each child.

40 (E) TN = total net monthly disposable income of both parties.

1 (2) To compute net disposable income, see Section 4059.
 2 (3) K (amount of both parents' income allocated for child
 3 support) equals one plus H% (if H% is less than or equal to 50
 4 percent) or two minus H% (if H% is greater than 50 percent) times
 5 the following fraction:

6		
7	Total Net Disposable	
8	Income Per Month	K
9	\$0–800	$0.20 + TN/16,000$
10	\$801–6,666	0.25
11	\$6,667–10,000	$0.10 + 1,000/TN$
12	Over \$10,000	$0.12 + 800/TN$

13
 14 For example, if H% equals 20 percent and the total monthly net
 15 disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$,
 16 or 0.30. If H% equals 80 percent and the total monthly net
 17 disposable income of the parents is \$1,000, $K = (2 - 0.80) \times 0.25$,
 18 or 0.30.

19 (4) For more than one child, multiply CS by:

20		
21	2 children	1.6
22	3 children	2
23	4 children	2.3
24	5 children	2.5
25	6 children	2.625
26	7 children	2.75
27	8 children	2.813
28	9 children	2.844
29	10 children	2.86

30
 31 (5) If the amount calculated under the formula results in a
 32 positive number, the higher earner shall pay that amount to the
 33 lower earner. If the amount calculated under the formula results
 34 in a negative number, the lower earner shall pay the absolute value
 35 of that amount to the higher earner.

36 (6) In any default proceeding where proof is by affidavit
 37 pursuant to Section 2336, or in any proceeding for child support
 38 in which a party fails to appear after being duly noticed, H% shall
 39 be set at zero in the formula if the noncustodial parent is the higher
 40 earner or at 100 if the custodial parent is the higher earner, where

1 there is no evidence presented demonstrating the percentage of
2 time that the noncustodial parent has primary physical
3 responsibility for the children. H% shall not be set as described
4 above if the moving party in a default proceeding is the
5 noncustodial parent or if the party who fails to appear after being
6 duly noticed is the custodial parent. A statement by the party who
7 is not in default as to the percentage of time that the noncustodial
8 parent has primary physical responsibility for the children shall
9 be deemed sufficient evidence.

10 (7) In all cases in which the net disposable income per month
11 of the obligor is less than one thousand dollars (\$1,000), there shall
12 be a rebuttable presumption that the obligor is entitled to a
13 low-income adjustment. The presumption may be rebutted by
14 evidence showing that the application of the low-income
15 adjustment would be unjust and inappropriate in the particular
16 case. In determining whether the presumption is rebutted, the court
17 shall consider the principles provided in Section 4053, and the
18 impact of the contemplated adjustment on the respective net
19 incomes of the obligor and the obligee. The low-income adjustment
20 shall reduce the child support amount otherwise determined under
21 this section by an amount that is no greater than the amount
22 calculated by multiplying the child support amount otherwise
23 determined under this section by a fraction, the numerator of which
24 is 1,000 minus the obligor's net disposable income per month, and
25 the denominator of which is 1,000.

26 (8) Unless the court orders otherwise, the order for child support
27 shall allocate the support amount so that the amount of support for
28 the youngest child is the amount of support for one child, and the
29 amount for the next youngest child is the difference between that
30 amount and the amount for two children, with similar allocations
31 for additional children. However, this paragraph does not apply
32 to cases in which there are different time-sharing arrangements
33 for different children or where the court determines that the
34 allocation would be inappropriate in the particular case.

35 (c) If a court uses a computer to calculate the child support
36 order, the computer program shall not automatically default
37 affirmatively or negatively on whether a low-income adjustment
38 is to be applied. If the low-income adjustment is applied, the
39 computer program shall not provide the amount of the low-income
40 adjustment. Instead, the computer program shall ask the user

1 whether or not to apply the low-income adjustment, and if
2 answered affirmatively, the computer program shall provide the
3 range of the adjustment permitted by paragraph (7) of subdivision
4 (b).

5 (d) This section shall become operative on January 1, 2018.

6 SEC. 63. Section 1587 of the Fish and Game Code is amended
7 to read:

8 1587. (a) The Mirage Trail within the Magnesia Spring
9 Ecological Reserve shall be open nine months of the year to
10 recreational hiking if the commission determines that the following
11 conditions are met:

12 (1) Local public agencies or other entities will assume complete
13 financial responsibility for the following as determined to be
14 necessary by the commission:

15 (A) Fencing to dissuade hikers from traversing beyond the trail
16 and into sensitive Peninsular bighorn sheep habitat.

17 (B) Signage and educational materials to educate hikers about
18 Peninsular bighorn sheep.

19 (2) A single entity has been designated to fulfill the financial
20 arrangements and other terms and conditions determined by the
21 commission to be necessary pursuant to paragraph (1).

22 (b) The commission shall determine seasonal openings and
23 closures of the trail that will not conflict with the use of the area
24 by Peninsular bighorn sheep, consistent with subdivision (a).

25 (c) This section shall remain in effect only until January 1, 2018,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2018, deletes or extends that date.

28 SEC. 64. Section 15100 of the Fish and Game Code is amended
29 to read:

30 15100. There is within the department an aquaculture
31 coordinator who shall perform all of the following duties as part
32 of the department’s aquaculture program:

33 (a) Promote understanding of aquaculture among public agencies
34 and the general public.

35 (b) Propose methods of reducing the negative impact of public
36 regulation at all levels of government on the aquaculture industry.

37 (c) Provide information on all aspects of regulatory compliance
38 to the various sectors of the aquaculture industry.

1 (d) Provide advice to the owner of a registered aquaculture
2 facility on project siting and facility design, as necessary, to comply
3 with regulatory requirements.

4 (e) Coordinate with the Aquaculture Development Committee
5 regarding the duties described in subdivisions (a) to (d), inclusive.

6 SEC. 65. Section 4101.3 of the Food and Agricultural Code,
7 as amended by Section 2 of Chapter 137 of the Statutes of 2012,
8 is amended to read:

9 4101.3. (a) Notwithstanding any other provision of law, the
10 California Science Center is hereby authorized to enter into a site
11 lease with the California Science Center Foundation, a California
12 Nonprofit Corporation, with the approval of the Natural Resources
13 Agency, the Department of Finance, and the Department of General
14 Services, for the purpose of the foundation developing,
15 constructing, equipping, furnishing, and funding the project known
16 as Phase II of the California Science Center. The overall
17 construction cost and scope shall be consistent with the amount
18 authorized in the Budget Act of 2002, provided that nothing in this
19 section shall prevent the foundation from expending additional
20 nonstate funds to complete Phase II provided that the additional
21 expenditures do not result in additional state operation and
22 maintenance costs. Any additional expenditure of nonstate funds
23 by the foundation shall not increase the state's contribution.

24 (b) For the purpose of carrying out subdivision (a), all of the
25 following shall apply:

26 (1) In connection with the development described in subdivision
27 (a), above, the foundation may, in its determination, select the
28 most qualified construction manager/general contractor to oversee
29 and manage the work and prepare the competitive bid packages
30 for all major subcontractors to be engaged in the construction of
31 Phase II Project. Any construction manager/general contractor
32 selected shall be required to have a California general contractor's
33 license.

34 (2) Prior to commencement of construction of the Phase II
35 Project, the California Science Center shall enter into a
36 lease-purchase agreement upon approval by the Department of
37 Finance with the foundation on terms that are compatible with the
38 Phase I Project financing. The term of the lease-purchase agreement
39 shall be a term not to exceed 25 years. Lease payments on behalf
40 of the state shall be commensurate with the twenty-two million

1 nine hundred forty-five thousand two hundred sixty-three dollars
2 (\$22,945,263), (nineteen million one hundred thirty-seven thousand
3 dollars (\$19,137,000) plus 19.9 percent augmentation authority)
4 construction cost allocation of the state. Lease payments may also
5 include any cost of financing that the foundation may incur related
6 to tax-exempt financing. The California Science Center shall be
7 authorized to direct the Controller to send the rental payments
8 under the lease-purchase agreement directly to the foundation's
9 bond trustee.

10 (3) The foundation shall ensure that the Phase II Project is
11 inspected during construction by the state in the manner consistent
12 with state infrastructure projects. The foundation shall also
13 indemnify and defend and save harmless the Department of General
14 Services for any and all claims and losses accruing and resulting
15 from or arising out of the foundation's use of the state's plans and
16 specifications. The foundation and the California Science Center,
17 upon consultation with the Director of General Services and the
18 Department of Finance shall agree on a reasonable level of state
19 oversight throughout the construction of the Phase II Project in
20 order to assist the foundation in the completion of the project within
21 the intended scope and cost.

22 (4) At the end of the term of the site lease and the lease-purchase
23 agreement unencumbered title to the land and improvements shall
24 return to the state with jurisdiction held by the California Science
25 Center.

26 SEC. 66. Section 4106 of the Food and Agricultural Code, as
27 amended by Section 6 of Chapter 137 of the Statutes of 2012, is
28 amended to read:

29 4106. (a) The California Science Center shall work with the
30 Los Angeles Memorial Coliseum Commission, the City of Los
31 Angeles, and the County of Los Angeles to develop additional
32 parking facilities in Exposition Park to the extent necessary to
33 allow for expansion of the park.

34 (b) The California Science Center shall manage or operate its
35 parking facilities in a manner that preserves and protects the
36 interests of itself and the California African American Museum
37 and recognizes the cultural and educational character of Exposition
38 Park.

39 (c) The Exposition Park Improvement Fund is hereby created
40 in the State Treasury. All revenues received by the California

1 Science Center from its parking facilities, from rental of museum
2 facilities, or from other business activities shall be deposited in
3 the Exposition Park Improvement Fund.

4 (d) The moneys in the Exposition Park Improvement Fund may
5 only be used, upon appropriation by the Legislature, for
6 improvements to Exposition Park, including, but not limited to,
7 maintenance of existing parking and museum facilities, replacement
8 of museum equipment, supplies and wages expended to generate
9 revenues from rental of museum facilities, development of new
10 parking facilities, and acquisition of land within or adjacent to
11 Exposition Park.

12 (e) (1) The Legislature hereby finds and declares that there is
13 a need for development of additional park, recreation, museum,
14 and parking facilities in Exposition Park. The Legislature
15 recognizes that the provision of these needed improvements as
16 identified in the California Science Center Exposition Park Master
17 Plan may require the use of funds provided by other governmental
18 agencies or private donors.

19 (2) The California Science Center may accept funds from other
20 governmental agencies or private contributions for the purpose of
21 implementation of the California Science Center Exposition Park
22 Master Plan. The private contributions and funds from
23 governmental agencies other than state governmental agencies
24 shall be deposited in the Exposition Park Improvement Fund in
25 the State Treasury and shall be available for expenditure without
26 regard to fiscal years by the California Science Center for
27 implementation of the California Science Center Exposition Park
28 Master Plan. Funds from other state governmental agencies shall
29 be deposited in the Exposition Park Improvement Fund and shall
30 be available for expenditure, upon appropriation, by the California
31 Science Center for implementation of the California Science Center
32 Exposition Park Master Plan. However, any expenditure is not
33 authorized sooner than 30 days after notification in writing of the
34 necessity therefor to the chairperson of the committee in each
35 house *of the Legislature* that considers appropriations and the
36 Chairperson of the Joint Legislative Budget Committee, or not
37 sooner than whatever lesser time as the chairperson of the joint
38 committee, or his or her designee, may in each instance determine.
39 Neither the City of Los Angeles nor the County of Los Angeles

1 shall impose any tax upon tickets purchased authorizing the use
2 of parking facilities owned by the California Science Center.

3 SEC. 67. Section 14611 of the Food and Agricultural Code is
4 amended to read:

5 14611. (a) A licensee whose name appears on the label who
6 sells or distributes bulk fertilizing materials, as defined in Sections
7 14517 and 14533, to unlicensed purchasers, shall pay to the
8 secretary an assessment not to exceed two mills (\$0.002) per dollar
9 of sales for all fertilizing materials. A licensee whose name appears
10 on the label of packaged fertilizing materials, as defined in Sections
11 14533 and 14551, shall pay to the secretary an assessment not to
12 exceed two mills (\$0.002) per dollar of sales. The secretary may,
13 based on the findings and recommendations of the board, reduce
14 the assessment rate to a lower rate that provides sufficient revenue
15 to carry out this chapter.

16 (b) In addition to the assessment provided in subdivision (a),
17 the secretary may impose an assessment in an amount not to exceed
18 one mill (\$0.001) per dollar of sales for all sales of fertilizing
19 materials, to provide funding for research and education regarding
20 the use and handling of fertilizing material, including, but not
21 limited to, support for University of California Cooperative
22 Extension, the California resource conservation districts, other
23 California institutions of postsecondary education, or other
24 qualified entities to develop programs in the following areas:

25 (1) Technical education for users of fertilizer materials in the
26 development and implementation of nutrient management projects
27 that result in more agronomically sound uses of fertilizer materials
28 and minimize the environmental impacts of fertilizer use, including,
29 but not limited to, nitrates in groundwater and emissions of
30 greenhouse gases resulting from fertilizer use.

31 (2) Research to improve nutrient management practices resulting
32 in more agronomically sound uses of fertilizer materials and to
33 minimize the environmental impacts of fertilizer use, including,
34 but not limited to, nitrates in groundwater and emissions of
35 greenhouse gases resulting from fertilizer use.

36 (3) Education to increase awareness of more agronomically
37 sound use of fertilizer materials to reduce the environmental
38 impacts resulting from the overuse or inefficient use of fertilizing
39 materials.

1 SEC. 68. Section 19447 of the Food and Agricultural Code is
2 amended to read:

3 19447. (a) In lieu of any civil action pursuant to Section 19445,
4 and in lieu of seeking prosecution, the secretary may levy a civil
5 penalty against a person who violates Article 6 (commencing with
6 Section 19300), Article 6.5 (commencing with Section 19310), or
7 any regulation adopted pursuant to those articles, in an amount not
8 to exceed five thousand dollars (\$5,000) for each violation.

9 (b) Before a civil penalty is levied, the person charged with the
10 violation shall receive notice of the nature of the violation and
11 shall be granted the opportunity to review the secretary's evidence
12 and, for up to 30 days following the issuance of the notice, the
13 opportunity to present written argument and evidence to the
14 secretary as to why the civil penalty should not be imposed or
15 should be reduced from the amount specified in the penalty notice.
16 Notwithstanding Chapter 4.5 (commencing with Section 11400)
17 of, and Chapter 5 (commencing with Section 11500) of, Part 1 of
18 Division 3 of Title 2 of the Government Code or any other
19 provision of law, this section does not require the department to
20 conduct either a formal or informal hearing. The secretary instead
21 may dispose of the matter upon review of the documentation
22 presented.

23 (c) Any person upon whom a civil penalty is levied may appeal
24 to the secretary within 20 days of the date of receiving notification
25 of the penalty, as follows:

26 (1) The appeal shall be in writing and signed by the appellant
27 or his or her authorized agent and shall state the grounds for the
28 appeal.

29 (2) Any party, at the time of filing the appeal, or within 10 days
30 thereafter, may present written evidence and a written argument
31 to the secretary.

32 (3) The secretary may grant oral arguments upon application
33 made at the time written arguments are made.

34 (4) If an application to present an oral argument is granted,
35 written notice of the time and place for the oral argument shall be
36 given at least 10 days prior to the date set therefor. This time
37 requirement may be altered by an agreement between the secretary
38 and the person appealing the penalty.

39 (5) The secretary shall decide the appeal on any oral or written
40 arguments, briefs, and evidence that he or she has received.

1 (6) The secretary shall render a written decision within 45 days
2 of the date of appeal, or within 15 days of the date of oral
3 arguments. A copy of the secretary's decision shall be delivered
4 or mailed to the appellant.

5 (7) The secretary may sustain the decision, modify the decision
6 by reducing the amount of the penalty levied, or reverse the
7 decision.

8 (8) A review of the decision of the secretary may be sought by
9 the appellant pursuant to Section 1094.5 of the Code of Civil
10 Procedure.

11 (d) (1) If the person upon whom a penalty is levied does not
12 file a petition for a writ of administrative mandamus, the court,
13 upon receiving a certified copy of the department's final decision
14 that directs payment of a civil penalty, shall enter judgment in
15 favor of the department.

16 (2) After completion of the appeal procedure provided for in
17 this section, the secretary may file a certified copy of the
18 department's final decision that directs payment of a civil penalty
19 and, if applicable, any order denying a petition for a writ of
20 administrative mandamus, with the clerk of the superior court of
21 any county that has jurisdiction over the matter. No fees shall be
22 charged by the clerk of the superior court for the performance of
23 any official services required in connection with the entry of
24 judgment pursuant to this section.

25 (e) Any penalties levied by the secretary pursuant to this section
26 shall be deposited in the Department of Food and Agriculture Fund,
27 and, upon appropriation by the Legislature, shall be used for the
28 purposes described in Section 221.

29 SEC. 69. Section 55527.6 of the Food and Agricultural Code
30 is amended to read:

31 55527.6. (a) Licensees or applicants for a license shall be
32 required to furnish and maintain an irrevocable guarantee in a form
33 and amount satisfactory to the secretary if, within the preceding
34 four years, the secretary determines that they have done any of the
35 following:

36 (1) Engaged in conduct which demonstrates a lack of financial
37 responsibility, including, but not limited to, delinquent accounts
38 payable, judgments of liability, insolvency, or bankruptcy.

39 (2) Failed to assure future financial responsibility unless an
40 irrevocable guarantee is provided.

1 (3) Otherwise violated this chapter which resulted in license
2 revocation.

3 (b) The irrevocable guarantee may include a personal or
4 corporate guarantee, a certificate of deposit, a bank letter of credit,
5 or a surety bond, as determined to be appropriate by the secretary.

6 (c) The guarantee shall not be less than ten thousand dollars
7 (\$10,000) or 20 percent of the annual dollar volume of business
8 based on farm product value returned to the grower, whichever is
9 greater, as assurance that the licensee's or applicant's business
10 will be conducted in accordance with this chapter and that the
11 licensee or applicant will pay all amounts due farm products
12 creditors.

13 (d) The secretary, based on changes in the nature and volume
14 of business conducted by the licensee, may require an increase or
15 authorize a reduction in the amount of the guarantee, but in no
16 case shall the guarantee be reduced below ten thousand dollars
17 (\$10,000). A licensee who is notified by the secretary to provide
18 a guarantee in an increased amount shall do so within a reasonable
19 time as specified by the secretary. If the licensee fails to do so, the
20 secretary may, after a notice and opportunity for a hearing, suspend
21 or revoke the license of the licensee.

22 SEC. 70. Section 64101 of the Food and Agricultural Code is
23 amended to read:

24 64101. There is in the state government the Dairy Council of
25 California which shall consist of not less than 24, nor more than
26 25, members. All members of the council shall be appointed by
27 the secretary and may hold office at the pleasure of the secretary.
28 The membership of the council shall be as follows:

29 (a) There shall be 12 members that are actually engaged in the
30 production of milk. These 12 members are the producer members
31 of the council.

32 (b) There shall be 12 members that are handlers or
33 producer-handlers of dairy products. These 12 members are the
34 handler members of the council.

35 (c) Upon the recommendation of the council, the secretary may
36 appoint one person who is neither a producer, handler, or
37 producer-handler, and who shall represent the public generally.

38 SEC. 71. Section 3513 of the Government Code is amended
39 to read:

40 3513. As used in this chapter:

1 (a) “Employee organization” means any organization that
2 includes employees of the state and that has as one of its primary
3 purposes representing these employees in their relations with the
4 state.

5 (b) “Recognized employee organization” means an employee
6 organization that has been recognized by the state as the exclusive
7 representative of the employees in an appropriate unit.

8 (c) “State employee” means any civil service employee of the
9 state, and the teaching staff of schools under the jurisdiction of the
10 State Department of Education or the Superintendent of Public
11 Instruction, except managerial employees, confidential employees,
12 supervisory employees, employees of the Department of Human
13 Resources, professional employees of the Department of Finance
14 engaged in technical or analytical state budget preparation other
15 than the auditing staff, professional employees in the
16 Personnel/Payroll Services Division of the Controller’s office
17 engaged in technical or analytical duties in support of the state’s
18 personnel and payroll systems other than the training staff,
19 employees of the Legislative Counsel Bureau, employees of the
20 Bureau of State Audits, employees of the office of the Inspector
21 General, employees of the board, conciliators employed by the
22 California State Mediation and Conciliation Service, employees
23 of the Office of the State Chief Information Officer except as
24 otherwise provided in Section 11546.5, and intermittent athletic
25 inspectors who are employees of the State Athletic Commission.

26 (d) “Mediation” means effort by an impartial third party to assist
27 in reconciling a dispute regarding wages, hours, and other terms
28 and conditions of employment between representatives of the
29 public agency and the recognized employee organization or
30 recognized employee organizations through interpretation,
31 suggestion, and advice.

32 (e) “Managerial employee” means any employee having
33 significant responsibilities for formulating or administering agency
34 or departmental policies and programs or administering an agency
35 or department.

36 (f) “Confidential employee” means any employee who is
37 required to develop or present management positions with respect
38 to employer-employee relations or whose duties normally require
39 access to confidential information contributing significantly to the
40 development of management positions.

1 (g) “Supervisory employee” means any individual, regardless
2 of the job description or title, having authority, in the interest of
3 the employer, to hire, transfer, suspend, lay off, recall, promote,
4 discharge, assign, reward, or discipline other employees, or
5 responsibility to direct them, or to adjust their grievances, or
6 effectively to recommend this action, if, in connection with the
7 foregoing, the exercise of this authority is not of a merely routine
8 or clerical nature, but requires the use of independent judgment.
9 Employees whose duties are substantially similar to those of their
10 subordinates shall not be considered to be supervisory employees.

11 (h) “Board” means the Public Employment Relations Board.
12 The Educational Employment Relations Board shall be renamed
13 the Public Employment Relations Board as provided in Section
14 3540. The powers and duties of the board described in Section
15 3541.3 shall also apply, as appropriate, to this chapter.

16 (i) “Maintenance of membership” means that all employees
17 who voluntarily are, or who voluntarily become, members of a
18 recognized employee organization shall remain members of that
19 employee organization in good standing for a period as agreed to
20 by the parties pursuant to a memorandum of understanding,
21 commencing with the effective date of the memorandum of
22 understanding. A maintenance of membership provision shall not
23 apply to any employee who within 30 days prior to the expiration
24 of the memorandum of understanding withdraws from the
25 employee organization by sending a signed withdrawal letter to
26 the employee organization and a copy to the Controller’s office.

27 (j) “State employer,” or “employer,” for the purposes of
28 bargaining or meeting and conferring in good faith, means the
29 Governor or his or her designated representatives.

30 (k) “Fair share fee” means the fee deducted by the state
31 employer from the salary or wages of a state employee in an
32 appropriate unit who does not become a member of and financially
33 support the recognized employee organization. The fair share fee
34 shall be used to defray the costs incurred by the recognized
35 employee organization in fulfilling its duty to represent the
36 employees in their employment relations with the state, and shall
37 not exceed the standard initiation fee, membership dues, and
38 general assessments of the recognized employee organization.

39 SEC. 72. Section 3527 of the Government Code is amended
40 to read:

1 3527. As used in this chapter:

2 (a) “Employee” means a civil service employee of the State of
3 California. The “State of California” as used in this chapter
4 includes those state agencies, boards, and commissions as may be
5 designated by law that employ civil service employees, except the
6 University of California, Hastings College of the Law, and the
7 California State University.

8 (b) “Excluded employee,” means all managerial employees, as
9 defined in subdivision (e) of Section 3513, all confidential
10 employees, as defined in subdivision (f) of Section 3513, and all
11 supervisory employees, as defined in subdivision (g) of Section
12 3513, and all civil service employees of the Department of Human
13 Resources, professional employees of the Department of Finance
14 engaged in technical or analytical state budget preparation other
15 than the auditing staff, professional employees in the
16 Personnel/Payroll Services Division of the Controller’s office
17 engaged in technical or analytical duties in support of the state’s
18 personnel and payroll systems other than the training staff,
19 employees of the Legislative Counsel Bureau, employees of the
20 Bureau of State Audits, employees of the Public Employment
21 Relations Board, conciliators employed by the California State
22 Mediation and Conciliation Service, employees of the office of
23 the State Chief Information Officer except as provided in Section
24 11546.5, and intermittent athletic inspectors who are employees
25 of the State Athletic Commission.

26 (c) “Supervisory employee organization” means an organization
27 that represents members who are supervisory employees under
28 subdivision (g) of Section 3513.

29 (d) “Excluded employee organization” means an organization
30 that includes excluded employees of the state, as defined in
31 subdivision (b), and that has as one of its primary purposes
32 representing its members in employer-employee relations.
33 Excluded employee organization includes supervisory employee
34 organizations.

35 (e) “State employer” or “employer,” for purposes of meeting
36 and conferring on matters relating to supervisory
37 employer-employee relations, means the Governor or his or her
38 designated representatives.

39 SEC. 73. Section 7480 of the Government Code, as amended
40 by Section 2 of Chapter 304 of the Statutes of 2011, is repealed.

1 SEC. 74. Section 7522.20 of the Government Code is amended
2 to read:

3 7522.20. (a) Each retirement system that offers a defined
4 benefit plan for nonsafety members of the system shall use the
5 formula prescribed by this section. The defined benefit plan shall
6 provide a pension at retirement for service equal to the percentage
7 of the member's final compensation set forth opposite the
8 member's age at retirement, taken to the preceding quarter year,
9 in the following table, multiplied by the number of years of service
10 in the system as a nonsafety member. A member may retire for
11 service under this section after five years of service and upon
12 reaching 52 years of age.

13	Age of Retirement	Fraction
14	52	1.000
15	52 1/4	1.025
16	52 1/2	1.050
17	52 3/4	1.075
18	53	1.100
19	53 1/4	1.125
20	53 1/2	1.150
21	53 3/4	1.175
22	54	1.200
23	54 1/4	1.225
24	54 1/2	1.250
25	54 3/4	1.275
26	55	1.300
27	55 1/4	1.325
28	55 1/2	1.350
29	55 3/4	1.375
30	56	1.400
31	56 1/4	1.425
32	56 1/2	1.450
33	56 3/4	1.475
34	57	1.500
35	57 1/4	1.525
36	57 1/2	1.550
37	57 3/4	1.575
38	58	1.600
39	58 1/4	1.625
40		

1	58 ¹ / ₂	1.650
2	58 ³ / ₄	1.675
3	59	1.700
4	59 ¹ / ₄	1.725
5	59 ¹ / ₂	1.750
6	59 ³ / ₄	1.775
7	60	1.800
8	60 ¹ / ₄	1.825
9	60 ¹ / ₂	1.850
10	60 ³ / ₄	1.875
11	61	1.900
12	61 ¹ / ₄	1.925
13	61 ¹ / ₂	1.950
14	61 ³ / ₄	1.975
15	62	2.000
16	62 ¹ / ₄	2.025
17	62 ¹ / ₂	2.050
18	62 ³ / ₄	2.075
19	63	2.100
20	63 ¹ / ₄	2.125
21	63 ¹ / ₂	2.150
22	63 ³ / ₄	2.175
23	64	2.200
24	64 ¹ / ₄	2.225
25	64 ¹ / ₂	2.250
26	64 ³ / ₄	2.275
27	65	2.300
28	65 ¹ / ₄	2.325
29	65 ¹ / ₂	2.350
30	65 ³ / ₄	2.375
31	66	2.400
32	66 ¹ / ₄	2.425
33	66 ¹ / ₂	2.450
34	66 ³ / ₄	2.475
35	67	2.500

36
 37 (b) Pensionable compensation used to calculate the defined
 38 benefit shall be limited as described in Section 7522.10.

1 (c) A new member of the State Teachers' Retirement System
2 shall be subject to the formula established pursuant to Section
3 24202.6 of the Education Code.

4 SEC. 75. Section 7522.56 of the Government Code is amended
5 to read:

6 7522.56. (a) This section shall apply to any person who is
7 receiving a pension benefit from a public retirement system and
8 shall supersede any other provision in conflict with this section.

9 (b) A retired person shall not serve, be employed by, or be
10 employed through a contract directly by, a public employer in the
11 same public retirement system from which the retiree receives the
12 benefit without reinstatement from retirement, except as permitted
13 by this section.

14 (c) A person who retires from a public employer may serve
15 without reinstatement from retirement or loss or interruption of
16 benefits provided by the retirement system upon appointment by
17 the appointing power of a public employer either during an
18 emergency to prevent stoppage of public business or because the
19 retired person has skills needed to perform work of limited
20 duration.

21 (d) Appointments of the person authorized under this section
22 shall not exceed a total for all employers in that public retirement
23 system of 960 hours or other equivalent limit, in a calendar or
24 fiscal year, depending on the administrator of the system. The rate
25 of pay for the employment shall not be less than the minimum,
26 nor exceed the maximum, paid by the employer to other employees
27 performing comparable duties, divided by 173.333 to equal an
28 hourly rate. A retired person whose employment without
29 reinstatement is authorized by this section shall acquire no service
30 credit or retirement rights under this section with respect to the
31 employment unless he or she reinstates from retirement.

32 (e) (1) Notwithstanding subdivision (c), any retired person shall
33 not be eligible to serve or be employed by a public employer if,
34 during the 12-month period prior to an appointment described in
35 this section, the retired person received any unemployment
36 insurance compensation arising out of prior employment subject
37 to this section with a public employer. A retiree shall certify in
38 writing to the employer upon accepting an offer of employment
39 that he or she is in compliance with this requirement.

1 (2) A retired person who accepts an appointment after receiving
 2 unemployment insurance compensation as described in this
 3 subdivision shall terminate that employment on the last day of the
 4 current pay period and shall not be eligible for reappointment
 5 subject to this section for a period of 12 months following the last
 6 day of employment.

7 (f) A retired person shall not be eligible to be employed pursuant
 8 to this section for a period of 180 days following the date of
 9 retirement unless he or she meets one of the following conditions:

10 (1) The employer certifies the nature of the employment and
 11 that the appointment is necessary to fill a critically needed position
 12 before 180 days have passed and the appointment has been
 13 approved by the governing body of the employer in a public
 14 meeting. The appointment may not be placed on a consent calendar.

15 (2) The state employer certifies the nature of the employment
 16 and that the appointment is necessary to fill a critically needed
 17 state employment position before 180 days have passed and the
 18 appointment has been approved by the Department of Human
 19 Resources. The department may establish a process to delegate
 20 appointing authority to individual state agencies, but shall audit
 21 the process to determine if abuses of the system occur. If necessary,
 22 the department may assume an agency’s appointing authority for
 23 retired workers and may charge the department an appropriate
 24 amount for administering that authority.

25 (3) The retiree is eligible to participate in the Faculty Early
 26 Retirement Program pursuant to a collective bargaining agreement
 27 with the California State University that existed prior to January
 28 1, 2013, or has been included in subsequent agreements.

29 (4) The retiree is a public safety officer or firefighter.

30 (g) A retired person who accepted a retirement incentive upon
 31 retirement shall not be eligible to be employed pursuant to this
 32 section for a period of 180 days following the date of retirement
 33 and subdivision (f) shall not apply.

34 (h) This section shall not apply to a person who is retired from
 35 the State Teachers’ Retirement System, and who is subject to
 36 Section 24214, 24214.5, or 26812 of the Education Code.

37 (i) This section shall not apply to (1) a subordinate judicial
 38 officer whose position, upon retirement, is converted to a judgeship
 39 pursuant to Section 69615, and he or she returns to work in the
 40 converted position, and the employer is a trial court, or (2) a retiree

1 who takes office as a judge of a court of record pursuant to Article
2 VI of the California Constitution or a retiree of the Judges'
3 Retirement System I or the Judges' Retirement System II who is
4 appointed to serve as a retired judge.

5 SEC. 76. Section 7522.57 of the Government Code is amended
6 to read:

7 7522.57. (a) This section shall apply to any retired person who
8 is receiving a pension benefit from a public retirement system and
9 is first appointed on or after January 1, 2013, to a salaried position
10 on a state board or commission. This section shall supersede any
11 other provision in conflict with this section.

12 (b) A person who is retired from a public retirement system
13 may serve without reinstatement from retirement or loss or
14 interruption of benefits provided that appointment is to a part-time
15 state board or commission. A retired person whose employment
16 without reinstatement is authorized by this subdivision shall acquire
17 no benefits, service credit, or retirement rights with respect to the
18 employment. Unless otherwise defined in statute, for the purpose
19 of this section, a part-time appointment shall mean an appointment
20 with a salary of no more than \$60,000 annually, which shall be
21 increased in any fiscal year in which a general salary increase is
22 provided for state employees. The amount of the increase provided
23 by this section shall be comparable to, but shall not exceed, the
24 percentage of the general salary increases provided for state
25 employees during that fiscal year.

26 (c) A person who is retired from the Public Employees'
27 Retirement System shall not serve on a full-time basis on a state
28 board or commission without reinstatement unless that person
29 serves as a nonsalaried member of the board or commission and
30 receives only per diem authorized to all members of the board or
31 commission. A person who serves as a nonsalaried member of a
32 board or commission shall not earn any service credit or benefits
33 in the Public Employees' Retirement System or make contributions
34 with respect to the service performed.

35 (d) A person retired from a public retirement system other than
36 the Public Employees' Retirement System who is appointed on a
37 full-time basis to a state board or commission shall choose one of
38 the following options:

39 (1) The person may serve as a nonsalaried member of the board
40 or commission and continue to receive his or her retirement

1 allowance, in addition to any per diem authorized to all members
2 of the board or commission. The person shall not earn service
3 credit or benefits in the Public Employees' Retirement System and
4 shall not make contributions with respect to the service performed.

5 (2) (A) The person may suspend his or her retirement allowance
6 or allowances and instate as a new member of the Public
7 Employees' Retirement System for the service performed on the
8 board or commission. The pensionable compensation earned
9 pursuant to this paragraph shall not be eligible for reciprocity with
10 any other retirement system or plan.

11 (B) Upon retiring for service after serving on the board or
12 commission, the appointee shall be entitled to reinstatement of any
13 suspended benefits, including employer provided retiree health
14 benefits, that he or she was entitled to at the time of being
15 appointed to the board or commission.

16 (e) Notwithstanding subdivisions (c) and (d), a person who
17 retires from a public employer may serve without reinstatement
18 from retirement or loss or interruption of benefits provided by the
19 retirement system upon appointment to a full-time state board
20 pursuant to Section 5075 of the Penal Code.

21 SEC. 77. Section 7522.72 of the Government Code is amended
22 to read:

23 7522.72. (a) This section shall apply to a public employee first
24 employed by a public employer or first elected or appointed to an
25 office before January 1, 2013, and, on and after that date, Section
26 7522.70 shall not apply.

27 (b) (1) If a public employee is convicted by a state or federal
28 trial court of any felony under state or federal law for conduct
29 arising out of or in the performance of his or her official duties, in
30 pursuit of the office or appointment, or in connection with
31 obtaining salary, disability retirement, service retirement, or other
32 benefits, he or she shall forfeit all accrued rights and benefits in
33 any public retirement system in which he or she is a member to
34 the extent provided in subdivision (c) and shall not accrue further
35 benefits in that public retirement system, effective on the date of
36 the conviction.

37 (2) If a public employee who has contact with children as part
38 of his or her official duties is convicted of a felony that was
39 committed within the scope of his or her official duties against or
40 involving a child who he or she has contact with as part of his or

1 her official duties, he or she shall forfeit all accrued rights and
2 benefits in any public retirement system in which he or she is a
3 member to the extent provided in subdivision (c) and shall not
4 accrue further benefits in that public retirement system, effective
5 on the date of the conviction.

6 (c) (1) A public employee shall forfeit all the retirement benefits
7 earned or accrued from the earliest date of the commission of any
8 felony described in subdivision (b) to the forfeiture date, inclusive.
9 The retirement benefits shall remain forfeited notwithstanding any
10 reduction in sentence or expungement of the conviction following
11 the date of the public employee's conviction. Retirement benefits
12 attributable to service performed prior to the date of the first
13 commission of the felony for which the public employee was
14 convicted shall not be forfeited as a result of this section.

15 (2) For purposes of this subdivision, "forfeiture date" means
16 the date of the conviction.

17 (d) (1) Any contributions to the public retirement system made
18 by the public employee described in subdivision (b) on or after
19 the earliest date of the commission of any felony described in
20 subdivision (b) shall be returned, without interest, to the public
21 employee upon the occurrence of a distribution event unless
22 otherwise ordered by a court or determined by the pension
23 administrator.

24 (2) Any funds returned to the public employee pursuant to
25 subdivision (d) shall be disbursed by electronic funds transfer to
26 an account of the public employee, in a manner conforming with
27 the requirements of the Internal Revenue Code, and the public
28 retirement system shall notify the court and the district attorney
29 at least three business days before that disbursement of funds.

30 (3) For the purposes of this subdivision, a "distribution event"
31 means any of the following:

- 32 (A) Separation from employment.
- 33 (B) Death of the member.
- 34 (C) Retirement of the member.

35 (e) (1) Upon conviction, a public employee as described in
36 subdivision (b) and the prosecuting agency shall notify the public
37 employer who employed the public employee at the time of the
38 commission of the felony within 60 days of the felony conviction
39 of all of the following information:

- 40 (A) The date of conviction.

1 (B) The date of the first known commission of the felony.

2 (2) The operation of this section is not dependent upon the
3 performance of the notification obligations specified in this
4 subdivision.

5 (f) The public employer that employs or employed a public
6 employee described in subdivision (b) and that public employee
7 shall each notify the public retirement system in which the public
8 employee is a member of that public employee's conviction within
9 90 days of the conviction. The operation of this section is not
10 dependent upon the performance of the notification obligations
11 specified in this subdivision.

12 (g) A public retirement system may assess a public employer a
13 reasonable amount to reimburse the cost of audit, adjustment, or
14 correction, if it determines that the public employer failed to
15 comply with this section.

16 (h) If a public employee's conviction is reversed and that
17 decision is final, the employee shall be entitled to do either of the
18 following:

19 (1) Recover the forfeited retirement benefits as adjusted for the
20 contributions received pursuant to subdivision (d).

21 (2) Redeposit those contributions and interest, as determined
22 by the system actuary, and then recover the full amount of the
23 forfeited benefits.

24 (i) A public employee first employed by a public employer or
25 first elected or appointed to an office on or after January 1, 2013,
26 shall be subject to Section 7522.74.

27 SEC. 78. Section 8164.1 of the Government Code is amended
28 to read:

29 8164.1. There is in state government a Capitol Area Committee
30 consisting of nine members who shall be appointed in the following
31 manner:

32 (a) Four members of the committee shall be appointed by the
33 Governor of which at least one member shall be appointed from
34 a list of three candidates submitted by the City of Sacramento and
35 at least one member shall be appointed from a list of three
36 candidates submitted by the County of Sacramento. Two members
37 shall be appointed for a term expiring December 31, 1979, and
38 two for a term expiring December 31, 1981.

39 (b) Two members shall be appointed by the Speaker of the
40 Assembly, one of whom may be a Member of the Assembly, and

1 two members shall be appointed by the Senate Rules Committee,
2 one of whom may be a Member of the Senate. Legislative members
3 of the committee shall meet and, except as otherwise provided by
4 the Constitution, advise the department to the extent that the
5 advisory participation is not incompatible with their respective
6 positions as Members of the Legislature. Of the four appointments
7 by the Legislature, two shall be appointed for a term expiring
8 December 31, 1979, and two for a term expiring December 31,
9 1981.

10 (c) One shall be appointed by and serve at the pleasure of the
11 director.

12 Subsequent appointments pursuant to subdivisions (a) and (b)
13 shall be for terms of four years, ending on December 31 of the
14 fourth year after the end of the prior term, except that appointments
15 to fill vacancies occurring for any reason other than the expiration
16 of the term shall be for the unexpired portion of the term in which
17 they occur. The members of the board shall hold office until their
18 successors are appointed and qualify.

19 The members of the committee shall not receive compensation
20 from the state for their services under this article but, when called
21 to attend a meeting of the committee, shall be reimbursed for their
22 actual and necessary expenses incurred in connection with the
23 meeting in accordance with the rules of the Department of Human
24 Resources.

25 (d) This section shall remain in effect only until January 1, 2018,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2018, deletes or extends that date.

28 SEC. 79. The heading of Chapter 3.1 (commencing with
29 Section 8240) of Division 1 of Title 2 of the Government Code is
30 amended to read:

31

32 CHAPTER 3.1. COMMISSION ON THE STATUS OF WOMEN AND
33 GIRLS

34

35 SEC. 80. Section 11019 of the Government Code is amended
36 to read:

37 11019. (a) Any department or authority specified in subdivision
38 (b) may, upon determining that an advance payment is essential
39 for the effective implementation of a program within the provisions
40 of this section, and to the extent funds are available, advance to a

1 community-based private nonprofit agency with which it has
2 contracted, pursuant to federal law and related state law, for the
3 delivery of services, not to exceed 25 percent of the annual
4 allocation to be made pursuant to the contract and those laws during
5 the fiscal year to the private nonprofit agency. Advances in excess
6 of 25 percent may be made on contracts financed by a federal
7 program when the advances are not prohibited by federal
8 guidelines. Advance payments may be provided for services to be
9 performed under any contract with a total annual contract amount
10 of four hundred thousand dollars (\$400,000) or less. This amount
11 shall be increased by 5 percent, as determined by the Department
12 of Finance, for each year commencing with 1989. Advance
13 payments may also be made with respect to any contract that the
14 Department of Finance determines has been entered into with any
15 community-based private nonprofit agency with modest reserves
16 and potential cashflow problems. No advance payment shall be
17 granted if the total annual contract exceeds four hundred thousand
18 dollars (\$400,000), without the prior approval of the Department
19 of Finance.

20 The specific departments and authority mentioned in subdivision
21 (b) shall develop a plan to establish control procedures for advance
22 payments. Each plan shall include a procedure whereby the
23 department or authority determines whether or not an advance
24 payment is essential for the effective implementation of a particular
25 program being funded. Each plan shall be approved by the
26 Department of Finance.

27 (b) Subdivision (a) shall apply to the Emergency Medical
28 Services Authority, the California Department of Aging, the State
29 Department of Developmental Services, the State Department of
30 Alcohol and Drug Programs, the Department of Corrections and
31 Rehabilitation, including the Division of Juvenile Justice, the
32 Department of Community Services and Development, the
33 Employment Development Department, the State Department of
34 Health Services, the State Department of State Hospitals, the
35 Department of Rehabilitation, the State Department of Social
36 Services, the Department of Child Support Services, the State
37 Department of Education, the area boards on developmental
38 disabilities, the State Council on Developmental Disabilities, the
39 Office of Statewide Health Planning and Development, and the

1 California Environmental Protection Agency, including all boards
2 and departments contained therein.

3 Subdivision (a) shall also apply to the California Health and
4 Human Services Agency, which may make advance payments,
5 pursuant to the requirements of that subdivision, to multipurpose
6 senior services projects as established in Chapter 8 (commencing
7 with Section 9560) of Division 8.5 of the Welfare and Institutions
8 Code.

9 Subdivision (a) shall also apply to the Natural Resources Agency,
10 including all boards and departments contained in that agency,
11 which may make advance payments pursuant to the requirements
12 of that subdivision with respect to grants and contracts awarded
13 to certified local community conservation corps.

14 (c) A county may, upon determining that an advance payment
15 is essential for the effective implementation of a program within
16 the provisions of this section, and to the extent funds are available,
17 and not more frequently than once each fiscal year, advance to a
18 community-based private nonprofit agency with which it has
19 contracted, pursuant to any applicable federal or state law, for the
20 delivery of services, not to exceed 25 percent of the annual
21 allocation to be made pursuant to the contract and those laws,
22 during the fiscal year to the private nonprofit agency.

23 SEC. 81. Section 11020 of the Government Code is amended
24 to read:

25 11020. (a) Unless otherwise provided by law, all offices of
26 every state agency shall be kept open for the transaction of business
27 from 8 a.m. until 5 p.m. of each day from Monday to Friday,
28 inclusive, other than legal holidays. However, any state agency or
29 division, branch, or office thereof may be kept open for the
30 transaction of business on other hours and on other days than those
31 specified in this subdivision.

32 (b) If this section is in conflict with a memorandum of
33 understanding reached pursuant to Chapter 12 (commencing with
34 Section 3560) of Division 4 of Title 1, the memorandum of
35 understanding shall be controlling without further legislative action,
36 except that if the memorandum of understanding requires the
37 expenditure of funds, the memorandum shall not become effective
38 unless approved by the Legislature in the annual Budget Act.

1 (c) Subdivision (a) shall not apply to any fair or association
2 specified under Division 3 (commencing with Section 3001) of
3 the Food and Agricultural Code.

4 SEC. 82. Section 11435.15 of the Government Code is amended
5 to read:

6 11435.15. (a) The following state agencies shall provide
7 language assistance in adjudicative proceedings to the extent
8 provided in this article:

9 ~~Agricultural~~

10 (1) *Agricultural* Labor Relations Board.

11 ~~State~~

12 (2) *State* Department of Alcohol and Drug Programs.

13 ~~State~~

14 (3) *State* Athletic Commission.

15 ~~California~~

16 (4) *California* Unemployment Insurance Appeals Board.

17 ~~Board~~

18 (5) *Board* of Parole Hearings.

19 ~~State~~

20 (6) *State* Board of Barbering and Cosmetology.

21 ~~State~~

22 (7) *State* Department of Developmental Services.

23 ~~Public~~

24 (8) *Public* Employment Relations Board.

25 ~~Franchise~~

26 (9) *Franchise* Tax Board.

27 ~~State~~

28 (10) *State* Department of Health Care Services.

29 ~~Department~~

30 (11) *Department* of Housing and Community Development.

31 ~~Department~~

32 (12) *Department* of Industrial Relations.

33 ~~State~~

34 (13) *State* Department of State Hospitals.

35 ~~Department~~

36 (14) *Department* of Motor Vehicles.

37 ~~Notary~~

38 (15) *Notary* Public Section, Office of the Secretary of State.

39 ~~Public~~

40 (16) *Public* Utilities Commission.

1 ~~Office~~
2 (17) *Office* of Statewide Health Planning and Development.

3 ~~State~~

4 (18) *State* Department of Social Services.

5 ~~Workers'~~

6 (19) *Workers'* Compensation Appeals Board.

7 ~~Division~~

8 (20) *Division* of Juvenile Justice.

9 ~~Division~~

10 (21) *Division* of Juvenile Parole Operations.

11 ~~Department~~

12 (22) *Department* of Insurance.

13 ~~State~~

14 (23) *State* Personnel Board.

15 ~~California~~

16 (24) *California* Board of Podiatric Medicine.

17 ~~Board~~

18 (25) *Board* of Psychology.

19 (b) Nothing in this section prevents an agency other than an
20 agency listed in subdivision (a) from electing to adopt any of the
21 procedures in this article, provided that any selection of an
22 interpreter is subject to Section 11435.30.

23 (c) Nothing in this section prohibits an agency from providing
24 an interpreter during a proceeding to which this chapter does not
25 apply, including an informal factfinding or informal investigatory
26 hearing.

27 (d) This article applies to an agency listed in subdivision (a)
28 notwithstanding a general provision that this chapter does not apply
29 to some or all of an agency's adjudicative proceedings.

30 SEC. 83. Section 11552 of the Government Code is amended
31 to read:

32 11552. (a) Effective January 1, 1988, an annual salary of
33 eighty-five thousand four hundred two dollars (\$85,402) shall be
34 paid to each of the following:

35 (1) Commissioner of Business Oversight.

36 (2) Director of Transportation.

37 (3) Real Estate Commissioner.

38 (4) Director of Social Services.

39 (5) Director of Water Resources.

40 (6) Director of General Services.

- 1 (7) Director of Motor Vehicles.
- 2 (8) Executive Officer of the Franchise Tax Board.
- 3 (9) Director of Employment Development.
- 4 (10) Director of Alcoholic Beverage Control.
- 5 (11) Director of Housing and Community Development.
- 6 (12) Director of Alcohol and Drug Programs.
- 7 (13) Director of Statewide Health Planning and Development.
- 8 (14) Director of the Department of Human Resources.
- 9 (15) Director of Health Care Services.
- 10 (16) Director of State Hospitals.
- 11 (17) Director of Developmental Services.
- 12 (18) State Public Defender.
- 13 (19) Director of the California State Lottery.
- 14 (20) Director of Fish and Wildlife.
- 15 (21) Director of Parks and Recreation.
- 16 (22) Director of Rehabilitation.
- 17 (23) Director of the Office of Administrative Law.
- 18 (24) Director of Consumer Affairs.
- 19 (25) Director of Forestry and Fire Protection.
- 20 (26) The Inspector General pursuant to Section 6125 of the
- 21 Penal Code.
- 22 (27) Director of Child Support Services.
- 23 (28) Director of Industrial Relations.
- 24 (29) Director of Toxic Substances Control.
- 25 (30) Director of Pesticide Regulation.
- 26 (31) Director of Managed Health Care.
- 27 (32) Director of Environmental Health Hazard Assessment.
- 28 (33) Director of Technology.
- 29 (34) Director of California Bay-Delta Authority.
- 30 (35) Director of California Conservation Corps.

31 (b) The annual compensation provided by this section shall be
 32 increased in any fiscal year in which a general salary increase is
 33 provided for state employees. The amount of the increase provided
 34 by this section shall be comparable to, but shall not exceed, the
 35 percentage of the general salary increases provided for state
 36 employees during that fiscal year.

37 SEC. 84. Section 12460 of the Government Code is amended
 38 to read:

39 12460. The Controller shall submit an annual report to the
 40 Governor containing a statement of the funds of the state, its

1 revenues, and the public expenditures during the preceding fiscal
2 year. The annual report shall be known as the budgetary-legal basis
3 annual report and prepared in a manner that will account for prior
4 year adjustments, fund balances, encumbrances, deferred payroll,
5 revenues, expenditures, and other components on the same basis
6 as that of the applicable Governor’s Budget and the applicable
7 Budget Act, as determined by the Director of Finance in
8 consultation with the Controller. If the Governor’s Budget or the
9 Budget Act does not provide the applicable information for this
10 purpose, funds shall be accounted for in the budgetary-legal basis
11 annual report in a manner prescribed by Section 13344. The
12 requirements of this section shall apply beginning with the issuance
13 of the budgetary-legal basis annual report for the 2013–14 fiscal
14 year. The Controller shall confer with the Department of Finance
15 to propose and develop methods to facilitate these changes pursuant
16 to Section 13344, including methods to ensure that information
17 related to encumbrances and deferred payroll continue to be listed
18 in the state’s financial statements, as deemed appropriate by the
19 Controller.

20 The Controller shall also issue a comprehensive annual financial
21 report prepared strictly in accordance with “Generally Accepted
22 Accounting Principles.”

23 The annual reports referenced in this section shall be compiled
24 and published by the Controller in the time, form, and manner
25 prescribed by him or her.

26 SEC. 85. Section 12838.14 of the Government Code is amended
27 to read:

28 12838.14. (a) Notwithstanding any other provision of law,
29 money recovered by the Department of Corrections and
30 Rehabilitation from a union paid leave settlement agreement shall
31 be credited to the fiscal year in which the recovered money is
32 received. An amount not to exceed the amount of the money
33 received shall be available for expenditure to the Department of
34 Corrections and Rehabilitation for the fiscal year in which the
35 recovered money is received, upon approval of the Department of
36 Finance. If this statute is enacted on or after July 1, 2012, any
37 money received prior to July 1, 2012, for purposes of this section,
38 shall be available for expenditure for the 2012–13 fiscal year.

1 (b) The Department of Corrections and Rehabilitation shall
2 identify and report the total amount collected annually to the
3 Department of Finance.

4 (c) This section shall become inoperative on June 30, 2021, and,
5 as of January 1, 2022, is repealed, unless a later enacted statute,
6 that becomes operative on or before January 1, 2022, deletes or
7 extends the dates on which it becomes inoperative and is repealed.

8 SEC. 86. Section 12926 of the Government Code is amended
9 to read:

10 12926. As used in this part in connection with unlawful
11 practices, unless a different meaning clearly appears from the
12 context:

13 (a) “Affirmative relief” or “prospective relief” includes the
14 authority to order reinstatement of an employee, awards of backpay,
15 reimbursement of out-of-pocket expenses, hiring, transfers,
16 reassignments, grants of tenure, promotions, cease and desist
17 orders, posting of notices, training of personnel, testing, expunging
18 of records, reporting of records, and any other similar relief that
19 is intended to correct unlawful practices under this part.

20 (b) “Age” refers to the chronological age of any individual who
21 has reached his or her 40th birthday.

22 (c) “Employee” does not include any individual employed by
23 his or her parents, spouse, or child, or any individual employed
24 under a special license in a nonprofit sheltered workshop or
25 rehabilitation facility.

26 (d) “Employer” includes any person regularly employing five
27 or more persons, or any person acting as an agent of an employer,
28 directly or indirectly, the state or any political or civil subdivision
29 of the state, and cities, except as follows:

30 “Employer” does not include a religious association or
31 corporation not organized for private profit.

32 (e) “Employment agency” includes any person undertaking for
33 compensation to procure employees or opportunities to work.

34 (f) “Essential functions” means the fundamental job duties of
35 the employment position the individual with a disability holds or
36 desires. “Essential functions” does not include the marginal
37 functions of the position.

38 (1) A job function may be considered essential for any of several
39 reasons, including, but not limited to, any one or more of the
40 following:

1 (A) The function may be essential because the reason the
2 position exists is to perform that function.

3 (B) The function may be essential because of the limited number
4 of employees available among whom the performance of that job
5 function can be distributed.

6 (C) The function may be highly specialized, so that the
7 incumbent in the position is hired for his or her expertise or ability
8 to perform the particular function.

9 (2) Evidence of whether a particular function is essential
10 includes, but is not limited to, the following:

11 (A) The employer's judgment as to which functions are essential.

12 (B) Written job descriptions prepared before advertising or
13 interviewing applicants for the job.

14 (C) The amount of time spent on the job performing the function.

15 (D) The consequences of not requiring the incumbent to perform
16 the function.

17 (E) The terms of a collective bargaining agreement.

18 (F) The work experiences of past incumbents in the job.

19 (G) The current work experience of incumbents in similar jobs.

20 (g) (1) "Genetic information" means, with respect to any
21 individual, information about any of the following:

22 (A) The individual's genetic tests.

23 (B) The genetic tests of family members of the individual.

24 (C) The manifestation of a disease or disorder in family members
25 of the individual.

26 (2) "Genetic information" includes any request for, or receipt
27 of, genetic services, or participation in clinical research that
28 includes genetic services, by an individual or any family member
29 of the individual.

30 (3) "Genetic information" does not include information about
31 the sex or age of any individual.

32 (h) "Labor organization" includes any organization that exists
33 and is constituted for the purpose, in whole or in part, of collective
34 bargaining or of dealing with employers concerning grievances,
35 terms or conditions of employment, or of other mutual aid or
36 protection.

37 (i) "Medical condition" means either of the following:

38 (1) Any health impairment related to or associated with a
39 diagnosis of cancer or a record or history of cancer.

1 (2) Genetic characteristics. For purposes of this section, “genetic
2 characteristics” means either of the following:

3 (A) Any scientifically or medically identifiable gene or
4 chromosome, or combination or alteration thereof, that is known
5 to be a cause of a disease or disorder in a person or his or her
6 offspring, or that is determined to be associated with a statistically
7 increased risk of development of a disease or disorder, and that is
8 presently not associated with any symptoms of any disease or
9 disorder.

10 (B) Inherited characteristics that may derive from the individual
11 or family member, that are known to be a cause of a disease or
12 disorder in a person or his or her offspring, or that are determined
13 to be associated with a statistically increased risk of development
14 of a disease or disorder, and that are presently not associated with
15 any symptoms of any disease or disorder.

16 (j) “Mental disability” includes, but is not limited to, all of the
17 following:

18 (1) Having any mental or psychological disorder or condition,
19 such as intellectual disability, organic brain syndrome, emotional
20 or mental illness, or specific learning disabilities, that limits a
21 major life activity. For purposes of this section:

22 (A) “Limits” shall be determined without regard to mitigating
23 measures, such as medications, assistive devices, or reasonable
24 accommodations, unless the mitigating measure itself limits a
25 major life activity.

26 (B) A mental or psychological disorder or condition limits a
27 major life activity if it makes the achievement of the major life
28 activity difficult.

29 (C) “Major life activities” shall be broadly construed and shall
30 include physical, mental, and social activities and working.

31 (2) Any other mental or psychological disorder or condition not
32 described in paragraph (1) that requires special education or related
33 services.

34 (3) Having a record or history of a mental or psychological
35 disorder or condition described in paragraph (1) or (2), which is
36 known to the employer or other entity covered by this part.

37 (4) Being regarded or treated by the employer or other entity
38 covered by this part as having, or having had, any mental condition
39 that makes achievement of a major life activity difficult.

1 (5) Being regarded or treated by the employer or other entity
2 covered by this part as having, or having had, a mental or
3 psychological disorder or condition that has no present disabling
4 effect, but that may become a mental disability as described in
5 paragraph (1) or (2).

6 “Mental disability” does not include sexual behavior disorders,
7 compulsive gambling, kleptomania, pyromania, or psychoactive
8 substance use disorders resulting from the current unlawful use of
9 controlled substances or other drugs.

10 (k) “On the bases enumerated in this part” means or refers to
11 discrimination on the basis of one or more of the following: race,
12 religious creed, color, national origin, ancestry, physical disability,
13 mental disability, medical condition, genetic information, marital
14 status, sex, age, or sexual orientation.

15 (l) “Physical disability” includes, but is not limited to, all of the
16 following:

17 (1) Having any physiological disease, disorder, condition,
18 cosmetic disfigurement, or anatomical loss that does both of the
19 following:

20 (A) Affects one or more of the following body systems:
21 neurological, immunological, musculoskeletal, special sense
22 organs, respiratory, including speech organs, cardiovascular,
23 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
24 and endocrine.

25 (B) Limits a major life activity. For purposes of this section:

26 (i) “Limits” shall be determined without regard to mitigating
27 measures such as medications, assistive devices, prosthetics, or
28 reasonable accommodations, unless the mitigating measure itself
29 limits a major life activity.

30 (ii) A physiological disease, disorder, condition, cosmetic
31 disfigurement, or anatomical loss limits a major life activity if it
32 makes the achievement of the major life activity difficult.

33 (iii) “Major life activities” shall be broadly construed and
34 includes physical, mental, and social activities and working.

35 (2) Any other health impairment not described in paragraph (1)
36 that requires special education or related services.

37 (3) Having a record or history of a disease, disorder, condition,
38 cosmetic disfigurement, anatomical loss, or health impairment
39 described in paragraph (1) or (2), which is known to the employer
40 or other entity covered by this part.

1 (4) Being regarded or treated by the employer or other entity
2 covered by this part as having, or having had, any physical
3 condition that makes achievement of a major life activity difficult.

4 (5) Being regarded or treated by the employer or other entity
5 covered by this part as having, or having had, a disease, disorder,
6 condition, cosmetic disfigurement, anatomical loss, or health
7 impairment that has no present disabling effect but may become
8 a physical disability as described in paragraph (1) or (2).

9 (6) “Physical disability” does not include sexual behavior
10 disorders, compulsive gambling, kleptomania, pyromania, or
11 psychoactive substance use disorders resulting from the current
12 unlawful use of controlled substances or other drugs.

13 (m) Notwithstanding subdivisions (j) and (l), if the definition
14 of “disability” used in the federal Americans with Disabilities Act
15 of 1990 (Public Law 101-336) would result in broader protection
16 of the civil rights of individuals with a mental disability or physical
17 disability, as defined in subdivision (j) or (l), or would include any
18 medical condition not included within those definitions, then that
19 broader protection or coverage shall be deemed incorporated by
20 reference into, and shall prevail over conflicting provisions of, the
21 definitions in subdivisions (j) and (l).

22 (n) “Race, religious creed, color, national origin, ancestry,
23 physical disability, mental disability, medical condition, genetic
24 information, marital status, sex, age, or sexual orientation” includes
25 a perception that the person has any of those characteristics or that
26 the person is associated with a person who has, or is perceived to
27 have, any of those characteristics.

28 (o) “Reasonable accommodation” may include either of the
29 following:

30 (1) Making existing facilities used by employees readily
31 accessible to, and usable by, individuals with disabilities.

32 (2) Job restructuring, part-time or modified work schedules,
33 reassignment to a vacant position, acquisition or modification of
34 equipment or devices, adjustment or modifications of examinations,
35 training materials or policies, the provision of qualified readers or
36 interpreters, and other similar accommodations for individuals
37 with disabilities.

38 (p) “Religious creed,” “religion,” “religious observance,”
39 “religious belief,” and “creed” include all aspects of religious
40 belief, observance, and practice, including religious dress and

1 grooming practices. “Religious dress practice” shall be construed
2 broadly to include the wearing or carrying of religious clothing,
3 head or face coverings, jewelry, artifacts, and any other item that
4 is part of the observance by an individual of his or her religious
5 creed. “Religious grooming practice” shall be construed broadly
6 to include all forms of head, facial, and body hair that are part of
7 the observance by an individual of his or her religious creed.

8 (q) (1) “Sex” includes, but is not limited to, the following:

9 (A) Pregnancy or medical conditions related to pregnancy.

10 (B) Childbirth or medical conditions related to childbirth.

11 (C) Breastfeeding or medical conditions related to breastfeeding.

12 (2) “Sex” also includes, but is not limited to, a person’s gender.
13 “Gender” means sex, and includes a person’s gender identity and
14 gender expression. “Gender expression” means a person’s
15 gender-related appearance and behavior whether or not
16 stereotypically associated with the person’s assigned sex at birth.

17 (r) “Sexual orientation” means heterosexuality, homosexuality,
18 and bisexuality.

19 (s) “Supervisor” means any individual having the authority, in
20 the interest of the employer, to hire, transfer, suspend, layoff, recall,
21 promote, discharge, assign, reward, or discipline other employees,
22 or the responsibility to direct them, or to adjust their grievances,
23 or effectively to recommend that action, if, in connection with the
24 foregoing, the exercise of that authority is not of a merely routine
25 or clerical nature, but requires the use of independent judgment.

26 (t) “Undue hardship” means an action requiring significant
27 difficulty or expense, when considered in light of the following
28 factors:

29 (1) The nature and cost of the accommodation needed.

30 (2) The overall financial resources of the facilities involved in
31 the provision of the reasonable accommodations, the number of
32 persons employed at the facility, and the effect on expenses and
33 resources or the impact otherwise of these accommodations upon
34 the operation of the facility.

35 (3) The overall financial resources of the covered entity, the
36 overall size of the business of a covered entity with respect to the
37 number of employees, and the number, type, and location of its
38 facilities.

39 (4) The type of operations, including the composition, structure,
40 and functions of the workforce of the entity.

1 (5) The geographic separateness, administrative, or fiscal
2 relationship of the facility or facilities.

3 SEC. 87. Section 14837 of the Government Code is amended
4 to read:

5 14837. As used in this chapter:

6 (a) “Department” means the Department of General Services.

7 (b) “Director” means the Director of General Services.

8 (c) “Manufacturer” means a business that meets both of the
9 following requirements:

10 (1) It is primarily engaged in the chemical or mechanical
11 transformation of raw materials or processed substances into new
12 products.

13 (2) It is classified between Codes 31 to 33, inclusive, of the
14 North American Industry Classification System.

15 (d) (1) “Small business” means an independently owned and
16 operated business that is not dominant in its field of operation, the
17 principal office of which is located in California, the officers of
18 which are domiciled in California, and which, together with
19 affiliates, has 100 or fewer employees, and average annual gross
20 receipts of ten million dollars (\$10,000,000) or less over the
21 previous three years, or is a manufacturer, as defined in subdivision
22 (c), with 100 or fewer employees.

23 (2) “Microbusiness” is a small business which, together with
24 affiliates, has average annual gross receipts of two million five
25 hundred thousand dollars (\$2,500,000) or less over the previous
26 three years, or is a manufacturer, as defined in subdivision (c),
27 with 25 or fewer employees.

28 (3) The director shall conduct a biennial review of the average
29 annual gross receipt levels specified in this subdivision and may
30 adjust that level to reflect changes in the California Consumer
31 Price Index for all items. To reflect unique variations or
32 characteristics of different industries, the director may establish,
33 to the extent necessary, either higher or lower qualifying standards
34 than those specified in this subdivision, or alternative standards
35 based on other applicable criteria.

36 (4) Standards applied under this subdivision shall be established
37 by regulation, in accordance with Chapter 3.5 (commencing with
38 Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude
39 the qualification of businesses that are dominant in their industry.
40 In addition, the standards shall provide that the certified small

1 business or microbusiness shall provide goods or services that
2 contribute to the fulfillment of the contract requirements by
3 performing a commercially useful function, as defined below:

4 (A) A certified small business or microbusiness is deemed to
5 perform a commercially useful function if the business does all of
6 the following:

7 (i) Is responsible for the execution of a distinct element of the
8 work of the contract.

9 (ii) Carries out its obligation by actually performing, managing,
10 or supervising the work involved.

11 (iii) Performs work that is normal for its business services and
12 functions.

13 (iv) Is responsible, with respect to products, inventories,
14 materials, and supplies required for the contract, for negotiating
15 price, determining quality and quantity, ordering, installing, if
16 applicable, and making payment.

17 (v) Is not further subcontracting a portion of the work that is
18 greater than that expected to be subcontracted by normal industry
19 practices.

20 (B) A contractor, subcontractor, or supplier will not be
21 considered to perform a commercially useful function if the
22 contractor's, subcontractor's, or supplier's role is limited to that
23 of an extra participant in a transaction, contract, or project through
24 which funds are passed in order to obtain the appearance of small
25 business or microbusiness participation.

26 (e) "Disabled veteran business enterprise" means an enterprise
27 that has been certified as meeting the qualifications established by
28 paragraph (7) of subdivision (b) of Section 999 of the Military and
29 Veterans Code.

30 SEC. 88. The heading of Chapter 3 (commencing with Section
31 15570) of Part 8.5 of Division 3 of Title 2 of the Government Code
32 is repealed.

33 SEC. 89. Section 15606.5 of the Government Code, as added
34 by Chapter 1167 of the Statutes of 1967, is amended and
35 renumbered to read:

36 15606.7 Training of assessors and their staffs under Sections
37 15606 and 15608 shall be provided by the board on a
38 nonreimbursable basis.

1 SEC. 90. Section 15814.25 of the Government Code, as added
2 by Section 1 of Chapter 234 of the Statutes of 1997, is amended
3 and renumbered to read:

4 15814.29 Notwithstanding subdivision (f) of Section 15814.11,
5 for the purposes of this chapter “state agency” also shall include
6 any local government as defined in subdivision (b) of Section
7 5921.

8 SEC. 91. Section 15819.30 of the Government Code, as added
9 by Section 8 of Chapter 585 of the Statutes of 1993, is amended
10 and renumbered to read:

11 15819.17 (a) The necessary funding for the construction of
12 the Secure Substance Abuse Treatment Facility authorized by
13 Section 5 of Chapter 585 of the Statutes of 1993 may be obtained
14 through lease-purchase financing arrangements. Sections 15819.1
15 to 15819.13, inclusive, and Section 15819.15 shall apply for this
16 purpose provided that the following apply:

17 (1) “Prison facility” as used in Section 15819.1 includes the
18 Secure Substance Abuse Treatment Facility.

19 (2) Notwithstanding the limitation imposed by Section 15819.3
20 regarding the amount of bonds to be issued for construction,
21 acquisition, and financing of prison facilities, the State Public
22 Works Board may issue additional bonds in order to pay the costs
23 of acquiring and constructing or refinancing the Secure Substance
24 Abuse Treatment Facility.

25 (b) Notwithstanding Section 13340, funds derived from the
26 lease-purchase financing methods for the Secure Substance Abuse
27 Treatment Facility deposited in the State Treasury, are hereby
28 continuously appropriated to the State Public Works Board on
29 behalf of the Department of Corrections and Rehabilitation for the
30 purpose of acquiring and constructing or refinancing the prison
31 facility so financed.

32 The sum of ninety-three million five hundred thousand dollars
33 (\$93,500,000) shall be available for capital outlay for the Secure
34 Substance Abuse Treatment Facility from funds derived from
35 lease-purchase financing methods.

36 Funds so appropriated shall be available as necessary for the
37 purposes of site acquisition, site studies and suitability reports,
38 environmental studies, master planning, architectural programming,
39 schematics, preliminary plans, working drawings, construction,
40 *and* long lead and equipment items. A maximum of two million

1 dollars (\$2,000,000) of the funds may be available for mitigation
2 costs of local government and school districts.

3 (c) The State Public Works Board may authorize the
4 augmentation of the cost of construction of the project set forth in
5 this section pursuant to the board's authority under Section
6 13332.11. In addition, the State Public Works Board may authorize
7 any additional amounts necessary to establish a reasonable
8 construction reserve and to pay the costs of financing, including
9 the payment of interest during acquisition or construction of the
10 project, the cost of financing a debt service reserve fund, and the
11 cost of issuance of permanent financing for the project. This
12 additional amount may include interest payable on any interim
13 loan for the facility from the General Fund or the Pooled Money
14 Investment Account pursuant to Section 16312.

15 SEC. 92. Section 15820.922 of the Government Code is
16 amended to read:

17 15820.922. (a) The board may issue up to five hundred million
18 dollars (\$500,000,000) in revenue bonds, notes, or bond
19 anticipation notes, pursuant to Chapter 5 (commencing with Section
20 15830) to finance the acquisition, design, and construction,
21 including, without limitation, renovation, and a reasonable
22 construction reserve, of approved adult local criminal justice
23 facilities described in Section 15820.92, and any additional amount
24 authorized under Section 15849.6 to pay for the cost of financing.

25 (b) Proceeds from the revenue bonds, notes, or bond anticipation
26 notes may be used to reimburse a participating county for the costs
27 of acquisition, design, and construction, including, without
28 limitation, renovation, for approved adult local criminal justice
29 facilities.

30 (c) Notwithstanding Section 13340, funds derived pursuant to
31 this section and Section 15820.921 are continuously appropriated
32 for purposes of this chapter.

33 SEC. 93. Section 19815 of the Government Code is amended
34 to read:

35 19815. As used in this part:

36 (a) "Department" means the Department of Human Resources.

37 (b) "Director" means the Director of the Department of Human
38 Resources.

39 (c) "Division" means the Division of Labor Relations.

1 (d) “Employee” or “state employee,” except where otherwise
2 indicated, means employees subject to the Ralph C. Dills Act
3 (Chapter 10.3 (commencing with Section 3512), Division 4, Title
4 1), supervisory employees as defined in subdivision (g) of Section
5 3513, managerial employees as defined in subdivision (e) of
6 Section 3513, confidential employees as defined in subdivision
7 (f) of Section 3513, employees of the Legislative Counsel Bureau,
8 employees of the Bureau of State Audits, employees of the office
9 of the Inspector General, employees of the Public Employment
10 Relations Board, conciliators employed by the California State
11 Mediation and Conciliation Service, employees of the Department
12 of Human Resources, professional employees of the Department
13 of Finance engaged in technical or analytical state budget
14 preparation other than audit staff, intermittent athletic inspectors
15 who are employees of the State Athletic Commission, professional
16 employees in the Personnel/Payroll Services Division of the
17 Controller’s office and all employees of the executive branch of
18 government who are not elected to office.

19 SEC. 94. Section 20391 of the Government Code is amended
20 to read:

21 20391. “State peace officer/firefighter member” means:

22 (a) All persons in the Board of Parole Hearings, the Department
23 of Consumer Affairs, the Department of Developmental Services,
24 the Department of Health Care Services, the Department of Toxic
25 Substances Control, the California Horse Racing Board, the
26 Department of Industrial Relations, the Department of Insurance,
27 the State Department of State Hospitals, the Department of Motor
28 Vehicles, the Department of Social Services employed with the
29 class title of Special Investigator (Class Code 8553), Senior Special
30 Investigator (Class Code 8550), and Investigator Assistant (Class
31 Code 8554) who have been designated as peace officers as defined
32 in Sections 830.2 and 830.3 of the Penal Code.

33 (b) All persons in the Department of Alcoholic Beverage Control
34 employed with the class title Investigator Trainee, Alcoholic
35 Beverage Control (Class Code 7553), Investigator I, Alcoholic
36 Beverage Control, Range A and B (Class Code 7554), and
37 Investigator II, Alcoholic Beverage Control (Class Code 7555)
38 who have been designated as peace officers as defined in Sections
39 830.2 and 830.3 of the Penal Code.

1 (c) All persons within the Department of Justice who are state
2 employees as defined in subdivision (c) of Section 3513 and who
3 have been designated as peace officers and performing investigative
4 duties.

5 (d) All persons in the Department of Parks and Recreation
6 employed with the class title of Park Ranger (Intermittent) (Class
7 Code 0984) who have been designated as peace officers as defined
8 in Sections 830.2 and 830.3 of the Penal Code.

9 (e) All persons in the Franchise Tax Board who have been
10 designated as peace officers in subdivision (s) of Section 830.3 of
11 the Penal Code.

12 (f) A member who is employed in a position that is reclassified
13 to state peace officer/firefighter pursuant to this section may make
14 an irrevocable election in writing to remain subject to the service
15 retirement benefit and the normal rate of contribution applicable
16 prior to reclassification by filing a notice of election with the board
17 within 90 days of notification by the board. A member who so
18 elects shall be subject to the reduced benefit factors specified in
19 Section 21353 or 21354.1, as applicable, only for service included
20 in the federal system.

21 SEC. 95. Section 20410 of the Government Code is amended
22 to read:

23 20410. "State safety member" also includes all persons in the
24 Department of Alcoholic Beverage Control, the Board of Parole
25 Hearings, the Department of Consumer Affairs, the Department
26 of Developmental Services, the Department of Health Care
27 Services, the Department of Toxic Substances Control, the
28 California Horse Racing Board, the Department of Industrial
29 Relations, the Department of Insurance, the State Department of
30 State Hospitals, the Department of Motor Vehicles, and the
31 Department of Social Services employed with the class title of
32 Special Investigator (Class Code 8553), Senior Special Investigator
33 (Class Code 8550), Investigator Trainee (Class Code 8555) and
34 Investigator Assistant (Class Code 8554), Supervising Special
35 Investigator I (Class Code 8548), Special Investigator II (Class
36 Code 8547), and persons in the class of State Park Ranger
37 (Intermittent) (Class Code 0984) in the Department of Parks and
38 Recreation, who have been designated as peace officers as defined
39 in Sections 830.2 and 830.3 of the Penal Code.

1 SEC. 96. Section 20516 of the Government Code is amended
2 to read:

3 20516. (a) Notwithstanding any other provision of this part,
4 with or without a change in benefits, a contracting agency and its
5 employees may agree, in writing, to share the costs of the employer
6 contribution. The cost sharing pursuant to this section shall also
7 apply for related nonrepresented employees as approved in a
8 resolution passed by the contracting agency.

9 (b) The collective bargaining agreement shall specify the exact
10 percentage of member compensation that shall be paid toward the
11 current service cost of the benefits by members. The member
12 contributions shall be contributions over and above normal
13 contributions otherwise required by this part and shall be treated
14 as normal contributions for all purposes of this part. The
15 contributions shall be uniform, except as described in subdivision
16 (c), with respect to all members within each of the following
17 classifications: local miscellaneous members, local police officers,
18 local firefighters, county peace officers, and all local safety
19 members other than local police officers, local firefighters, and
20 county peace officers. The balance of any costs shall be paid by
21 the contracting agency and shall be credited to the employer's
22 account. An employer shall not use impasse procedures to impose
23 member cost sharing on any contribution amount above that which
24 is authorized by law.

25 (c) Member cost sharing may differ by classification for groups
26 of employees subject to different levels of benefits pursuant to
27 Sections 7522.20, 7522.25, and 20475, or by a recognized
28 collective bargaining unit if agreed to in a memorandum of
29 understanding reached pursuant to the applicable collective
30 bargaining laws.

31 (d) This section shall not apply to any contracting agency nor
32 to the employees of a contracting agency until the agency elects
33 to be subject to this section by contract or by amendment to its
34 contract made in the manner prescribed for approval of contracts.
35 Contributions provided by this section shall be withheld from
36 member compensation or otherwise collected when the contract
37 amendment becomes effective.

38 (e) For the purposes of this section, all contributions, liabilities,
39 actuarial interest rates, and other valuation factors shall be
40 determined on the basis of actuarial assumptions and methods that,

1 in the aggregate, are reasonable and that, in combination, offer the
2 actuary's best estimate of anticipated experience under this system.

3 (f) Nothing in this section shall preclude a contracting agency
4 and its employees from independently agreeing in a memorandum
5 of understanding to share the costs of any benefit, in a manner
6 inconsistent with this section. However, any agreement in a
7 memorandum of understanding that is inconsistent with this section
8 shall not be part of the contract between this system and the
9 contracting agency.

10 (g) If, and to the extent that, the board determines that a
11 cost-sharing agreement under this section would conflict with Title
12 26 of the United States Code, the board may refuse to approve the
13 agreement.

14 (h) Nothing in this section shall require a contracting agency to
15 enter into a memorandum of understanding or collective bargaining
16 agreement with a bargaining representative in order to increase
17 the amount of member contributions when such a member
18 contribution increase is authorized by other provisions under this
19 part.

20 SEC. 97. Section 20677.7 of the Government Code is amended
21 to read:

22 20677.7. (a) Notwithstanding Section 20677.4, effective with
23 the beginning of the September 2010 pay period, the normal rate
24 of contribution for state miscellaneous or state industrial members
25 who are represented by State Bargaining Unit 8, shall be:

26 (1) Eleven percent of the compensation in excess of three
27 hundred seventeen dollars (\$317) per month paid to a member
28 whose service is not included in the federal system.

29 (2) Ten percent of compensation in excess of five hundred
30 thirteen dollars (\$513) per month paid to a member whose service
31 has been included in the federal system.

32 (b) Notwithstanding Section 20677.4, effective with the
33 beginning of the September 2010 pay period, the normal rate of
34 contribution for state miscellaneous or state industrial members
35 who are represented by State Bargaining Unit 5 shall be:

36 (1) Eight percent of the compensation in excess of three hundred
37 seventeen dollars (\$317) per month paid to a member whose service
38 is not included in the federal system.

1 (2) Seven percent of compensation in excess of five hundred
2 thirteen dollars (\$513) per month paid to a member whose service
3 has been included in the federal system.

4 (c) If the provisions of this section are in conflict with the
5 provisions of a memorandum of understanding reached pursuant
6 to Section 3517.5, the memorandum of understanding shall be
7 controlling without further legislative action, except that if the
8 provisions of a memorandum of understanding require the
9 expenditure of funds, the provisions shall not become effective
10 unless and until approved by the Legislature in the annual Budget
11 Act.

12 (d) Consistent with the normal rate of contribution for all
13 members identified in this subdivision, the Director of the
14 Department of Personnel Administration may exercise his or her
15 discretion to establish the normal rate of contribution for a related
16 state employee who is excepted from the definition of “state
17 employee” in subdivision (c) of Section 3513, and an officer or
18 employee of the executive branch of state government who is not
19 a member of the civil service.

20 SEC. 98. Section 25060 of the Government Code is amended
21 to read:

22 25060. Whenever a vacancy occurs in a board of supervisors,
23 the Governor shall fill the vacancy. The appointee shall hold office
24 until the election and qualification of his or her successor.

25 SEC. 99. Section 25062 of the Government Code is amended
26 to read:

27 25062. When a vacancy occurs from the failure of the person
28 elected to file his or her oath or bond as provided by law, and the
29 person elected is appointed to fill the vacancy, he or she shall hold
30 office for the unexpired term.

31 SEC. 100. Section 65040.7 of the Government Code is amended
32 to read:

33 65040.7. (a) For purposes of this section, the following terms
34 have the following meanings:

35 (1) “Energy security and military mission goals” means federal
36 laws, regulations, or executive orders, related to alternative fuel
37 and vehicle technology, clean energy, energy efficiency, water
38 and waste conservation, greenhouse gas emissions reductions, and
39 related infrastructure, including, but not limited to, the federal
40 laws, regulations, and executive orders, and the goals set forth

1 therein, of the National Energy Conservation Policy Act (42 U.S.C.
2 Sec. 8201 et seq.), the Energy Independence and Security Act of
3 2007 (42 U.S.C. Sec. 17001 et seq.), the Energy Policy Act of
4 2005 (42 U.S.C. Sec. 15801 et seq.), and the Energy Policy Act
5 of 1992 (42 U.S.C. Sec. 13201 et seq.), and the goals set forth in
6 Executive Order No. 13514, Executive Order No. 13423, and
7 Executive Order No. 13221.

8 (2) “State energy and environmental policies” includes, but is
9 not limited to, policies involving alternative fuels and vehicle
10 technology and related fueling infrastructure, renewable electricity
11 generation and related transmission infrastructure, energy efficiency
12 and demand response, waste management, recycling, water
13 conservation, water quality, water supply, greenhouse gas
14 emissions reductions, and green chemistry.

15 (b) A state agency that is identified by the Office of Planning
16 and Research pursuant to paragraph (1) of subdivision (c) shall,
17 when developing and implementing state energy and environmental
18 policies, consider the direct impacts of those policies upon the
19 United States Department of Defense’s energy security and military
20 mission goals.

21 (c) The Office of Planning and Research shall do both of the
22 following:

23 (1) Identify state agencies that develop and implement state
24 energy and environmental policies that directly impact the United
25 States Department of Defense’s energy security and military
26 mission goals in the state.

27 (2) Serve as a liaison to coordinate effective inclusion of the
28 United States Department of Defense in the development and
29 implementation of state energy and environmental policy.

30 (d) This section shall not do any of the following:

31 (1) Interfere with the existing authority of, or prevent, an agency
32 or department from carrying out of its programs, projects, or
33 responsibilities.

34 (2) Limit compliance with requirements imposed under any
35 other law.

36 (3) Authorize or require the United States Department of
37 Defense to operate differently from any other self-generating
38 ratepayer, or alter an existing rate structure.

39 SEC. 101. Section 65302.5 of the Government Code is amended
40 to read:

1 65302.5. (a) At least 45 days prior to adoption or amendment
2 of the safety element, each county and city shall submit to the
3 California Geological Survey of the Department of Conservation
4 one copy of a draft of the safety element or amendment and any
5 technical studies used for developing the safety element. The
6 division may review drafts submitted to it to determine whether
7 they incorporate known seismic and other geologic hazard
8 information, and report its findings to the planning agency within
9 30 days of receipt of the draft of the safety element or amendment
10 pursuant to this subdivision. The legislative body shall consider
11 the division's findings prior to final adoption of the safety element
12 or amendment unless the division's findings are not available
13 within the above prescribed time limits or unless the division has
14 indicated to the city or county that the division will not review the
15 safety element. If the division's findings are not available within
16 those prescribed time limits, the legislative body may take the
17 division's findings into consideration at the time it considers future
18 amendments to the safety element. Each county and city shall
19 provide the division with a copy of its adopted safety element or
20 amendments. The division may review adopted safety elements
21 or amendments and report its findings. All findings made by the
22 division shall be advisory to the planning agency and legislative
23 body.

24 (b) (1) The draft element of or draft amendment to the safety
25 element of a county or a city's general plan shall be submitted to
26 the State Board of Forestry and Fire Protection and to every local
27 agency that provides fire protection to territory in the city or county
28 at least 90 days prior to either of the following:

29 (A) The adoption or amendment to the safety element of its
30 general plan for each county that contains state responsibility areas.

31 (B) The adoption or amendment to the safety element of its
32 general plan for each city or county that contains a very high fire
33 hazard severity zone as defined pursuant to subdivision (i) of
34 Section 51177.

35 (2) A county that contains state responsibility areas and a city
36 or county that contains a very high fire hazard severity zone as
37 defined pursuant to subdivision (i) of Section 51177 shall submit
38 for review the safety element of its general plan to the State Board
39 of Forestry and Fire Protection and every local agency that provides
40 fire protection to territory in the city or county in accordance with

1 the following dates, as specified, unless the local government
2 submitted the element within five years prior to that date:

3 (A) Local governments within the regional jurisdiction of the
4 San Diego Association of Governments: December 31, 2010.

5 (B) Local governments within the regional jurisdiction of the
6 Southern California Association of Governments: December 31,
7 2011.

8 (C) Local governments within the regional jurisdiction of the
9 Association of Bay Area Governments: December 31, 2012.

10 (D) Local governments within the regional jurisdiction of the
11 Council of Fresno County Governments, the Kern County Council
12 of Governments, and the Sacramento Area Council of
13 Governments: June 30, 2013.

14 (E) Local governments within the regional jurisdiction of the
15 Association of Monterey Bay Area Governments: December 31,
16 2014.

17 (F) All other local governments: December 31, 2015.

18 (3) The State Board of Forestry and Fire Protection shall, and
19 a local agency may, review the draft or an existing safety element
20 and recommend changes to the planning agency within 60 days
21 of its receipt regarding both of the following:

22 (A) Uses of land and policies in state responsibility areas and
23 very high fire hazard severity zones that will protect life, property,
24 and natural resources from unreasonable risks associated with
25 wildland fires.

26 (B) Methods and strategies for wildland fire risk reduction and
27 prevention within state responsibility areas and very high fire
28 hazard severity zones.

29 (4) Prior to the adoption of its draft element or draft amendment,
30 the board of supervisors of the county or the city council of a city
31 shall consider the recommendations, if any, made by the State
32 Board of Forestry and Fire Protection and any local agency that
33 provides fire protection to territory in the city or county. If the
34 board of supervisors or city council determines not to accept all
35 or some of the recommendations, if any, made by the State Board
36 of Forestry and Fire Protection or local agency, the board of
37 supervisors or city council shall communicate in writing to the
38 State Board of Forestry and Fire Protection or the local agency,
39 its reasons for not accepting the recommendations.

1 (5) If the State Board of Forestry and Fire Protection's or local
2 agency's recommendations are not available within the time limits
3 required by this section, the board of supervisors or city council
4 may act without those recommendations. The board of supervisors
5 or city council shall take the recommendations into consideration
6 the next time it considers amendments to the safety element.

7 SEC. 102. Section 65915 of the Government Code, as amended
8 by Section 53 of Chapter 181 of the Statutes of 2012, is amended
9 to read:

10 65915. (a) When an applicant seeks a density bonus for a
11 housing development within, or for the donation of land for housing
12 within, the jurisdiction of a city, county, or city and county, that
13 local government shall provide the applicant with incentives or
14 concessions for the production of housing units and child care
15 facilities as prescribed in this section. All cities, counties, or cities
16 and counties shall adopt an ordinance that specifies how
17 compliance with this section will be implemented. Failure to adopt
18 an ordinance shall not relieve a city, county, or city and county
19 from complying with this section.

20 (b) (1) A city, county, or city and county shall grant one density
21 bonus, the amount of which shall be as specified in subdivision
22 (f), and incentives or concessions, as described in subdivision (d),
23 when an applicant for a housing development seeks and agrees to
24 construct a housing development, excluding any units permitted
25 by the density bonus awarded pursuant to this section, that will
26 contain at least any one of the following:

27 (A) Ten percent of the total units of a housing development for
28 lower income households, as defined in Section 50079.5 of the
29 Health and Safety Code.

30 (B) Five percent of the total units of a housing development for
31 very low income households, as defined in Section 50105 of the
32 Health and Safety Code.

33 (C) A senior citizen housing development, as defined in Sections
34 51.3 and 51.12 of the Civil Code, or mobilehome park that limits
35 residency based on age requirements for housing for older persons
36 pursuant to Section 798.76 or 799.5 of the Civil Code.

37 (D) Ten percent of the total dwelling units in a common interest
38 development as defined in Section 4100 of the Civil Code for
39 persons and families of moderate income, as defined in Section

1 50093 of the Health and Safety Code, provided that all units in the
2 development are offered to the public for purchase.

3 (2) For purposes of calculating the amount of the density bonus
4 pursuant to subdivision (f), the applicant who requests a density
5 bonus pursuant to this subdivision shall elect whether the bonus
6 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)
7 of paragraph (1).

8 (3) For the purposes of this section, “total units” or “total
9 dwelling units” does not include units added by a density bonus
10 awarded pursuant to this section or any local law granting a greater
11 density bonus.

12 (c) (1) An applicant shall agree to, and the city, county, or city
13 and county shall ensure, continued affordability of all low- and
14 very low income units that qualified the applicant for the award
15 of the density bonus for 30 years or a longer period of time if
16 required by the construction or mortgage financing assistance
17 program, mortgage insurance program, or rental subsidy program.
18 Rents for the lower income density bonus units shall be set at an
19 affordable rent as defined in Section 50053 of the Health and Safety
20 Code. Owner-occupied units shall be available at an affordable
21 housing cost as defined in Section 50052.5 of the Health and Safety
22 Code.

23 (2) An applicant shall agree to, and the city, county, or city and
24 county shall ensure that, the initial occupant of the
25 moderate-income units that are directly related to the receipt of
26 the density bonus in the common interest development, as defined
27 in Section 4100 of the Civil Code, are persons and families of
28 moderate income, as defined in Section 50093 of the Health and
29 Safety Code, and that the units are offered at an affordable housing
30 cost, as that cost is defined in Section 50052.5 of the Health and
31 Safety Code. The local government shall enforce an equity sharing
32 agreement, unless it is in conflict with the requirements of another
33 public funding source or law. The following apply to the equity
34 sharing agreement:

35 (A) Upon resale, the seller of the unit shall retain the value of
36 any improvements, the downpayment, and the seller’s proportionate
37 share of appreciation. The local government shall recapture any
38 initial subsidy, as defined in subparagraph (B), and its proportionate
39 share of appreciation, as defined in subparagraph (C), which
40 amount shall be used within five years for any of the purposes

1 described in subdivision (e) of Section 33334.2 of the Health and
2 Safety Code that promote home ownership.

3 (B) For purposes of this subdivision, the local government's
4 initial subsidy shall be equal to the fair market value of the home
5 at the time of initial sale minus the initial sale price to the
6 moderate-income household, plus the amount of any downpayment
7 assistance or mortgage assistance. If upon resale the market value
8 is lower than the initial market value, then the value at the time of
9 the resale shall be used as the initial market value.

10 (C) For purposes of this subdivision, the local government's
11 proportionate share of appreciation shall be equal to the ratio of
12 the local government's initial subsidy to the fair market value of
13 the home at the time of initial sale.

14 (d) (1) An applicant for a density bonus pursuant to subdivision
15 (b) may submit to a city, county, or city and county a proposal for
16 the specific incentives or concessions that the applicant requests
17 pursuant to this section, and may request a meeting with the city,
18 county, or city and county. The city, county, or city and county
19 shall grant the concession or incentive requested by the applicant
20 unless the city, county, or city and county makes a written finding,
21 based upon substantial evidence, of any of the following:

22 (A) The concession or incentive is not required in order to
23 provide for affordable housing costs, as defined in Section 50052.5
24 of the Health and Safety Code, or for rents for the targeted units
25 to be set as specified in subdivision (c).

26 (B) The concession or incentive would have a specific adverse
27 impact, as defined in paragraph (2) of subdivision (d) of Section
28 65589.5, upon public health and safety or the physical environment
29 or on any real property that is listed in the California Register of
30 Historical Resources and for which there is no feasible method to
31 satisfactorily mitigate or avoid the specific adverse impact without
32 rendering the development unaffordable to low- and
33 moderate-income households.

34 (C) The concession or incentive would be contrary to state or
35 federal law.

36 (2) The applicant shall receive the following number of
37 incentives or concessions:

38 (A) One incentive or concession for projects that include at least
39 10 percent of the total units for lower income households, at least
40 5 percent for very low income households, or at least 10 percent

1 for persons and families of moderate income in a common interest
2 development.

3 (B) Two incentives or concessions for projects that include at
4 least 20 percent of the total units for lower income households, at
5 least 10 percent for very low income households, or at least 20
6 percent for persons and families of moderate income in a common
7 interest development.

8 (C) Three incentives or concessions for projects that include at
9 least 30 percent of the total units for lower income households, at
10 least 15 percent for very low income households, or at least 30
11 percent for persons and families of moderate income in a common
12 interest development.

13 (3) The applicant may initiate judicial proceedings if the city,
14 county, or city and county refuses to grant a requested density
15 bonus, incentive, or concession. If a court finds that the refusal to
16 grant a requested density bonus, incentive, or concession is in
17 violation of this section, the court shall award the plaintiff
18 reasonable attorney's fees and costs of suit. Nothing in this
19 subdivision shall be interpreted to require a local government to
20 grant an incentive or concession that has a specific, adverse impact,
21 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
22 upon health, safety, or the physical environment, and for which
23 there is no feasible method to satisfactorily mitigate or avoid the
24 specific adverse impact. Nothing in this subdivision shall be
25 interpreted to require a local government to grant an incentive or
26 concession that would have an adverse impact on any real property
27 that is listed in the California Register of Historical Resources.
28 The city, county, or city and county shall establish procedures for
29 carrying out this section, that shall include legislative body
30 approval of the means of compliance with this section.

31 (e) (1) In no case may a city, county, or city and county apply
32 any development standard that will have the effect of physically
33 precluding the construction of a development meeting the criteria
34 of subdivision (b) at the densities or with the concessions or
35 incentives permitted by this section. An applicant may submit to
36 a city, county, or city and county a proposal for the waiver or
37 reduction of development standards that will have the effect of
38 physically precluding the construction of a development meeting
39 the criteria of subdivision (b) at the densities or with the
40 concessions or incentives permitted under this section, and may

1 request a meeting with the city, county, or city and county. If a
 2 court finds that the refusal to grant a waiver or reduction of
 3 development standards is in violation of this section, the court
 4 shall award the plaintiff reasonable attorney’s fees and costs of
 5 suit. Nothing in this subdivision shall be interpreted to require a
 6 local government to waive or reduce development standards if the
 7 waiver or reduction would have a specific, adverse impact, as
 8 defined in paragraph (2) of subdivision (d) of Section 65589.5,
 9 upon health, safety, or the physical environment, and for which
 10 there is no feasible method to satisfactorily mitigate or avoid the
 11 specific adverse impact. Nothing in this subdivision shall be
 12 interpreted to require a local government to waive or reduce
 13 development standards that would have an adverse impact on any
 14 real property that is listed in the California Register of Historical
 15 Resources, or to grant any waiver or reduction that would be
 16 contrary to state or federal law.

17 (2) A proposal for the waiver or reduction of development
 18 standards pursuant to this subdivision shall neither reduce nor
 19 increase the number of incentives or concessions to which the
 20 applicant is entitled pursuant to subdivision (d).

21 (f) For the purposes of this chapter, “density bonus” means a
 22 density increase over the otherwise maximum allowable residential
 23 density as of the date of application by the applicant to the city,
 24 county, or city and county. The applicant may elect to accept a
 25 lesser percentage of density bonus. The amount of density bonus
 26 to which the applicant is entitled shall vary according to the amount
 27 by which the percentage of affordable housing units exceeds the
 28 percentage established in subdivision (b).

29 (1) For housing developments meeting the criteria of
 30 subparagraph (A) of paragraph (1) of subdivision (b), the density
 31 bonus shall be calculated as follows:

32	Percentage Low-Income Units	Percentage Density
33		Bonus
34	10	20
35	11	21.5
36	12	23
37	13	24.5
38	14	26
39	15	27.5
40		

1	17	30.5
2	18	32
3	19	33.5
4	20	35

5
6 (2) For housing developments meeting the criteria of
7 subparagraph (B) of paragraph (1) of subdivision (b), the density
8 bonus shall be calculated as follows:
9

10	Percentage Very Low Income Units	Percentage Density Bonus
11	5	20
12	6	22.5
13	7	25
14	8	27.5
15	9	30
16	10	32.5
17	11	35

18
19 (3) For housing developments meeting the criteria of
20 subparagraph (C) of paragraph (1) of subdivision (b), the density
21 bonus shall be 20 percent of the number of senior housing units.

22 (4) For housing developments meeting the criteria of
23 subparagraph (D) of paragraph (1) of subdivision (b), the density
24 bonus shall be calculated as follows:
25

26	Percentage Moderate-Income Units	Percentage Density Bonus
27	10	5
28	11	6
29	12	7
30	13	8
31	14	9
32	15	10
33	16	11
34	17	12
35	18	13
36	19	14
37	20	15
38	21	16
39	22	17
40	23	18

1	24	19
2	25	20
3	26	21
4	27	22
5	28	23
6	29	24
7	30	25
8	31	26
9	32	27
10	33	28
11	34	29
12	35	30
13	36	31
14	37	32
15	38	33
16	39	34
17	40	35

18

19 (5) All density calculations resulting in fractional units shall be
 20 rounded up to the next whole number. The granting of a density
 21 bonus shall not be interpreted, in and of itself, to require a general
 22 plan amendment, local coastal plan amendment, zoning change,
 23 or other discretionary approval.

24 (g) (1) When an applicant for a tentative subdivision map,
 25 parcel map, or other residential development approval donates
 26 land to a city, county, or city and county in accordance with this
 27 subdivision, the applicant shall be entitled to a 15-percent increase
 28 above the otherwise maximum allowable residential density for
 29 the entire development, as follows:

30

31	Percentage Very Low Income	Percentage Density Bonus
32	10	15
33	11	16
34	12	17
35	13	18
36	14	19
37	15	20
38	16	21
39	17	22
40	18	23

1	19	24
2	20	25
3	21	26
4	22	27
5	23	28
6	24	29
7	25	30
8	26	31
9	27	32
10	28	33
11	29	34
12	30	35

13
14 (2) This increase shall be in addition to any increase in density
15 mandated by subdivision (b), up to a maximum combined mandated
16 density increase of 35 percent if an applicant seeks an increase
17 pursuant to both this subdivision and subdivision (b). All density
18 calculations resulting in fractional units shall be rounded up to the
19 next whole number. Nothing in this subdivision shall be construed
20 to enlarge or diminish the authority of a city, county, or city and
21 county to require a developer to donate land as a condition of
22 development. An applicant shall be eligible for the increased
23 density bonus described in this subdivision if all of the following
24 conditions are met:

25 (A) The applicant donates and transfers the land no later than
26 the date of approval of the final subdivision map, parcel map, or
27 residential development application.

28 (B) The developable acreage and zoning classification of the
29 land being transferred are sufficient to permit construction of units
30 affordable to very low income households in an amount not less
31 than 10 percent of the number of residential units of the proposed
32 development.

33 (C) The transferred land is at least one acre in size or of
34 sufficient size to permit development of at least 40 units, has the
35 appropriate general plan designation, is appropriately zoned with
36 appropriate development standards for development at the density
37 described in paragraph (3) of subdivision (c) of Section 65583.2,
38 and is or will be served by adequate public facilities and
39 infrastructure.

1 (D) The transferred land shall have all of the permits and
2 approvals, other than building permits, necessary for the
3 development of the very low income housing units on the
4 transferred land, not later than the date of approval of the final
5 subdivision map, parcel map, or residential development
6 application, except that the local government may subject the
7 proposed development to subsequent design review to the extent
8 authorized by subdivision (i) of Section 65583.2 if the design is
9 not reviewed by the local government prior to the time of transfer.

10 (E) The transferred land and the affordable units shall be subject
11 to a deed restriction ensuring continued affordability of the units
12 consistent with paragraphs (1) and (2) of subdivision (c), which
13 shall be recorded on the property at the time of the transfer.

14 (F) The land is transferred to the local agency or to a housing
15 developer approved by the local agency. The local agency may
16 require the applicant to identify and transfer the land to the
17 developer.

18 (G) The transferred land shall be within the boundary of the
19 proposed development or, if the local agency agrees, within
20 one-quarter mile of the boundary of the proposed development.

21 (H) A proposed source of funding for the very low income units
22 shall be identified not later than the date of approval of the final
23 subdivision map, parcel map, or residential development
24 application.

25 (h) (1) When an applicant proposes to construct a housing
26 development that conforms to the requirements of subdivision (b)
27 and includes a child care facility that will be located on the
28 premises of, as part of, or adjacent to, the project, the city, county,
29 or city and county shall grant either of the following:

30 (A) An additional density bonus that is an amount of square
31 feet of residential space that is equal to or greater than the amount
32 of square feet in the child care facility.

33 (B) An additional concession or incentive that contributes
34 significantly to the economic feasibility of the construction of the
35 child care facility.

36 (2) The city, county, or city and county shall require, as a
37 condition of approving the housing development, that the following
38 occur:

39 (A) The child care facility shall remain in operation for a period
40 of time that is as long as or longer than the period of time during

1 which the density bonus units are required to remain affordable
2 pursuant to subdivision (c).

3 (B) Of the children who attend the child care facility, the
4 children of very low income households, lower income households,
5 or families of moderate income shall equal a percentage that is
6 equal to or greater than the percentage of dwelling units that are
7 required for very low income households, lower income
8 households, or families of moderate income pursuant to subdivision
9 (b).

10 (3) Notwithstanding any requirement of this subdivision, a city,
11 county, or city and county shall not be required to provide a density
12 bonus or concession for a child care facility if it finds, based upon
13 substantial evidence, that the community has adequate child care
14 facilities.

15 (4) “Child care facility,” as used in this section, means a child
16 day care facility other than a family day care home, including, but
17 not limited to, infant centers, preschools, extended day care
18 facilities, and schoolage child care centers.

19 (i) “Housing development,” as used in this section, means a
20 development project for five or more residential units. For the
21 purposes of this section, “housing development” also includes a
22 subdivision or common interest development, as defined in Section
23 4100 of the Civil Code, approved by a city, county, or city and
24 county and consists of residential units or unimproved residential
25 lots and either a project to substantially rehabilitate and convert
26 an existing commercial building to residential use or the substantial
27 rehabilitation of an existing multifamily dwelling, as defined in
28 subdivision (d) of Section 65863.4, where the result of the
29 rehabilitation would be a net increase in available residential units.
30 For the purpose of calculating a density bonus, the residential units
31 shall be on contiguous sites that are the subject of one development
32 application, but do not have to be based upon individual
33 subdivision maps or parcels. The density bonus shall be permitted
34 in geographic areas of the housing development other than the
35 areas where the units for the lower income households are located.

36 (j) The granting of a concession or incentive shall not be
37 interpreted, in and of itself, to require a general plan amendment,
38 local coastal plan amendment, zoning change, or other discretionary
39 approval. This provision is declaratory of existing law.

1 (k) For the purposes of this chapter, concession or incentive
2 means any of the following:

3 (1) A reduction in site development standards or a modification
4 of zoning code requirements or architectural design requirements
5 that exceed the minimum building standards approved by the
6 California Building Standards Commission as provided in Part 2.5
7 (commencing with Section 18901) of Division 13 of the Health
8 and Safety Code, including, but not limited to, a reduction in
9 setback and square footage requirements and in the ratio of
10 vehicular parking spaces that would otherwise be required that
11 results in identifiable, financially sufficient, and actual cost
12 reductions.

13 (2) Approval of mixed-use zoning in conjunction with the
14 housing project if commercial, office, industrial, or other land uses
15 will reduce the cost of the housing development and if the
16 commercial, office, industrial, or other land uses are compatible
17 with the housing project and the existing or planned development
18 in the area where the proposed housing project will be located.

19 (3) Other regulatory incentives or concessions proposed by the
20 developer or the city, county, or city and county that result in
21 identifiable, financially sufficient, and actual cost reductions.

22 (l) Subdivision (k) does not limit or require the provision of
23 direct financial incentives for the housing development, including
24 the provision of publicly owned land, by the city, county, or city
25 and county, or the waiver of fees or dedication requirements.

26 (m) This section shall not be construed to supersede or in any
27 way alter or lessen the effect or application of the California
28 Coastal Act of 1976 (Division 20 (commencing with Section
29 30000) of the Public Resources Code).

30 (n) If permitted by local ordinance, nothing in this section shall
31 be construed to prohibit a city, county, or city and county from
32 granting a density bonus greater than what is described in this
33 section or from granting a proportionately lower density bonus
34 than what is required by this section for developments that do not
35 meet the requirements of this section.

37 (o) For purposes of this section, the following definitions shall
38 apply:

39 (1) "Development standard" includes a site or construction
40 condition, including, but not limited to, a height limitation, a

1 setback requirement, a floor area ratio, an onsite open-space
2 requirement, or a parking ratio that applies to a residential
3 development pursuant to any ordinance, general plan element,
4 specific plan, charter, or other local condition, law, policy,
5 resolution, or regulation.

6 (2) “Maximum allowable residential density” means the density
7 allowed under the zoning ordinance and land use element of the
8 general plan, or if a range of density is permitted, means the
9 maximum allowable density for the specific zoning range and land
10 use element of the general plan applicable to the project. Where
11 the density allowed under the zoning ordinance is inconsistent
12 with the density allowed under the land use element of the general
13 plan, the general plan density shall prevail.

14 (p) (1) Upon the request of the developer, no city, county, or
15 city and county shall require a vehicular parking ratio, inclusive
16 of handicapped and guest parking, of a development meeting the
17 criteria of subdivision (b), that exceeds the following ratios:

18 (A) Zero to one bedroom: one onsite parking space.

19 (B) Two to three bedrooms: two onsite parking spaces.

20 (C) Four and more bedrooms: two and one-half parking spaces.

21 (2) If the total number of parking spaces required for a
22 development is other than a whole number, the number shall be
23 rounded up to the next whole number. For purposes of this
24 subdivision, a development may provide “onsite parking” through
25 tandem parking or uncovered parking, but not through onstreet
26 parking.

27 (3) This subdivision shall apply to a development that meets
28 the requirements of subdivision (b) but only at the request of the
29 applicant. An applicant may request parking incentives or
30 concessions beyond those provided in this subdivision pursuant
31 to subdivision (d).

32 SEC. 103. The heading of Chapter 3 (commencing with Section
33 80) of Division 1 of the Harbors and Navigation Code, as added
34 by Section 2 of Chapter 136 of the Statutes of 2012, is amended
35 to read:

36

37 CHAPTER 3. ~~BOATING AND WATERWAYS COMMISSION~~

38 *BOATING AND WATERWAYS COMMISSION*

39

1 SEC. 104. Section 80.2 of the Harbors and Navigation Code,
2 as added by Section 2 of Chapter 136 of the Statutes of 2012, is
3 amended to read:

4 80.2. The commission shall be composed of seven members
5 appointed by the Governor, with the advice and consent of the
6 Senate. The members shall have experience and background
7 consistent with the functions of the commission. In making
8 appointments to the commission, the Governor shall give primary
9 consideration to geographical location of the residence of members
10 as related to boating activities and harbors. In addition to the
11 geographical considerations, the members of the commission shall
12 be appointed with regard to their special interests in recreational
13 boating. At least one of the members shall be a member of a
14 recognized statewide organization representing recreational boaters.
15 One member of the commission shall be a private small craft harbor
16 owner and operator. One member of the commission shall be an
17 officer or employee of a law enforcement agency responsible for
18 enforcing boating laws.

19 The Governor shall appoint the first seven members of the
20 commission for the following terms to expire on January 15: one
21 member for one year, two members for two years, two members
22 for three years, and two members for four years. Thereafter,
23 appointments shall be for a four-year term. Vacancies occurring
24 prior to the expiration of the term shall be filled by appointment
25 for the unexpired term.

26 SEC. 105. Section 82 of the Harbors and Navigation Code, as
27 added by Section 2 of Chapter 136 of the Statutes of 2012, is
28 amended to read:

29 82. The division, consistent with Section 82.3, and in
30 furtherance of the public interest and in accordance therewith, shall
31 have only the following duties with respect to the commission:

32 (a) To submit any proposed changes in regulations pertaining
33 to boating functions and responsibilities of the division to the
34 commission for its advice and comment prior to enactment of
35 changes.

36 (b) To submit proposals for transfers pursuant to Section 70,
37 loans pursuant to Section 71.4 or 76.3, and grants pursuant to
38 Section 72.5 to the commission for its advice and comment.

39 (c) To submit any proposed project it is considering approving
40 to the commission if that project could have a potentially significant

1 impact on either public health or safety, public access, or the
2 environment for the commission’s advice and comment prior to
3 approval by the division.

4 (d) To annually submit a report on its budget and expenditures
5 to the commission for its advice and comment.

6 (e) To cause studies and surveys to be made of the need for
7 small craft harbors and connecting waterways throughout the state
8 and the most suitable sites therefor, and submit those studies and
9 surveys to the commission for advice and comment.

10 SEC. 106. Section 1339.40 of the Health and Safety Code is
11 amended to read:

12 1339.40. For purposes of this article, the following definitions
13 apply:

14 (a) “Bereavement services” has the same meaning as defined
15 in subdivision (a) of Section 1746.

16 (b) “Hospice care” means a specialized form of interdisciplinary
17 health care that is designed to provide palliative care, alleviate the
18 physical, emotional, social, and spiritual discomforts of an
19 individual who is experiencing the last phases of life due to the
20 existence of a terminal disease, and provide supportive care to the
21 primary caregiver and the family of the hospice patient, and that
22 meets all of the following criteria:

23 (1) Considers the patient and the patient’s family, in addition
24 to the patient, as the unit of care.

25 (2) Utilizes an interdisciplinary team to assess the physical,
26 medical, psychological, social, and spiritual needs of the patient
27 and the patient’s family.

28 (3) Requires the interdisciplinary team to develop an overall
29 plan of care and to provide coordinated care that emphasizes
30 supportive services, including, but not limited to, home care, pain
31 control, and limited inpatient services. Limited inpatient services
32 are intended to ensure both continuity of care and appropriateness
33 of services for those patients who cannot be managed at home
34 because of acute complications or the temporary absence of a
35 capable primary caregiver.

36 (4) Provides for the palliative medical treatment of pain and
37 other symptoms associated with a terminal disease, but does not
38 provide for efforts to cure the disease.

1 (5) Provides for bereavement services following death to assist
2 the family in coping with social and emotional needs associated
3 with the death of the patient.

4 (6) Actively utilizes volunteers in the delivery of hospice
5 services.

6 (7) To the extent appropriate, based on the medical needs of the
7 patient, provides services in the patient's home or primary place
8 of residence.

9 (c) "Hospice facility" means a health facility as defined in
10 subdivision (n) of Section 1250.

11 (d) "Inpatient hospice care" means hospice care that is provided
12 to patients in a hospice facility, including routine, continuous, and
13 inpatient care directly as specified in Section 418.110 of Title 42
14 of the Code of Federal Regulations, and may include short-term
15 inpatient respite care as specified in Section 418.108 of Title 42
16 of the Code of Federal Regulations.

17 (e) "Interdisciplinary team" has the same meaning as defined
18 in subdivision (g) of Section 1746.

19 (f) "Medical direction" has the same meaning as defined in
20 subdivision (h) of Section 1746.

21 (g) "Palliative care" has the same meaning as defined in
22 subdivision (j) of Section 1746.

23 (h) "Plan of care" has the same meaning as defined in
24 subdivision (l) of Section 1746.

25 (i) "Skilled nursing services" has the same meaning as defined
26 in subdivision (n) of Section 1746.

27 (j) "Social services/counseling services" has the same meaning
28 as defined in subdivision (o) of Section 1746.

29 (k) "Terminal disease" or "terminal illness" has the same
30 meaning as defined in subdivision (p) of Section 1746.

31 (l) "Volunteer services" has the same meaning as defined in
32 subdivision (q) of Section 1746.

33 SEC. 107. Section 1339.41 of the Health and Safety Code is
34 amended to read:

35 1339.41. (a) A person, governmental agency, or political
36 subdivision of the state shall not be licensed as a hospice facility
37 under this chapter unless the person or entity is a provider of
38 hospice services licensed pursuant to Section 1751 and is certified
39 as a hospice facility under Part 418 of Title 42 of the Code of
40 Federal Regulations.

1 (b) A hospice provider that intends to provide inpatient hospice
2 care in the hospice provider's own facility shall submit an
3 application and fee for licensure as a hospice facility under this
4 chapter. Notwithstanding the maximum period for a provisional
5 license under subdivision (b) of Section 1268.5, the department
6 may issue a provisional license to a hospice facility for a period
7 of up to one year.

8 (c) A verified application for a new license completed on forms
9 furnished by the department shall be submitted to the department
10 upon the occurrence of either of the following:

11 (1) Establishment of a hospice facility.

12 (2) Change of ownership.

13 (d) The licensee shall submit to the department a verified
14 application for a corrected license completed on forms furnished
15 by the department upon the occurrence of any of the following:

16 (1) Construction of new or replacement hospice facility.

17 (2) Increase in licensed bed capacity.

18 (3) Change of name of facility.

19 (4) Change of licensed category.

20 (5) Change of location of facility.

21 (6) Change in bed classification.

22 (e) (1) A hospice facility that participates in the Medicare and
23 Medicaid programs may obtain initial certification from a federal
24 Centers for Medicare and Medicaid Services (CMS) approved
25 accreditation organization.

26 (2) If the CMS-approved accreditation organization conducts
27 certification inspections, the hospice facility shall transmit to the
28 department, within 30 days of receipt, a copy of the final
29 accreditation report of the accreditation organization.

30 (f) A hospice facility shall be separately licensed, irrespective
31 of the location of the facility.

32 (g) (1) The licensee shall notify the department in writing of
33 any changes in the information provided pursuant to subdivision
34 (d) within 10 days of these changes. This notice shall include
35 information and documentation regarding the changes.

36 (2) Each licensee shall notify the department within 10 days in
37 writing of any change of the mailing address of the licensee. This
38 notice shall include the new mailing address of the licensee.

39 (3) When a change in the principal officer of a corporate
40 licensee, including the chairman, president, or general manager

1 occurs, the licensee shall notify the department of this change
2 within 10 days in writing. This notice shall include the name and
3 business address of the officer.

4 (4) Any decrease in licensed bed capacity of the facility shall
5 require notification by letter to the department and shall result in
6 the issuance of a corrected license.

7 SEC. 108. Section 1367.65 of the Health and Safety Code is
8 amended to read:

9 1367.65. (a) On or after January 1, 2000, each health care
10 service plan contract, except a specialized health care service plan
11 contract, that is issued, amended, delivered, or renewed shall be
12 deemed to provide coverage for mammography for screening or
13 diagnostic purposes upon referral by a participating nurse
14 practitioner, participating certified nurse-midwife, participating
15 physician assistant, or participating physician, providing care to
16 the patient and operating within the scope of practice provided
17 under existing law.

18 (b) This section does not prevent application of copayment or
19 deductible provisions in a plan, nor shall this section be construed
20 to require that a plan be extended to cover any other procedures
21 under an individual or a group health care service plan contract.
22 This section does not authorize a plan enrollee to receive the
23 services required to be covered by this section if those services
24 are furnished by a nonparticipating provider, unless the plan
25 enrollee is referred to that provider by a participating physician,
26 nurse practitioner, or certified nurse-midwife providing care.

27 SEC. 109. Section 1531.15 of the Health and Safety Code is
28 amended to read:

29 1531.15. (a) A licensee of an adult residential facility or group
30 home for no more than 15 residents, that is eligible for and serving
31 clients eligible for federal Medicaid funding and utilizing delayed
32 egress devices pursuant to Section 1531.1, may install and utilize
33 secured perimeters in accordance with the provisions of this
34 section.

35 (b) As used in this section, “secured perimeters” means fences
36 that meet the requirements prescribed by this section.

37 (c) Only individuals meeting all of the following conditions
38 may be admitted to or reside in a facility described in subdivision

39 (a) utilizing secured perimeters:

1 (1) The person shall have a developmental disability as defined
2 in Section 4512 of the Welfare and Institutions Code.

3 (2) The person shall be receiving services and case management
4 from a regional center under the Lanterman Developmental
5 Disabilities Services Act (Division 4.5 (commencing with Section
6 4500) of the Welfare and Institutions Code).

7 (3) (A) The person shall be 14 years of age or older, except as
8 specified in subparagraph (B).

9 (B) Notwithstanding subparagraph (A), a child who is at least
10 10 years of age and less than 14 years of age may be placed in a
11 licensed group home described in subdivision (a) using secured
12 perimeters only if both of the following occur:

13 (i) A comprehensive assessment is conducted and an individual
14 program plan meeting is convened to determine the services and
15 supports needed for the child to receive services in a less restrictive,
16 unlocked residential setting in California, and the regional center
17 requests assistance from the State Department of Developmental
18 Services' statewide specialized resource service to identify options
19 to serve the child in a less restrictive, unlocked residential setting
20 in California.

21 (ii) The regional center requests placement of the child in a
22 licensed group home described in subdivision (a) using secured
23 perimeters on the basis that the placement is necessary to prevent
24 out-of-state placement or placement in a more restrictive, locked
25 residential setting and the State Department of Developmental
26 Services approves the request.

27 (4) The person is not a foster child under the jurisdiction of the
28 juvenile court pursuant to Section 300, 450, 601, or 602 of the
29 Welfare and Institutions Code.

30 (5) An interdisciplinary team, through the individual program
31 plan (IPP) process pursuant to Section 4646.5 of the Welfare and
32 Institutions Code, shall have determined the person lacks hazard
33 awareness or impulse control and, for his or her safety and security,
34 requires the level of supervision afforded by a facility equipped
35 with secured perimeters, and, but for this placement, the person
36 would be at risk of admission to, or would have no option but to
37 remain in, a more restrictive placement. The individual program
38 planning team shall determine the continued appropriateness of
39 the placement at least annually.

1 (d) The licensee shall be subject to all applicable fire and
2 building codes, regulations, and standards, and shall receive
3 approval by the county or city fire department, the local fire
4 prevention district, or the State Fire Marshal for the installed
5 secured perimeters.

6 (e) The licensee shall provide staff training regarding the use
7 and operation of the secured perimeters, protection of residents'
8 personal rights, lack of hazard awareness and impulse control
9 behavior, and emergency evacuation procedures.

10 (f) The licensee shall revise its facility plan of operation. These
11 revisions shall first be approved by the State Department of
12 Developmental Services. The plan of operation shall not be
13 approved by the State Department of Social Services unless the
14 licensee provides certification that the plan was approved by the
15 State Department of Developmental Services. The plan shall
16 include, but not be limited to, all of the following:

17 (1) A description of how the facility is to be equipped with
18 secured perimeters that are consistent with regulations adopted by
19 the State Fire Marshal pursuant to Section 13143.6.

20 (2) A description of how the facility will provide training for
21 staff.

22 (3) A description of how the facility will ensure the protection
23 of the residents' personal rights consistent with Sections 4502,
24 4503, and 4504 of the Welfare and Institutions Code, and any
25 applicable personal rights provided in Title 22 of the California
26 Code of Regulations.

27 (4) A description of how the facility will manage residents' lack
28 of hazard awareness and impulse control behavior.

29 (5) A description of the facility's emergency evacuation
30 procedures.

31 (g) Secured perimeters shall not substitute for adequate staff.

32 (h) Emergency fire and earthquake drills shall be conducted on
33 each shift in accordance with existing licensing requirements, and
34 shall include all facility staff providing resident care and
35 supervision on each shift.

36 (i) Interior and exterior space shall be available on the facility
37 premises to permit clients to move freely and safely.

38 (j) For the purpose of using secured perimeters, the licensee
39 shall not be required to obtain a waiver or exception to a regulation

1 that would otherwise prohibit the locking of a perimeter fence or
2 gate.

3 (k) This section shall become operative only upon the
4 publication in Title 17 of the California Code of Regulations of
5 emergency regulations filed by the State Department of
6 Developmental Services. These regulations shall be developed
7 with stakeholders, including the State Department of Social
8 Services, consumer advocates, and regional centers. The regulations
9 shall establish program standards for homes that include secured
10 perimeters, including requirements and timelines for the completion
11 and updating of a comprehensive assessment of each consumer's
12 needs, including the identification through the individual program
13 plan process of the services and supports needed to transition the
14 consumer to a less restrictive living arrangement, and a timeline
15 for identifying or developing those services and supports. The
16 regulations shall establish a statewide limit on the total number of
17 beds in homes with secured perimeters. The adoption of these
18 regulations shall be deemed to be an emergency and necessary for
19 the immediate preservation of the public peace, health and safety,
20 or general welfare.

21 SEC. 110. Section 11378 of the Health and Safety Code is
22 amended to read:

23 11378. Except as otherwise provided in Article 7 (commencing
24 with Section 4110) of Chapter 9 of Division 2 of the Business and
25 Professions Code, a person who possesses for sale a controlled
26 substance that meets any of the following criteria shall be punished
27 by imprisonment pursuant to subdivision (h) of Section 1170 of
28 the Penal Code:

29 (1) The substance is classified in Schedule III, IV, or V and is
30 not a narcotic drug, except the substance specified in subdivision
31 (g) of Section 11056.

32 (2) The substance is specified in subdivision (d) of Section
33 11054, except paragraphs (13), (14), (15), (20), (21), (22), and
34 (23) of subdivision (d).

35 (3) The substance is specified in paragraph (11) of subdivision
36 (c) of Section 11056.

37 (4) The substance is specified in paragraph (2) or (3) of
38 subdivision (f) of Section 11054.

1 (5) The substance is specified in subdivision (d), (e), or (f),
2 except paragraph (3) of subdivision (e) and subparagraphs (A) and
3 (B) of paragraph (2) of subdivision (f), of Section 11055.

4 SEC. 111. Section 11755 of the Health and Safety Code is
5 amended to read:

6 11755. The department shall do all of the following:

7 (a) Adopt regulations pursuant to Section 11152 of the
8 Government Code.

9 (b) Employ administrative, technical, and other personnel as
10 may be necessary for the performance of its powers and duties.

11 (c) Do or perform any of the acts that may be necessary,
12 desirable, or proper to carry out the purpose of this division.

13 (d) Provide funds to counties for the planning and
14 implementation of local programs to alleviate problems related to
15 alcohol and other drug use.

16 (e) Review and execute contracts for drug and alcohol services
17 submitted for funds allocated or administered by the department.

18 (f) Provide for technical assistance and training to local alcohol
19 and other drug programs to assist in the planning and
20 implementation of quality services.

21 (g) Review research in, and serve as a resource to provide
22 information relating to, alcohol and other drug programs.

23 (h) In cooperation with the Department of Human Resources,
24 encourage training in other state agencies to assist the agencies to
25 recognize employee problems relating to alcohol and other drug
26 use that affects job performance and encourage the employees to
27 seek appropriate services.

28 (i) Assist and cooperate with the Office of Statewide Health
29 Planning and Development in the drafting and adoption of the state
30 health plan to ensure inclusion of appropriate provisions relating
31 to alcohol and other drug problems.

32 (j) In the same manner and subject to the same conditions as
33 other state agencies, develop and submit annually to the
34 Department of Finance a program budget for the alcohol and other
35 drug ~~program~~ *programs*, which budget shall include expenditures
36 proposed to be made under this division, and may include
37 expenditures proposed to be made by any other state agency
38 relating to alcohol and other drug problems, pursuant to an
39 interagency agreement with the department.

1 (k) Review and certify alcohol and other drug programs meeting
2 state standards pursuant to Chapter 7 (commencing with Section
3 11830) and Chapter 13 (commencing with Section 11847) of Part
4 2.

5 (l) Develop standards for ensuring minimal statewide levels of
6 service quality provided by alcohol and other drug programs.

7 (m) Review and license narcotic treatment programs.

8 (n) Develop and implement, in partnership with the counties,
9 alcohol and other drug prevention strategies especially designed
10 for youth.

11 (o) Develop and maintain a centralized alcohol and drug abuse
12 indicator data collection system that shall gather and obtain
13 information on the status of the alcohol and other drug abuse
14 problems in the state. This information shall include, but not be
15 limited to, all of the following:

16 (1) The number and characteristics of persons receiving recovery
17 or treatment services from alcohol and other drug programs
18 providing publicly funded services or services licensed by the
19 state.

20 (2) The location and types of services offered by these programs.

21 (3) The number of admissions to hospitals on both an emergency
22 room and inpatient basis for treatment related to alcohol and other
23 drugs.

24 (4) The number of arrests for alcohol and other drug violations.

25 (5) The number of Department of Corrections and
26 Rehabilitation, Division of Juvenile Facilities, commitments for
27 drug violations.

28 (6) The number of Department of Corrections and Rehabilitation
29 commitments for drug violations.

30 (7) The number or percentage of persons having alcohol or other
31 drug problems as determined by survey information.

32 (8) The amounts of illicit drugs confiscated by law enforcement
33 in the state.

34 (9) The statewide alcohol and other drug program distribution
35 and the fiscal impact of alcohol and other drug problems upon the
36 state.

37 Providers of publicly funded services or services licensed by the
38 department to clients-participants shall report data in a manner, in
39 a format, and under a schedule prescribed by the department.

1 (p) Issue an annual report that portrays the drugs abused,
2 populations affected, user characteristics, crime-related costs,
3 socioeconomic costs, and other related information deemed
4 necessary in providing a problem profile of alcohol and other drug
5 abuse in the state.

6 (q) (1) Require any individual, public or private organization,
7 or government agency, receiving federal grant funds, to comply
8 with all federal statutes, regulations, guidelines, and terms and
9 conditions of the grants. The failure of the individual, public or
10 private organization, or government agency, to comply with the
11 statutes, regulations, guidelines, and terms and conditions of grants
12 received may result in the department's disallowing noncompliant
13 costs, or the suspension or termination of the contract or grant
14 award allocating the grant funds.

15 (2) Adopt regulations implementing this subdivision in
16 accordance with Chapter 3.5 (commencing with Section 11340)
17 of Part 1 of Division 3 of Title 2 of the Government Code. For the
18 purposes of the Administrative Procedure Act, the adoption of the
19 regulations shall be deemed necessary for the preservation of the
20 public peace, health and safety, or general welfare. Subsequent
21 amendments to the adoption of emergency regulations shall be
22 deemed an emergency only if those amendments are adopted in
23 direct response to a change in federal statutes, regulations,
24 guidelines, or the terms and conditions of federal grants. Nothing
25 in this paragraph shall be interpreted as prohibiting the department
26 from adopting subsequent amendments on a nonemergency basis
27 or as emergency regulations in accordance with the standards set
28 forth in Section 11346.1 of the Government Code.

29 SEC. 112. Section 25110.11 of the Health and Safety Code is
30 amended to read:

31 25110.11. (a) "Contained gaseous material," for purposes of
32 subdivision (a) of Section 25124 or any other provision of this
33 chapter, means any gas that is contained in an enclosed cylinder
34 or other enclosed container.

35 (b) Notwithstanding subdivision (a), "contained gaseous
36 material" does not include any exhaust or flue gas, or other vapor
37 stream, or any air or exhaust gas stream that is filtered or otherwise
38 processed to remove particulates, dusts, or other air pollutants,
39 regardless of the source.

1 SEC. 113. Section 34177 of the Health and Safety Code is
2 amended to read:

3 34177. Successor agencies are required to do all of the
4 following:

5 (a) Continue to make payments due for enforceable obligations.

6 (1) On and after February 1, 2012, and until a Recognized
7 Obligation Payment Schedule becomes operative, only payments
8 required pursuant to an enforceable obligations payment schedule
9 shall be made. The initial enforceable obligation payment schedule
10 shall be the last schedule adopted by the redevelopment agency
11 under Section 34169. However, payments associated with
12 obligations excluded from the definition of enforceable obligations
13 by paragraph (2) of subdivision (d) of Section 34171 shall be
14 excluded from the enforceable obligations payment schedule and
15 be removed from the last schedule adopted by the redevelopment
16 agency under Section 34169 prior to the successor agency adopting
17 it as its enforceable obligations payment schedule pursuant to this
18 subdivision. The enforceable obligation payment schedule may
19 be amended by the successor agency at any public meeting and
20 shall be subject to the approval of the oversight board as soon as
21 the board has sufficient members to form a quorum. In recognition
22 of the fact that the timing of the California Supreme Court's ruling
23 in the case California Redevelopment Association v. Matosantos
24 (2011) 53 Cal.4th 231 delayed the preparation by successor
25 agencies and the approval by oversight boards of the January 1,
26 2012, through June 30, 2012, Recognized Obligation Payment
27 Schedule, a successor agency may amend the Enforceable
28 Obligation Payment Schedule to authorize the continued payment
29 of enforceable obligations until the time that the January 1, 2012,
30 through June 30, 2012, Recognized Obligation Payment Schedule
31 has been approved by the oversight board and by the Department
32 of Finance.

33 (2) The Department of Finance and the Controller shall each
34 have the authority to require any documents associated with the
35 enforceable obligations to be provided to them in a manner of their
36 choosing. Any taxing entity, the department, and the Controller
37 shall each have standing to file a judicial action to prevent a
38 violation under this part and to obtain injunctive or other
39 appropriate relief.

1 (3) Commencing on the date the Recognized Obligation Payment
 2 Schedule is valid pursuant to subdivision (l), only those payments
 3 listed in the Recognized Obligation Payment Schedule may be
 4 made by the successor agency from the funds specified in the
 5 Recognized Obligation Payment Schedule. In addition, after it
 6 becomes valid, the Recognized Obligation Payment Schedule shall
 7 supersede the Statement of Indebtedness, which shall no longer
 8 be prepared nor have any effect under the Community
 9 Redevelopment Law (Part 1 (commencing with Section 33000)).

10 (4) Nothing in the act adding this part is to be construed as
 11 preventing a successor agency, with the prior approval of the
 12 oversight board, as described in Section 34179, from making
 13 payments for enforceable obligations from sources other than those
 14 listed in the Recognized Obligation Payment Schedule.

15 (5) From February 1, 2012, to July 1, 2012, a successor agency
 16 shall have no authority and is hereby prohibited from accelerating
 17 payment or making any lump-sum payments that are intended to
 18 prepay loans unless such accelerated repayments were required
 19 prior to the effective date of this part.

20 (b) Maintain reserves in the amount required by indentures,
 21 trust indentures, or similar documents governing the issuance of
 22 outstanding redevelopment agency bonds.

23 (c) Perform obligations required pursuant to any enforceable
 24 obligation.

25 (d) Remit unencumbered balances of redevelopment agency
 26 funds to the county auditor-controller for distribution to the taxing
 27 entities, including, but not limited to, the unencumbered balance
 28 of the Low and Moderate Income Housing Fund of a former
 29 redevelopment agency. In making the distribution, the county
 30 auditor-controller shall utilize the same methodology for allocation
 31 and distribution of property tax revenues provided in Section
 32 34188.

33 (e) Dispose of assets and properties of the former redevelopment
 34 agency as directed by the oversight board; provided, however, that
 35 the oversight board may instead direct the successor agency to
 36 transfer ownership of certain assets pursuant to subdivision (a) of
 37 Section 34181. The disposal is to be done expeditiously and in a
 38 manner aimed at maximizing value. Proceeds from asset sales and
 39 related funds that are no longer needed for approved development
 40 projects or to otherwise wind down the affairs of the agency, each

1 as determined by the oversight board, shall be transferred to the
2 county auditor-controller for distribution as property tax proceeds
3 under Section 34188. The requirements of this subdivision shall
4 not apply to a successor agency that has been issued a finding of
5 completion by the Department of Finance pursuant to Section
6 34179.7.

7 (f) Enforce all former redevelopment agency rights for the
8 benefit of the taxing entities, including, but not limited to,
9 continuing to collect loans, rents, and other revenues that were due
10 to the redevelopment agency.

11 (g) Effectuate transfer of housing functions and assets to the
12 appropriate entity designated pursuant to Section 34176.

13 (h) Expeditiously wind down the affairs of the redevelopment
14 agency pursuant to the provisions of this part and in accordance
15 with the direction of the oversight board.

16 (i) Continue to oversee development of properties until the
17 contracted work has been completed or the contractual obligations
18 of the former redevelopment agency can be transferred to other
19 parties. Bond proceeds shall be used for the purposes for which
20 bonds were sold unless the purposes can no longer be achieved,
21 in which case, the proceeds may be used to defease the bonds.

22 (j) Prepare a proposed administrative budget and submit it to
23 the oversight board for its approval. The proposed administrative
24 budget shall include all of the following:

25 (1) Estimated amounts for successor agency administrative costs
26 for the upcoming six-month fiscal period.

27 (2) Proposed sources of payment for the costs identified in
28 paragraph (1).

29 (3) Proposals for arrangements for administrative and operations
30 services provided by a city, county, city and county, or other entity.

31 (k) Provide administrative cost estimates, from its approved
32 administrative budget that are to be paid from property tax revenues
33 deposited in the Redevelopment Property Tax Trust Fund, to the
34 county auditor-controller for each six-month fiscal period.

35 (l) (1) Before each six-month fiscal period, prepare a
36 Recognized Obligation Payment Schedule in accordance with the
37 requirements of this paragraph. For each recognized obligation,
38 the Recognized Obligation Payment Schedule shall identify one
39 or more of the following sources of payment:

40 (A) Low and Moderate Income Housing Fund.

- 1 (B) Bond proceeds.
- 2 (C) Reserve balances.
- 3 (D) Administrative cost allowance.
- 4 (E) The Redevelopment Property Tax Trust Fund, but only to
- 5 the extent no other funding source is available or when payment
- 6 from property tax revenues is required by an enforceable obligation
- 7 or by this part.

8 (F) Other revenue sources, including rents, concessions, asset
 9 sale proceeds, interest earnings, and any other revenues derived
 10 from the former redevelopment agency, as approved by the
 11 oversight board in accordance with this part.

12 (2) A Recognized Obligation Payment Schedule shall not be
 13 deemed valid unless all of the following conditions have been met:

14 (A) A Recognized Obligation Payment Schedule is prepared
 15 by the successor agency for the enforceable obligations of the
 16 former redevelopment agency. The initial schedule shall project
 17 the dates and amounts of scheduled payments for each enforceable
 18 obligation for the remainder of the time period during which the
 19 redevelopment agency would have been authorized to obligate
 20 property tax increment had the redevelopment agency not been
 21 dissolved.

22 (B) The Recognized Obligation Payment Schedule is submitted
 23 to and duly approved by the oversight board. The successor agency
 24 shall submit a copy of the Recognized Obligation Payment
 25 Schedule to the county administrative officer, the county
 26 auditor-controller, and the Department of Finance at the same time
 27 that the successor agency submits the Recognized Obligation
 28 Payment Schedule to the oversight board for approval.

29 (C) A copy of the approved Recognized Obligation Payment
 30 Schedule is submitted to the county auditor-controller and both
 31 the Controller’s office and the Department of Finance and be posted
 32 on the successor agency’s Internet Web site.

33 (3) The Recognized Obligation Payment Schedule shall be
 34 forward looking to the next six months. The first Recognized
 35 Obligation Payment Schedule shall be submitted to the Controller’s
 36 office and the Department of Finance by April 15, 2012, for the
 37 period of January 1, 2012, to June 30, 2012, inclusive. This
 38 Recognized Obligation Payment Schedule shall include all
 39 payments made by the former redevelopment agency between
 40 January 1, 2012, through January 31, 2012, and shall include all

1 payments proposed to be made by the successor agency from
2 February 1, 2012, through June 30, 2012. Former redevelopment
3 agency enforceable obligation payments due, and reasonable or
4 necessary administrative costs due or incurred, prior to January 1,
5 2012, shall be made from property tax revenues received in the
6 spring of 2011 property tax distribution, and from other revenues
7 and balances transferred to the successor agency.

8 (m) The Recognized Obligation Payment Schedule for the period
9 of January 1, 2013, to June 30, 2013, shall be submitted by the
10 successor agency, after approval by the oversight board, no later
11 than September 1, 2012. Commencing with the Recognized
12 Obligation Payment Schedule covering the period July 1, 2013,
13 through December 31, 2013, successor agencies shall submit an
14 oversight board-approved Recognized Obligation Payment
15 Schedule to the Department of Finance and to the county
16 auditor-controller no fewer than 90 days before the date of property
17 tax distribution. The Department of Finance shall make its
18 determination of the enforceable obligations and the amounts and
19 funding sources of the enforceable obligations no later than 45
20 days after the Recognized Obligation Payment Schedule is
21 submitted. Within five business days of the department's
22 determination, a successor agency may request additional review
23 by the department and an opportunity to meet and confer on
24 disputed items. The meet and confer period may vary; an untimely
25 submittal of a Recognized Obligation Payment Schedule may result
26 in a meet and confer period of less than 30 days. The department
27 shall notify the successor agency and the county auditor-controllers
28 as to the outcome of its review at least 15 days before the date of
29 property tax distribution.

30 (1) The successor agency shall submit a copy of the Recognized
31 Obligation Payment Schedule to the Department of Finance
32 electronically, and the successor agency shall complete the
33 Recognized Obligation Payment Schedule in the manner provided
34 for by the department. A successor agency shall be in
35 noncompliance with this paragraph if it only submits to the
36 department an electronic message or a letter stating that the
37 oversight board has approved a Recognized Obligation Payment
38 Schedule.

39 (2) If a successor agency does not submit a Recognized
40 Obligation Payment Schedule by the deadlines provided in this

1 subdivision, the city, county, or city and county that created the
2 redevelopment agency shall be subject to a civil penalty equal to
3 ten thousand dollars (\$10,000) per day for every day the schedule
4 is not submitted to the department. The civil penalty shall be paid
5 to the county auditor-controller for allocation to the taxing entities
6 under Section 34183. If a successor agency fails to submit a
7 Recognized Obligation Payment Schedule by the deadline, any
8 creditor of the successor agency or the Department of Finance or
9 any affected taxing entity shall have standing to and may request
10 a writ of mandate to require the successor agency to immediately
11 perform this duty. Those actions may be filed only in the County
12 of Sacramento and shall have priority over other civil matters.
13 Additionally, if an agency does not submit a Recognized Obligation
14 Payment Schedule within 10 days of the deadline, the maximum
15 administrative cost allowance for that period shall be reduced by
16 25 percent.

17 (3) If a successor agency fails to submit to the department an
18 oversight board-approved Recognized Obligation Payment
19 Schedule that complies with all requirements of this subdivision
20 within five business days of the date upon which the Recognized
21 Obligation Payment Schedule is to be used to determine the amount
22 of property tax allocations, the department may determine if any
23 amount should be withheld by the county auditor-controller for
24 payments for enforceable obligations from distribution to taxing
25 entities, pending approval of a Recognized Obligation Payment
26 Schedule. The county auditor-controller shall distribute the portion
27 of any of the sums withheld pursuant to this paragraph to the
28 affected taxing entities in accordance with paragraph (4) of
29 subdivision (a) of Section 34183 upon notice by the department
30 that a portion of the withheld balances are in excess of the amount
31 of enforceable obligations. The county auditor-controller shall
32 distribute withheld funds to the successor agency only in
33 accordance with a Recognized Obligation Payment Schedule
34 approved by the department. County auditor-controllers shall lack
35 the authority to withhold any other amounts from the allocations
36 provided for under Section 34183 or 34188, unless required by a
37 court order.

38 (n) Cause a postaudit of the financial transactions and records
39 of the successor agency to be made at least annually by a certified
40 public accountant.

1 SEC. 114. Section 34183.5 of the Health and Safety Code is
2 amended to read:

3 34183.5. (a) The Legislature hereby finds and declares that
4 due to the delayed implementation of this part due to the California
5 Supreme Court’s ruling in the case California Redevelopment
6 Association v. Matosantos (2011) 53 Cal.4th 231, some disruption
7 to the intended application of this part and other law with respect
8 to passthrough payments may have occurred.

9 (1) If a redevelopment agency or successor agency did not pay
10 any portion of an amount owed for the 2011–12 fiscal year to an
11 affected taxing entity pursuant to Section 33401, 33492.140, 33607,
12 33607.5, 33607.7, or 33676, or pursuant to any passthrough
13 agreement entered into before January 1, 1994, between a
14 redevelopment agency and an affected taxing entity, and to the
15 extent the county auditor-controller did not remit the amounts
16 owed for passthrough payments during the 2011–12 fiscal year,
17 the county auditor-controller shall make the required payments to
18 the taxing entities owed passthrough payments and shall reduce
19 the amounts to which the successor agency would otherwise be
20 entitled pursuant to paragraph (2) of subdivision (a) of Section
21 34183 at the next allocation of property tax under this part, subject
22 to subdivision (b) of Section 34183. If the amount of available
23 property tax allocation to the successor agency is not sufficient to
24 make the required payment, the county auditor-controller shall
25 continue to reduce allocations to the successor agency under
26 paragraph (2) of subdivision (a) of Section 34183 until the time
27 that the owed amount is fully paid. Alternatively, the county
28 auditor-controller may accept payment from the successor agency’s
29 reserve funds for payments of passthrough payments owed as
30 defined in this subdivision.

31 (2) If a redevelopment agency did not pay any portion of the
32 amount owed for the 2011–12 fiscal year to an affected taxing
33 entity pursuant to Section 33401, 33492.140, 33607, 33607.5,
34 33607.7, or 33676, or pursuant to any passthrough agreement
35 entered into before January 1, 1994, between a redevelopment
36 agency and an affected taxing entity, but the county
37 auditor-controller did pay the difference that was owing, the county
38 auditor-controller shall deduct from the next allocation of property
39 tax to the successor agency under paragraph (2) of subdivision (a)
40 of Section 34183, the amount of the payment made on behalf of

1 the successor agency by the county auditor-controller, not to exceed
2 one-half the amount of passthrough payments owed for the
3 2011–12 fiscal year. If the amount of available property tax
4 allocation to the successor agency is not sufficient to make the
5 required deduction, the county auditor-controller shall continue to
6 reduce allocations to the successor agency under paragraph (2) of
7 subdivision (a) of Section 34183 until the time that the amount is
8 fully deducted. Alternatively, the auditor-controller may accept
9 payment from the successor agency’s reserve funds for deductions
10 of passthrough payments owed as defined in this subdivision.
11 Amounts reduced from successor agency payments under this
12 paragraph are available for the purposes of paragraphs (2) to (4),
13 inclusive, of subdivision (a) of Section 34183 for the six-month
14 period for which the property tax revenues are being allocated.

15 (b) In recognition of the fact that county auditor-controllers
16 were unable to make the payments required by paragraph (4) of
17 subdivision (a) of Section 34183 for the period January 1, 2012,
18 through June 30, 2012, on January 16, 2012, due to the California
19 Supreme Court’s ruling in the case of California Redevelopment
20 Association v. Matosantos (2011) 53 Cal.4th 231, in addition to
21 taking the actions specified in Section 34183 with respect to the
22 June 1 property tax allocations, county auditor-controllers should
23 have made allocations as provided in paragraph (1).

24 (1) From the allocations made on June 1, 2012, for the
25 Recognized Obligation Payment Schedule covering the period
26 July 1, 2012, through December 31, 2012, deduct from the amount
27 that otherwise would be deposited in the Redevelopment Property
28 Tax Trust Fund on behalf of the successor agency an amount
29 equivalent to the amount that each affected taxing entity was
30 entitled to pursuant to paragraph (4) of subdivision (a) of Section
31 34183 for the period January 1, 2012, through June 30, 2012. The
32 amount to be retained by taxing entities pursuant to paragraph (4)
33 of subdivision (a) of Section 34183 for the January 1, 2012, through
34 June 30, 2012, period is determined based on the Recognized
35 Obligation Payment Schedule approved by the Department of
36 Finance pursuant to subdivision (h) of Section 34179 and any
37 amount determined to be owed pursuant to this subdivision. Any
38 amounts so computed shall not be offset by any shortages in
39 funding for recognized obligations for the period covering July 1,
40 2012, through December 31, 2012.

1 (2) (A) If an affected taxing entity has not received the full
2 amount to which it was entitled pursuant to paragraph (4) of
3 subdivision (a) of Section 34183 of the property tax distributed
4 for the period January 1, 2012, through June 30, 2012, and
5 paragraph (1), no later than July 9, 2012, the county
6 auditor-controller shall determine the amount, if any, that is owed
7 by each successor agency to taxing entities and send a demand for
8 payment from the funds of the successor agency for the amount
9 owed to taxing entities if it has distributed the June 1, 2012,
10 allocation to the successor agencies. No later than July 12, 2012,
11 successor agencies shall make payment of the amounts demanded
12 to the county auditor-controller for deposit into the Redevelopment
13 Property Tax Trust Fund and subsequent distribution to taxing
14 entities. No later than July 16, 2012, the county auditor-controller
15 shall make allocations of all money received by that date from
16 successor agencies in amounts owed to taxing entities under this
17 paragraph to taxing entities in accordance with Section 34183. The
18 county auditor-controller shall make allocations of any money
19 received after that date under this paragraph within five business
20 days of receipt. These duties are not discretionary and shall be
21 carried out with due diligence.

22 (B) If a county auditor-controller fails to determine the amounts
23 owed to taxing entities and present a demand for payment by July
24 9, 2012, to the successor agencies, the Department of Finance or
25 any affected taxing entity may request a writ of mandate to require
26 the county auditor-controller to immediately perform this duty.
27 Such actions may be filed only in the County of Sacramento and
28 shall have priority over other civil matters. Any county in which
29 the county auditor-controller fails to perform the duties under this
30 paragraph shall be subject to a civil penalty of 10 percent of the
31 amount owed to taxing entities plus 1.5 percent of the amount
32 owed to taxing entities for each month that the duties are not
33 performed. The civil penalties shall be payable to the taxing entities
34 under Section 34183. Additionally, any county in which the county
35 auditor-controller fails to make the required determinations and
36 demands for payment under this paragraph by July 9, 2012, or fails
37 to distribute the full amount of funds received from successor
38 agencies as required by this paragraph shall not receive the
39 distribution of sales and use tax scheduled for July 18, 2012, or
40 any subsequent payment, up to the amount owed to taxing entities,

1 until the county auditor-controller performs the duties required by
2 this paragraph.

3 (C) If a successor agency fails to make the payment demanded
4 under subparagraph (A) by July 12, 2012, the Department of
5 Finance or any affected taxing entity may file for a writ of mandate
6 to require the successor agency to immediately make this payment.
7 Such actions may be filed only in the County of Sacramento and
8 shall have priority over other civil matters. Any successor agency
9 that fails to make payment by July 12, 2012, under this paragraph
10 shall be subject to a civil penalty of 10 percent of the amount owed
11 to taxing entities plus one and one-half percent of the amount owed
12 to taxing entities for each month that the payments are not made.
13 Additionally, the city or county or city and county that created the
14 redevelopment agency shall also be subject to a civil penalty of
15 10 percent of the amount owed to taxing entities plus 1.5 percent
16 of the amount owed to taxing entities for each month the payment
17 is late. The civil penalties shall be payable to the taxing entities
18 under Section 34183. If the Department of Finance finds that the
19 imposition of penalties will jeopardize the payment of enforceable
20 obligations it may request the court to waive some or all of the
21 penalties. A successor agency that does not pay the amount
22 required under this subparagraph by July 12, 2012, shall not pay
23 any obligations other than bond debt service until full payment is
24 made to the county auditor-controller. Additionally, any city,
25 county or city and county that created the redevelopment agency
26 that fails to make the required payment under this paragraph by
27 July 12, 2012, shall not receive the distribution of sales and use
28 tax scheduled for July 18, 2012, or any subsequent payment, up
29 to the amount owed to taxing entities, until the payment required
30 by this paragraph is made.

31 (D) The Legislature hereby finds and declares that time is of
32 the essence. Funds that should have been received and were
33 expected and spent in anticipation of receipt by community
34 colleges, schools, counties, cities, and special districts have not
35 been received resulting in significant fiscal impact to the state and
36 taxing entities. Continued delay and uncertainty whether funds
37 will be received warrants the availability of extraordinary relief
38 as authorized herein.

39 (3) If an affected taxing entity has not received the full amount
40 to which it was entitled pursuant to paragraph (4) of subdivision

1 (a) of Section 34183 for the period January 1, 2012, through June
2 30, 2012, and paragraph (1), the county auditor-controller shall
3 reapply paragraph (1) to each subsequent property tax allocation
4 until such time as the affected taxing entity has received the full
5 amount to which it was entitled pursuant to paragraph (4) of
6 subdivision (a) of Section 34183 for the period January 1, 2012,
7 through June 30, 2012.

8 SEC. 115. Section 39053 of the Health and Safety Code is
9 amended to read:

10 39053. "State board" means the State Air Resources Board.

11 SEC. 116. Section 39510 of the Health and Safety Code is
12 amended to read:

13 39510. (a) The State Air Resources Board is continued in
14 existence in the California Environmental Protection Agency. The
15 state board shall consist of 12 members.

16 (b) The members shall be appointed by the Governor, with the
17 consent of the Senate, on the basis of their demonstrated interest
18 and proven ability in the field of air pollution control and their
19 understanding of the needs of the general public in connection
20 with air pollution problems.

21 (c) Six members shall have the following qualifications:

22 (1) One member shall have training and experience in
23 automotive engineering or closely related fields.

24 (2) One member shall have training and experience in chemistry,
25 meteorology, or related scientific fields, including agriculture or
26 law.

27 (3) One member shall be a physician and surgeon or an authority
28 on health effects of air pollution.

29 (4) Two members shall be public members.

30 (5) One member shall have the qualifications specified in
31 paragraph (1), (2), or (3) or shall have experience in the field of
32 air pollution control.

33 (d) Six members shall be board members from districts who
34 shall reflect the qualitative requirements of subdivision (c) to the
35 extent practicable. Of these members:

36 (1) One shall be a board member from the south coast district.

37 (2) One shall be a board member from the bay district.

38 (3) One shall be a board member from the San Joaquin Valley
39 Unified Air Pollution Control District.

1 (4) One shall be a board member from the San Diego County
2 Air Pollution Control District.

3 (5) One shall be a board member from the Sacramento district,
4 the Placer County Air Pollution Control District, the Yolo-Solano
5 Air Quality Management District, the Feather River Air Quality
6 Management District, or the El Dorado County Air Pollution
7 Control District.

8 (6) One shall be a board member of any other district.

9 (e) Any vacancy shall be filled by the Governor within 30 days
10 of the date on which it occurs. If the Governor fails to make an
11 appointment for any vacancy within the 30-day period, the Senate
12 Committee on Rules may make the appointment to fill the vacancy
13 in accordance with this section.

14 (f) While serving on the state board, all members shall exercise
15 their independent judgment as officers of the state on behalf of the
16 interests of the entire state in furthering the purposes of this
17 division. A member of the state board shall not be precluded from
18 voting or otherwise acting upon any matter solely because that
19 member has voted or acted upon the matter in his or her capacity
20 as a member of a district board, except that a member of the state
21 board who is also a member of a district board shall not participate
22 in any action regarding his or her district taken by the state board
23 pursuant to Sections 41503 to 41505, inclusive.

24 SEC. 117. Section 39710 of the Health and Safety Code is
25 amended to read:

26 39710. For purposes of this chapter, “fund” means the
27 Greenhouse Gas Reduction Fund, created pursuant to Section
28 16428.8 of the Government Code.

29 SEC. 118. Section 39712 of the Health and Safety Code is
30 amended to read:

31 39712. (a) (1) It is the intent of the Legislature that moneys
32 shall be appropriated from the fund only in a manner consistent
33 with the requirements of this chapter and Article 9.7 (commencing
34 with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title
35 2 of the Government Code.

36 (2) The state shall not approve allocations for a measure or
37 program using moneys appropriated from the fund except after
38 determining, based on the available evidence, that the use of those
39 moneys furthers the regulatory purposes of Division 25.5
40 (commencing with Section 38500) and is consistent with law. If

1 any expenditure of moneys from the fund for any measure or
2 project is determined by a court to be inconsistent with law, the
3 allocations for the remaining measures or projects shall be
4 severable and shall not be affected.

5 (b) Moneys shall be used to facilitate the achievement of
6 reductions of greenhouse gas emissions in this state consistent
7 with Division 25.5 (commencing with Section 38500) and, where
8 applicable and to the extent feasible:

9 (1) Maximize economic, environmental, and public health
10 benefits to the state.

11 (2) Foster job creation by promoting in-state greenhouse gas
12 emissions reduction projects carried out by California workers and
13 businesses.

14 (3) Complement efforts to improve air quality.

15 (4) Direct investment toward the most disadvantaged
16 communities and households in the state.

17 (5) Provide opportunities for businesses, public agencies,
18 nonprofits, and other community institutions to participate in and
19 benefit from statewide efforts to reduce greenhouse gas emissions.

20 (6) Lessen the impacts and effects of climate change on the
21 state's communities, economy, and environment.

22 (c) Moneys appropriated from the fund may be allocated,
23 consistent with subdivision (a), for the purpose of reducing
24 greenhouse gas emissions in this state through investments that
25 may include, but are not limited to, any of the following:

26 (1) Funding to reduce greenhouse gas emissions through energy
27 efficiency, clean and renewable energy generation, distributed
28 renewable energy generation, transmission and storage, and other
29 related actions, including, but not limited to, at public universities,
30 state and local public buildings, and industrial and manufacturing
31 facilities.

32 (2) Funding to reduce greenhouse gas emissions through the
33 development of state-of-the-art systems to move goods and freight,
34 advanced technology vehicles and vehicle infrastructure, advanced
35 biofuels, and low-carbon and efficient public transportation.

36 (3) Funding to reduce greenhouse gas emissions associated with
37 water use and supply, land and natural resource conservation and
38 management, forestry, and sustainable agriculture.

1 (4) Funding to reduce greenhouse gas emissions through
2 strategic planning and development of sustainable infrastructure
3 projects, including, but not limited to, transportation and housing.

4 (5) Funding to reduce greenhouse gas emissions through
5 increased in-state diversion of municipal solid waste from disposal
6 through waste reduction, diversion, and reuse.

7 (6) Funding to reduce greenhouse gas emissions through
8 investments in programs implemented by local and regional
9 agencies, local and regional collaboratives, and nonprofit
10 organizations coordinating with local governments.

11 (7) Funding research, development, and deployment of
12 innovative technologies, measures, and practices related to
13 programs and projects funded pursuant to this chapter.

14 SEC. 119. Section 39716 of the Health and Safety Code is
15 amended to read:

16 39716. (a) The Department of Finance, on behalf of the
17 Governor, and in consultation with the state board and any other
18 relevant state entity, shall develop and submit to the Legislature
19 at the time of the department's adjustments to the proposed
20 2013–14 fiscal year budget pursuant to subdivision (e) of Section
21 13308 of the Government Code a three-year investment plan.
22 Commencing with the 2016–17 fiscal year budget and every three
23 years thereafter, with the release of the Governor's budget proposal,
24 the Department of Finance shall include updates to the investment
25 plan following the public process described in subdivisions (b)
26 and (c). The investment plan, consistent with the requirements of
27 Section 39712, shall do all of the following:

28 (1) Identify the state's near-term and long-term greenhouse gas
29 emissions reduction goals and targets by sector.

30 (2) Analyze gaps, where applicable, in current state strategies
31 to meeting the state's greenhouse gas emissions reduction goals
32 and targets by sector.

33 (3) Identify priority programmatic investments of moneys that
34 will facilitate the achievement of feasible and cost-effective
35 greenhouse gas emissions reductions toward achievement of
36 greenhouse gas reduction goals and targets by sector, consistent
37 with subdivision (c) of Section 39712.

38 (b) (1) The state board shall hold at least two public workshops
39 in different regions of the state and one public hearing prior to the
40 Department of Finance submitting the investment plan.

1 (2) The state board shall, prior to the submission of each
2 investment plan, consult with the Public Utilities Commission to
3 ensure the investment plan is coordinated with, and does not
4 conflict with or unduly overlap with, activities under the oversight
5 or administration of the Public Utilities Commission undertaken
6 pursuant to Part 5 (commencing with Section 38570) of Division
7 25.5 or other activities under the oversight or administration of
8 the Public Utilities Commission that facilitate greenhouse gas
9 emissions reductions consistent with this division. The investment
10 plan shall include a description of the use of any moneys generated
11 by the sale of allowances received at no cost by the investor-owned
12 utilities pursuant to a market-based compliance mechanism.

13 (c) The Climate Action Team, established under Executive
14 Order S-3-05, shall provide information to the Department of
15 Finance and the state board to assist in the development of each
16 investment plan. The Climate Action Team shall participate in
17 each public workshop held on an investment plan and provide
18 testimony to the state board on each investment plan. For purposes
19 of this section, the Secretary of Labor and Workforce Development
20 shall assist the Climate Action Team in its efforts.

21 SEC. 120. Section 39718 of the Health and Safety Code is
22 amended to read:

23 39718. (a) Moneys in the fund shall be appropriated through
24 the annual Budget Act consistent with the investment plan
25 developed and submitted pursuant to Section 39716.

26 (b) Upon appropriation, moneys in the fund shall be available
27 to the state board and to administering agencies for administrative
28 purposes in carrying out this chapter.

29 (c) Any repayment of loans, including interest payments and
30 all interest earnings on or accruing to any moneys, resulting from
31 implementation of this chapter shall be deposited in the fund for
32 purposes of this chapter.

33 SEC. 121. Section 106985 of the Health and Safety Code is
34 amended to read:

35 106985. (a) (1) Notwithstanding Section 2052 of the Business
36 and Professions Code or any other law, a radiologic technologist
37 certified pursuant to the Radiologic Technology Act (Section 27)
38 may, under the direct supervision of a licensed physician and
39 surgeon, and in accordance with the facility's protocol that meets,
40 at a minimum, the requirements described in paragraph (2), perform

1 venipuncture in an upper extremity to administer contrast materials,
2 manually or by utilizing a mechanical injector, if the radiologic
3 technologist has been deemed competent to perform that
4 venipuncture, in accordance with paragraph (3), and issued a
5 certificate, as described in subdivision (b).

6 (2) (A) In administering contrast materials, a radiologic
7 technologist may, to ensure the security and integrity of the
8 needle's placement or of an existing intravenous cannula, use a
9 saline-based solution *that* conforms with the facility's protocol
10 and that has been approved by a licensed physician and surgeon.
11 The protocol shall specify that only contrast materials or
12 pharmaceuticals approved by the United States Food and Drug
13 Administration may be used and shall also specify that the use
14 shall be in accordance with the labeling.

15 (B) A person who is currently certified as meeting the standards
16 of competence in nuclear medicine technology pursuant to Article
17 6 (commencing with Section 107150) and who is authorized to
18 perform a computerized tomography scanner only on a dual-mode
19 machine, as described in Section 106976, may perform the conduct
20 described in this subdivision.

21 (3) Prior to performing venipuncture pursuant to paragraph (1),
22 a radiologic technologist shall have performed at least 10
23 venipunctures on live humans under the personal supervision of
24 a licensed physician and surgeon, a registered nurse, or a person
25 the physician or nurse has previously deemed qualified to provide
26 personal supervision to the technologist for purposes of performing
27 venipuncture pursuant to this paragraph. Only after completion of
28 a minimum of 10 venipunctures may the supervising individual
29 evaluate whether the technologist is competent to perform
30 venipuncture under direct supervision. The number of
31 venipunctures required in this paragraph are in addition to those
32 performed for meeting the requirements of paragraph (2) of
33 subdivision (d). The facility shall document compliance with this
34 subdivision.

35 (b) The radiologic technologist shall be issued a certificate as
36 specified in subdivision (e) or by an instructor indicating
37 satisfactory completion of the training and education described in
38 subdivision (d). This certificate documents completion of the
39 required education and training and may not, by itself, be construed

1 to authorize a person to perform venipuncture or to administer
2 contrast materials.

3 (c) (1) “Direct supervision,” for purposes of this section, means
4 the direction of procedures authorized by this section by a licensed
5 physician and surgeon who shall be physically present within the
6 facility and available within the facility where the procedures are
7 performed, in order to provide immediate medical intervention to
8 prevent or mitigate injury to the patient in the event of adverse
9 reaction.

10 (2) “Personal supervision,” for purposes of this section, means
11 the oversight of the procedures authorized by this section by a
12 supervising individual identified in paragraph (3) of subdivision
13 (a) who is physically present to observe, and correct, as needed,
14 the performance of the individual who is performing the procedure.

15 (d) The radiologic technologist shall have completed both of
16 the following:

17 (1) Received a total of 10 hours of instruction, including all of
18 the following:

19 (A) Anatomy and physiology of venipuncture sites.

20 (B) Venipuncture instruments, intravenous solutions, and related
21 equipment.

22 (C) Puncture techniques.

23 (D) Techniques of intravenous line establishment.

24 (E) Hazards and complications of venipuncture.

25 (F) Postpuncture care.

26 (G) Composition and purpose of antianaphylaxis tray.

27 (H) First aid and basic cardiopulmonary resuscitation.

28 (2) Performed 10 venipunctures on a human or training
29 mannequin upper extremity (for example, an infusion arm or a
30 mannequin arm) under personal supervision. If performance is on
31 a human, only an upper extremity may be used.

32 (e) Schools for radiologic technologists shall include the
33 training and education specified in subdivision (d). Upon
34 satisfactory completion of the training and education, the school
35 shall issue to the student a completion document. This document
36 may not be construed to authorize a person to perform venipuncture
37 or to administer contrast materials.

38 (f) Nothing in this section shall be construed to authorize a
39 radiologic technologist to perform arterial puncture, any central
40 venous access procedures including repositioning of previously

1 placed central venous catheter except as specified in paragraph (1)
2 of subdivision (a), or cutdowns, or establish an intravenous line.

3 (g) This section shall not be construed to apply to a person who
4 is currently certified as meeting the standards of competence in
5 nuclear medicine technology pursuant to Article 6 (commencing
6 with Section 107150), except as provided in subparagraph (B) of
7 paragraph (2) of subdivision (a).

8 (h) Radiologic technologists who met the training and education
9 requirements of subdivision (d) prior to January 1, 2013, need not
10 repeat those requirements, or perform the venipunctures specified
11 in paragraph (3) of subdivision (a), provided the facility documents
12 that the radiologic technologist is competent to perform the tasks
13 specified in paragraph (1) of subdivision (a).

14 SEC. 122. Section 114365.5 of the Health and Safety Code is
15 amended to read:

16 114365.5. (a) The department shall adopt and post on its
17 Internet Web site a list of nonpotentially hazardous foods and their
18 ethnic variations that are approved for sale by a cottage food
19 operation. A cottage food product shall not be potentially hazardous
20 food, as defined in Section 113871.

21 (b) This list of nonpotentially hazardous foods shall include,
22 but not be limited to, all of the following:

23 (1) Baked goods without cream, custard, or meat fillings, such
24 as breads, biscuits, churros, cookies, pastries, and tortillas.

25 (2) Candy, such as brittle and toffee.

26 (3) Chocolate-covered nonperishable foods, such as nuts and
27 dried fruit.

28 (4) Dried fruit.

29 (5) Dried pasta.

30 (6) Dry baking mixes.

31 (7) Fruit pies, fruit empanadas, and fruit tamales.

32 (8) Granola, cereals, and trail mixes.

33 (9) Herb blends and dried mole paste.

34 (10) Honey and sweet sorghum syrup.

35 (11) Jams, jellies, preserves, and fruit butter that comply with
36 the standard described in Part 150 of Title 21 of the Code of
37 Federal Regulations.

38 (12) Nut mixes and nut butters.

39 (13) Popcorn.

40 (14) Vinegar and mustard.

1 (15) Roasted coffee and dried tea.

2 (16) Waffle cones and pizelles.

3 (c) (1) The State Public Health Officer may add or delete food
4 products to or from the list described in subdivision (b), which
5 shall be known as the approved food products list. Notice of any
6 change to the approved food products list shall be posted on the
7 department's cottage food program Internet Web site, to also be
8 known as the program Internet Web site for purposes of this
9 chapter. Any change to the approved food products list shall
10 become effective 30 days after the notice is posted. The notice
11 shall state the reason for the change, the authority for the change,
12 and the nature of the change. The notice will provide an opportunity
13 for written comment by indicating the address to which to submit
14 the comment and the deadline by which the comment is required
15 to be received by the department. The address to which the
16 comment is to be submitted may be an electronic site. The notice
17 shall allow at least 20 calendar days for comments to be submitted.
18 The department shall consider all comments submitted before the
19 due date. The department may withdraw the proposed change at
20 any time by notification on the program Internet Web site or
21 through notification by other electronic means. The approved food
22 products list described in subdivision (b), and any updates to the
23 list, shall not be subject to the administrative rulemaking
24 requirements of Chapter 3.5 (commencing with Section 11340) of
25 Part 1 of Division 3 of Title 2 of the Government Code.

26 (2) The State Public Health Officer shall not remove any items
27 from the approved food products list unless the State Public Health
28 Officer also posts information on the program Internet Web site
29 explaining the basis upon which the removed food item has been
30 determined to be potentially hazardous.

31 SEC. 123. Section 114380 of the Health and Safety Code is
32 amended to read:

33 114380. (a) A person proposing to build or remodel a food
34 facility shall submit complete, easily readable plans drawn to scale,
35 and specifications to the enforcement agency for review, and shall
36 receive plan approval before starting any new construction or
37 remodeling of a facility for use as a retail food facility.

38 (b) Plans and specifications may also be required by the
39 enforcement agency if the agency determines that they are
40 necessary to ensure compliance with the requirements of this part,

1 including, but not limited to, a menu change or change in the
2 facility's method of operation.

3 (c) (1) All new school food facilities or school food facilities
4 that undergo modernization or remodeling shall comply with all
5 structural requirements of this part. Upon submission of plans by
6 a public school authority, the Division of the State Architect and
7 the local enforcement agency shall review and approve all new
8 and remodeled school facilities for compliance with all applicable
9 requirements.

10 (2) Notwithstanding subdivision (a), the Office of Statewide
11 Health Planning and Development (OSHDP) shall maintain its
12 primary jurisdiction over licensed skilled nursing facilities, and
13 when new construction, modernization, or remodeling must be
14 undertaken to repair existing systems or to keep up the course of
15 normal or routine maintenance, the facility shall complete a
16 building application and plan check process as required by OSHDP.
17 Approval of the plans by OSHDP shall be deemed compliance
18 with the plan approval process required by the local county
19 enforcement agency described in this section.

20 (3) Except when a determination is made by the enforcement
21 agency that the nonconforming structural conditions pose a public
22 health hazard, existing public and private school cafeterias and
23 licensed health care facilities shall be deemed to be in compliance
24 with this part pending replacement or renovation.

25 (d) Except when a determination is made by the enforcement
26 agency that the nonconforming structural conditions pose a public
27 health hazard, existing food facilities that were in compliance with
28 the law in effect on June 30, 2007, shall be deemed to be in
29 compliance with the law pending replacement or renovation. If a
30 determination is made by the enforcement agency that a structural
31 condition poses a public health hazard, the food facility shall
32 remedy the deficiency to the satisfaction of the enforcement
33 agency.

34 (e) The plans shall be approved or rejected within 20 working
35 days after receipt by the enforcement agency and the applicant
36 shall be notified of the decision. Unless the plans are approved or
37 rejected within 20 working days, they shall be deemed approved.
38 The building department shall not issue a building permit for a
39 food facility until after it has received plan approval by the

1 enforcement agency. Nothing in this section shall require that plans
2 or specifications be prepared by someone other than the applicant.

3 SEC. 124. Section 116565 of the Health and Safety Code is
4 amended to read:

5 116565. (a) Each public water system serving 1,000 or more
6 service connections, and any public water system that treats water
7 on behalf of one or more public water systems for the purpose of
8 rendering it safe for human consumption, shall reimburse the
9 department for the actual cost incurred by the department for
10 conducting those activities mandated by this chapter relating to
11 the issuance of domestic water supply permits, inspections,
12 monitoring, surveillance, and water quality evaluation that relate
13 to that specific public water system. The amount of reimbursement
14 shall be sufficient to pay, but in no event shall exceed, the
15 department's actual cost in conducting these activities.

16 (b) Each public water system serving fewer than 1,000 service
17 connections shall pay an annual drinking water operating fee to
18 the department as set forth in this subdivision for costs incurred
19 by the department for conducting those activities mandated by this
20 chapter relating to inspections, monitoring, surveillance, and water
21 quality evaluation relating to public water systems. The total
22 amount of fees shall be sufficient to pay, but in no event shall
23 exceed, the department's actual cost in conducting these activities.
24 Notwithstanding adjustment of actual fees collected pursuant to
25 Section 100425 as authorized pursuant to subdivision (d) of Section
26 116590, the amount that shall be paid annually by a public water
27 system pursuant to this section shall be as follows:

28 (1) Community water systems, six dollars (\$6) per service
29 connection, but not less than two hundred fifty dollars (\$250) per
30 water system, which may be increased by the department, as
31 provided for in subdivision (f), to ten dollars (\$10) per service
32 connection, but not less than two hundred fifty dollars (\$250) per
33 water system.

34 (2) Nontransient noncommunity water systems pursuant to
35 subdivision (k) of Section 116275, two dollars (\$2) per person
36 served, but not less than four hundred fifty-six dollars (\$456) per
37 water system, which may be increased by the department, as
38 provided for in subdivision (f), to three dollars (\$3) per person
39 served, but not less than four hundred fifty-six dollars (\$456) per
40 water system.

1 (3) Transient noncommunity water systems pursuant to
2 subdivision (o) of Section 116275, eight hundred dollars (\$800)
3 per water system, which may be increased by the department, as
4 provided for in subdivision (f), to one thousand three hundred
5 thirty-five dollars (\$1,335) per water system.

6 (4) Noncommunity water systems in possession of a current
7 exemption pursuant to former Section 116282 on January 1, 2012,
8 one hundred two dollars (\$102) per water system.

9 (c) For purposes of determining the fees provided for in
10 subdivision (a), the department shall maintain a record of its actual
11 costs for pursuing the activities specified in subdivision (a) relative
12 to each system required to pay the fees. The fee charged each
13 system shall reflect the department's actual cost, or in the case of
14 a local primacy agency the local primacy agency's actual cost, of
15 conducting the specified activities.

16 (d) The department shall submit an invoice for cost
17 reimbursement for the activities specified in subdivision (a) to the
18 public water systems no more than twice a year.

19 (1) The department shall submit one estimated cost invoice to
20 public water systems serving 1,000 or more service connections
21 and any public water system that treats water on behalf of one or
22 more public water systems for the purpose of rendering it safe for
23 human consumption. This invoice shall include the actual hours
24 expended during the first six months of the fiscal year. The hourly
25 cost rate used to determine the amount of the estimated cost invoice
26 shall be the rate for the previous fiscal year.

27 (2) The department shall submit a final invoice to the public
28 water system before October 1 following the fiscal year that the
29 costs were incurred. The invoice shall indicate the total hours
30 expended during the fiscal year, the reasons for the expenditure,
31 the hourly cost rate of the department for the fiscal year, the
32 estimated cost invoice, and payments received. The amount of the
33 final invoice shall be determined using the total hours expended
34 during the fiscal year and the actual hourly cost rate of the
35 department for the fiscal year. The payment of the estimated
36 invoice, exclusive of late penalty, if any, shall be credited toward
37 the final invoice amount.

38 (3) Payment of the invoice issued pursuant to paragraphs (1)
39 and (2) shall be made within 90 days of the date of the invoice.
40 Failure to pay the amount of the invoice within 90 days shall result

1 in a 10-percent late penalty that shall be paid in addition to the
2 invoiced amount.

3 (e) Any public water system under the jurisdiction of a local
4 primacy agency shall pay the fees specified in this section to the
5 local primacy agency in lieu of the department. This section shall
6 not preclude a local health officer from imposing additional fees
7 pursuant to Section 101325.

8 (f) The department may increase the fees established in
9 subdivision (b) as follows:

10 (1) By February 1 of the fiscal year prior to the fiscal year for
11 which fees are proposed to be increased, the department shall
12 publish a list of fees for the following fiscal year and a report
13 showing the calculation of the amount of the fees.

14 (2) The department shall make the report and the list of fees
15 available to the public by submitting them to the Legislature and
16 posting them on the department's Internet Web site.

17 (3) The department shall establish the amount of fee increases
18 subject to the approval and appropriation by the Legislature.

19 SEC. 125. Section 120365 of the Health and Safety Code is
20 amended to read:

21 120365. (a) Immunization of a person shall not be required
22 for admission to a school or other institution listed in Section
23 120335 if the parent or guardian or adult who has assumed
24 responsibility for his or her care and custody in the case of a minor,
25 or the person seeking admission if an emancipated minor, files
26 with the governing authority a letter or affidavit that documents
27 which immunizations required by Section 120355 have been given
28 and which immunizations have not been given on the basis that
29 they are contrary to his or her beliefs.

30 (b) On and after January 1, 2014, a form prescribed by the State
31 Department of Public Health shall accompany the letter or affidavit
32 filed pursuant to subdivision (a). The form shall include both of
33 the following:

34 (1) A signed attestation from the health care practitioner that
35 indicates that the health care practitioner provided the parent or
36 guardian of the person who is subject to the immunization
37 requirements of this chapter, the adult who has assumed
38 responsibility for the care and custody of the person, or the person
39 if an emancipated minor, with information regarding the benefits
40 and risks of the immunization and the health risks of the

1 communicable diseases listed in Section 120335 to the person and
2 to the community. This attestation shall be signed not more than
3 six months before the date when the person first becomes subject
4 to the immunization requirement for which exemption is being
5 sought.

6 (2) A written statement signed by the parent or guardian of the
7 person who is subject to the immunization requirements of this
8 chapter, the adult who has assumed responsibility for the care and
9 custody of the person, or the person if an emancipated minor, that
10 indicates that the signer has received the information provided by
11 the health care practitioner pursuant to paragraph (1). This
12 statement shall be signed not more than six months before the date
13 when the person first becomes subject to the immunization
14 requirements as a condition of admittance to a school or institution
15 pursuant to Section 120335.

16 (c) The following shall be accepted in lieu of the original form:

17 (1) A photocopy of the signed form.

18 (2) A letter signed by a health care practitioner that includes all
19 information and attestations included on the form.

20 (d) Issuance and revision of the form shall be exempt from the
21 rulemaking provisions of the Administrative Procedure Act
22 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
23 Division 3 of Title 2 of the Government Code).

24 (e) When there is good cause to believe that the person has been
25 exposed to one of the communicable diseases listed in subdivision
26 (a) of Section 120325, that person may be temporarily excluded
27 from the school or institution until the local health officer is
28 satisfied that the person is no longer at risk of developing the
29 disease.

30 (f) For purposes of this section, “health care practitioner” means
31 any of the following:

32 (1) A physician and surgeon, licensed pursuant to Section 2050
33 of the Business and Professions Code.

34 (2) A nurse practitioner who is authorized to furnish drugs
35 pursuant to Section 2836.1 of the Business and Professions Code.

36 (3) A physician assistant who is authorized to administer or
37 provide medication pursuant to Section 3502.1 of the Business
38 and Professions Code.

39 (4) An osteopathic physician and surgeon, as defined in the
40 Osteopathic Initiative Act.

1 (5) A naturopathic doctor who is authorized to furnish or order
2 drugs under a physician and surgeon’s supervision pursuant to
3 Section 3640.5 of the Business and Professions Code.

4 (6) A credentialed school nurse, as described in Section 49426
5 of the Education Code.

6 SEC. 126. Section 123327 of the Health and Safety Code is
7 amended to read:

8 123327. (a) The department shall provide written notice to a
9 retail food vendor if the department determines that the vendor
10 has committed an initial violation for which a pattern of the
11 violation must be established to impose a sanction. Notice shall
12 be provided no later than 30 days after the department determines
13 the first investigation that identified the violation is complete.

14 (b) The written notice shall be delivered to the vendor 30 days
15 before the department conducts a second investigation for purposes
16 of establishing a pattern of the violation to the vendor’s most recent
17 business ownership address on file with the department or to the
18 vendor location upon identification of a violation during vendor
19 monitoring, as defined by Section 40743 of Title 22 of the
20 California Code of Regulations.

21 (c) The written notice shall include a description of the initial
22 violation and may include information to assist the vendor to take
23 corrective action, including, but not limited to, a 60-day window
24 that includes the date of the violation.

25 (d) For purposes of this section, “violation” means a violation
26 set forth in Section 246.2 of Title 7 of the Code of Federal
27 Regulations.

28 (e) It is the intent of the Legislature in enacting this section to
29 clarify existing law.

30 SEC. 127. Section 123940 of the Health and Safety Code is
31 amended to read:

32 123940. (a) (1) Annually, the board of supervisors shall
33 appropriate a sum of money for services for handicapped children
34 of the county, including diagnosis, treatment, and therapy services
35 for physically handicapped children in public schools, equal to 25
36 percent of the actual expenditures for the county program under
37 this article for the 1990–91 fiscal year, except as specified in
38 paragraph (2).

39 (2) If the state certifies that a smaller amount is needed in order
40 for the county to pay 25 percent of costs of the county’s program

1 from this source. The smaller amount certified by the state shall
2 be the amount that the county shall appropriate.

3 (b) In addition to the amount required by subdivision (a), the
4 county shall allocate an amount equal to the amount determined
5 pursuant to subdivision (a) for purposes of this article from
6 revenues allocated to the county pursuant to Chapter 6
7 (commencing with Section 17600) of Division 9 of the Welfare
8 and Institutions Code.

9 (c) (1) The state shall match county expenditures for this article
10 from funding provided pursuant to subdivisions (a) and (b).

11 (2) County expenditures shall be waived for payment of services
12 for children who are eligible pursuant to paragraph (2) of
13 subdivision (a) of Section 123870.

14 (d) The county may appropriate and expend moneys in addition
15 to those set forth in subdivisions (a) and (b) and the state shall
16 match the expenditures, on a dollar-for-dollar basis, to the extent
17 that state funds are available for this article.

18 (e) County appropriations under subdivisions (a) and (b) shall
19 include county financial participation in the nonfederal share of
20 expenditures for services for children who are enrolled in the
21 Medi-Cal program pursuant to Section 14005.26 of the Welfare
22 and Institutions Code, and who are eligible for services under this
23 article pursuant to paragraph (1) of subdivision (a) of Section
24 123870, to the extent that federal financial participation is available
25 at the enhanced federal reimbursement rate under Title XXI of the
26 federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.) and
27 funds are appropriated for the California Children's Services
28 Program in the State Budget.

29 (f) Nothing in this section shall require the county to expend
30 more than the amount set forth in subdivision (a) plus the amount
31 set forth in subdivision (b) nor shall it require the state to expend
32 more than the amount of the match set forth in subdivision (c).

33 (g) Notwithstanding Chapter 3.5 (commencing with Section
34 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
35 the department, without taking further regulatory action, shall
36 implement this section by means of California Children's Services
37 numbered letters.

38 SEC. 128. Section 123955 of the Health and Safety Code is
39 amended to read:

1 123955. (a) The state and the counties shall share in the cost
2 of administration of the California Children’s Services Program
3 at the local level.

4 (b) (1) The director shall adopt regulations establishing
5 minimum standards for the administration, staffing, and local
6 implementation of this article subject to reimbursement by the
7 state.

8 (2) The standards shall allow necessary flexibility in the
9 administration of county programs, taking into account the
10 variability of county needs and resources, and shall be developed
11 and revised jointly with state and county representatives.

12 (c) The director shall establish minimum standards for
13 administration, staffing, and local operation of the program subject
14 to reimbursement by the state.

15 (d) Until July 1, 1992, reimbursable administrative costs, to be
16 paid by the state to counties, shall not exceed 4.1 percent of the
17 gross total expenditures for diagnosis, treatment, and therapy by
18 counties as specified in Section 123940.

19 (e) Beginning July 1, 1992, this subdivision shall apply with
20 respect to all of the following:

21 (1) Counties shall be reimbursed by the state for 50 percent of
22 the amount required to meet state administrative standards for that
23 portion of the county caseload under this article that is ineligible
24 for Medi-Cal to the extent funds are available in the State Budget
25 for the California Children’s Services Program.

26 (2) Counties shall be reimbursed by the state for 50 percent of
27 the nonfederal share of the amount required to meet state
28 administrative standards for that portion of the county caseload
29 under this article that is enrolled in the Medi-Cal program pursuant
30 to Section 14005.26 of the Welfare and Institutions Code and who
31 are eligible for services under this article pursuant to subdivision
32 (a) of Section 123870, to the extent that federal financial
33 participation is available at the enhanced federal reimbursement
34 rate under Title XXI of the federal Social Security Act (42 U.S.C.
35 Sec. 1397aa et seq.) and funds are appropriated for the California
36 Children’s Services Program in the State Budget.

37 (3) On or before September 15 of each year, each county
38 program implementing this article shall submit an application for
39 the subsequent fiscal year that provides information as required

1 by the state to determine if the county administrative staff and
2 budget meet state standards.

3 (4) The state shall determine the maximum amount of state
4 funds available for each county from state funds appropriated for
5 CCS county administration. If the amount appropriated for any
6 fiscal year in the Budget Act for county administration under this
7 article differs from the amounts approved by the department, each
8 county shall submit a revised application in a form and at the time
9 specified by the department.

10 (f) The department and counties shall maximize the use of
11 federal funds for administration of the programs implemented
12 pursuant to this article, including using state and county funds to
13 match funds claimable under Title XIX or Title XXI of the federal
14 Social Security Act (42 U.S.C. Sec. 1396 et seq.; 42 U.S.C. Sec.
15 1397aa et seq.).

16 SEC. 129. Section 125286.20 of the Health and Safety Code
17 is amended to read:

18 125286.20. Unless the context otherwise requires, the following
19 definitions shall apply for purposes of this article:

20 (a) “Assay” means the amount of a particular constituent of a
21 mixture or of the biological or pharmacological potency of a drug.

22 (b) “Ancillary infusion equipment and supplies” means the
23 equipment and supplies required to infuse a blood clotting product
24 into a human vein, including, but not limited to, syringes, needles,
25 sterile gauze, field pads, gloves, alcohol swabs, numbing creams,
26 tourniquets, medical tape, sharps or equivalent biohazard waste
27 containers, and cold compression packs.

28 (c) “Bleeding disorder” means a medical condition characterized
29 by a deficiency or absence of one or more essential blood clotting
30 proteins in the human blood, often called “factors,” including all
31 forms of hemophilia and other bleeding disorders that, without
32 treatment, result in uncontrollable bleeding or abnormal blood
33 clotting.

34 (d) “Blood clotting product” means an intravenously
35 administered medicine manufactured from human plasma or
36 recombinant biotechnology techniques, approved for distribution
37 by the federal Food and Drug Administration, that is used for the
38 treatment and prevention of symptoms associated with bleeding
39 disorders. Blood clotting products include, but are not limited to,
40 factor VII, factor VIIa, factor VIII, and factor IX products, von

1 Willebrand factor products, bypass products for patients with
2 inhibitors, and activated prothrombin complex concentrates.

3 (e) “Emergency” means care as defined in Section 1317.1.

4 (f) “Hemophilia” means a human bleeding disorder caused by
5 a hereditary deficiency of the factor I, II, V, VIII, IX, XI, XII, or
6 XIII blood clotting protein in human blood.

7 (g) “Hemophilia treatment center” means a facility for the
8 treatment of bleeding disorders, including, but not limited to,
9 hemophilia, that receives funding specifically for the treatment of
10 patients with bleeding disorders from federal government sources,
11 including, but not limited to, the federal Centers for Disease
12 Control and Prevention and the federal Health Resources and
13 Services Administration (HRSA) of the United States Department
14 of Health and Human Services.

15 (h) “Home use” means infusion or other use of a blood clotting
16 product in a place other than a state-recognized hemophilia
17 treatment center or other clinical setting. Places where home use
18 occurs include, without limitation, a home or other nonclinical
19 setting.

20 (i) “Patient” means a person needing a blood clotting product
21 for home use.

22 (j) (1) “Provider of blood clotting products for home use” means
23 all the following pharmacies, except as described in Section
24 125286.35, that dispense blood clotting factors for home use:

25 (A) Hospital pharmacies.

26 (B) Health system pharmacies.

27 (C) Pharmacies affiliated with hemophilia treatment centers.

28 (D) Specialty home care pharmacies.

29 (E) Retail pharmacies.

30 (2) The providers described in this subdivision shall include a
31 health care service plan and all its affiliated providers if the health
32 care service plan exclusively contracts with a single medical group
33 in a specified geographic area to provide professional services to
34 its enrollees.

35 SEC. 130. Section 128570 of the Health and Safety Code is
36 amended to read:

37 128570. (a) Persons participating in the program shall be
38 persons who agree in writing prior to completing an accredited
39 medical or osteopathic school based in the United States to serve
40 in an eligible practice setting, pursuant to subdivision (g) of Section

1 128565, for at least three years. The program shall be used only
2 for the purpose of promoting the education of medical doctors and
3 doctors of osteopathy and related administrative costs.

4 (b) A program participant shall commit to three years of
5 full-time professional practice once the participant has achieved
6 full licensure pursuant to Article 4 (commencing with Section
7 2080) of Chapter 5 of Division 2 of, or Section 2099.5 of, the
8 Business and Professions Code and after completing an accredited
9 residency program. The obligated professional service shall be in
10 direct patient care in an eligible practice setting pursuant to
11 subdivision (g) of Section 128565.

12 (1) Leaves of absence either during medical school or service
13 obligation shall be permitted for serious illness, pregnancy, or
14 other natural causes. The selection committee shall develop the
15 process for determining the maximum permissible length of an
16 absence, the maximum permissible leaves of absences, and the
17 process for reinstatement. Awarding of scholarship funds shall be
18 deferred until the participant is back to full-time status.

19 (2) Full-time status shall be defined by the selection committee.
20 The selection committee may establish exemptions from this
21 requirement on a case-by-case basis.

22 (c) The maximum allowable amount per total scholarship shall
23 be one hundred five thousand dollars (\$105,000). These moneys
24 shall be distributed over the course of a standard medical school
25 curriculum. The distribution of funds shall increase over the course
26 of medical school, increasing to ensure that at least 45 percent of
27 the total scholarship award is distributed upon matriculation in the
28 final year of school.

29 (d) In the event the program participant does not complete
30 medical school and the minimum three years of professional service
31 pursuant to the contractual agreement between the foundation and
32 the participant, the office shall recover the funds awarded plus the
33 maximum allowable interest for failure to begin or complete the
34 service obligation.

35 SEC. 131. Section 129725 of the Health and Safety Code is
36 amended to read:

37 129725. (a) (1) "Hospital building" includes any building
38 not specified in subdivision (b) that is used, or designed to be used,
39 for a health facility of a type required to be licensed pursuant to
40 Chapter 2 (commencing with Section 1250) of Division 2.

1 (2) Except as provided in paragraph (7) of subdivision (b),
2 hospital building includes a correctional treatment center, as
3 defined in subdivision (j) of Section 1250, the construction of
4 which was completed on or after March 7, 1973.

5 (b) “Hospital building” does not include any of the following:

6 (1) Any building where outpatient clinical services of a health
7 facility licensed pursuant to Section 1250 are provided that is
8 separated from a building in which hospital services are provided.

9 If any one or more outpatient clinical services in the building
10 provides services to inpatients, the building shall not be included
11 as a “hospital building” if those services provided to inpatients
12 represent no more than 25 percent of the total outpatient services
13 provided at the building. Hospitals shall maintain on an ongoing
14 basis, data on the patients receiving services in these buildings,
15 including the number of patients seen, categorized by their inpatient
16 or outpatient status. Hospitals shall submit this data annually to
17 the State Department of Public Health.

18 (2) A building used, or designed to be used, for a skilled nursing
19 facility or intermediate care facility if the building is of
20 single-story, wood-frame or light steel frame construction.

21 (3) A building of single-story, wood-frame or light steel frame
22 construction where only skilled nursing or intermediate care
23 services are provided if the building is separated from a building
24 housing other patients of the health facility receiving higher levels
25 of care.

26 (4) A freestanding structure of a chemical dependency recovery
27 hospital exempted under subdivision (c) of Section 1275.2.

28 (5) A building licensed to be used as an intermediate care
29 facility/developmentally disabled habilitative with six beds or less
30 and an intermediate care facility/developmentally disabled
31 habilitative of 7 to 15 beds that is a single-story, wood-frame or
32 light steel frame building.

33 (6) A building subject to licensure as a correctional treatment
34 center, as defined in subdivision (j) of Section 1250, the
35 construction of which was completed before March 7, 1973.

36 (7) (A) A building that meets the definition of a correctional
37 treatment center, pursuant to subdivision (j) of Section 1250, for
38 which the final design documents were completed or the
39 construction of which was initiated before January 1, 1994,
40 operated by or to be operated by the Department of Corrections

1 and Rehabilitation, or by a law enforcement agency of a city,
2 county, or a city and county.

3 (B) In the case of reconstruction, alteration, or addition to, the
4 facilities identified in this paragraph, and paragraph (6) or any
5 other building subject to licensure as a general acute care hospital,
6 acute psychiatric hospital, correctional treatment center, or nursing
7 facility, as defined in subdivisions (a), (b), (j), and (k) of Section
8 1250, operated or to be operated by the Department of Corrections
9 and Rehabilitation, or by a law enforcement agency of a city,
10 county, or city and county, only the reconstruction, alteration, or
11 addition, itself, and not the building as a whole, nor any other
12 aspect thereof, shall be required to comply with this chapter or the
13 regulations adopted pursuant thereto.

14 (8) A freestanding building used, or designed to be used, as a
15 congregate living health facility, as defined in subdivision (i) of
16 Section 1250.

17 (9) A freestanding building used, or designed to be used, as a
18 hospice facility, as defined in subdivision (n) of Section 1250.

19 SEC. 132. Section 136000 of the Health and Safety Code is
20 amended to read:

21 136000. (a) (1) Effective July 1, 2012, there is hereby
22 transferred from the Department of Managed Health Care the
23 Office of Patient Advocate to be established within the California
24 Health and Human Services Agency, to provide assistance to, and
25 advocate on behalf of, individuals served by health care service
26 plans regulated by the Department of Managed Health Care,
27 insureds covered by health insurers regulated by the Department
28 of Insurance, and individuals who receive or are eligible for other
29 health care coverage in California, including coverage available
30 through the Medi-Cal program, the California Health Benefit
31 Exchange, the Healthy Families Program, or any other county or
32 state health care program. The goal of the office shall be to help
33 those individuals secure the health care services to which they are
34 entitled or for which they are eligible under the law.
35 Notwithstanding any provision of this division, each regulator and
36 health coverage program shall retain its respective authority,
37 including its authority to resolve complaints, grievances, and
38 appeals.

1 (2) The office shall be headed by a patient advocate appointed
2 by the Governor. The patient advocate shall serve at the pleasure
3 of the Governor.

4 (3) The provisions of this division affecting insureds covered
5 by health insurers regulated by the Department of Insurance and
6 individuals who receive or are eligible for coverage available
7 through the Medi-Cal program, the California Health Benefit
8 Exchange, the Healthy Families Program, or any other county or
9 state health care program shall commence on January 1, 2013,
10 except that for the period July 1, 2012, to January 1, 2013, the
11 office shall continue with any duties, responsibilities, or activities
12 of the office authorized as of July 1, 2011, which shall continue
13 to be authorized.

14 (b) (1) The duties of the office shall include, but not be limited
15 to, all of the following:

16 (A) Developing, in consultation with the Managed Risk Medical
17 Insurance Board, the State Department of Health Care Services,
18 the California Health Benefit Exchange, the Department of
19 Managed Health Care, and the Department of Insurance,
20 educational and informational guides for consumers describing
21 their rights and responsibilities, and informing them on effective
22 ways to exercise their rights to secure health care coverage. The
23 guides shall be easy to read and understand and shall be made
24 available in English and other threshold languages, using an
25 appropriate literacy level, and in a culturally competent manner.
26 The informational guides shall be made available to the public by
27 the office, including being made accessible on the office's Internet
28 Web site and through public outreach and educational programs.

29 (B) Compiling an annual publication, to be made available on
30 the office's Internet Web site, of a quality of care report card,
31 including, but not limited to, health care service plans.

32 (C) Rendering assistance to consumers regarding procedures,
33 rights, and responsibilities related to the filing of complaints,
34 grievances, and appeals, including appeals of coverage denials and
35 information about any external appeal process.

36 (D) Making referrals to the appropriate state agency regarding
37 studies, investigations, audits, or enforcement that may be
38 appropriate to protect the interests of consumers.

1 (E) Coordinating and working with other government and
2 nongovernment patient assistance programs and health care
3 ombudsperson programs.

4 (2) The office shall employ necessary staff. The office may
5 employ or contract with experts when necessary to carry out the
6 functions of the office. The patient advocate shall make an annual
7 budget request for the office which shall be identified in the annual
8 Budget Act.

9 (3) Until January 1, 2013, the office shall have access to records
10 of the Department of Managed Health Care, including, but not
11 limited to, information related to health care service plan or health
12 insurer audits, surveys, and enrollee or insured grievances.

13 (4) The patient advocate shall annually issue a public report on
14 the activities of the office, and shall appear before the appropriate
15 policy and fiscal committees of the Senate and Assembly, if
16 requested, to report and make recommendations on the activities
17 of the office.

18 (5) The office shall adopt standards for the organizations with
19 which it contracts pursuant to this section to ensure compliance
20 with the privacy and confidentiality laws of this state, including,
21 but not limited to, the Information Practices Act of 1977 (Chapter
22 1(commencing with Section 1798) of Division 3 of the Civil Code).
23 The office shall conduct privacy trainings as necessary, and
24 regularly verify that the organizations have measures in place to
25 ensure compliance with this provision.

26 (c) In enacting this act, the Legislature recognizes that, because
27 of the enactment of federal health care reform on March 23, 2010,
28 and the implementation of various provisions by January 1, 2014,
29 it is appropriate to transfer the Office of Patient Advocate and to
30 confer new responsibilities on the Office of Patient Advocate,
31 including assisting consumers in obtaining health care coverage
32 and obtaining health care through health coverage that is regulated
33 by multiple regulators, both state and federal. The new
34 responsibilities include assisting consumers in navigating both
35 public and private health care coverage and assisting consumers
36 in determining which regulator regulates the health care coverage
37 of a particular consumer. In order to assist in implementing federal
38 health care reform in California, commencing January 1, 2013,
39 the office, in addition to the duties set forth in subdivision (b),
40 shall also do all of the following:

1 (1) Receive and respond to all inquiries, complaints, and requests
2 for assistance from individuals concerning health care coverage
3 available in California.

4 (2) Provide, and assist in the provision of, outreach and
5 education about health care coverage options as set forth in
6 subparagraph (A) of paragraph (1) of subdivision (b), including,
7 but not limited to:

8 (A) Information regarding applying for coverage; the cost of
9 coverage; and renewal in, and transitions between, health coverage
10 programs.

11 (B) Information and assistance regarding public programs, such
12 as Medi-Cal, the Healthy Families Program, federal veterans health
13 benefits, and Medicare; and private coverage, including
14 employer-sponsored coverage, Exchange coverage; and other
15 sources of care if the consumer is not eligible for coverage, such
16 as county services, community clinics, discounted hospital care,
17 or charity care.

18 (3) Coordinate with other state and federal agencies engaged in
19 outreach and education regarding the implementation of federal
20 health care reform.

21 (4) Render assistance to, and advocate on behalf of, consumers
22 with problems related to health care services, including care and
23 service problems and claims or payment problems.

24 (5) Refer consumers to the appropriate regulator of their health
25 coverage programs for filing complaints, grievances, or claims, or
26 for payment problems.

27 (d) (1) Commencing January 1, 2013, the office shall track and
28 analyze data on problems and complaints by, and questions from,
29 consumers about health care coverage for the purpose of providing
30 public information about problems faced and information needed
31 by consumers in obtaining coverage and care. The data collected
32 shall include demographic data, source of coverage, regulator, and
33 resolution of complaints, including timeliness of resolution.

34 (2) The Department of Managed Health Care, the State
35 Department of Health Care Services, the Department of Insurance,
36 the Managed Risk Medical Insurance Board, the California Health
37 Benefit Exchange, and other public coverage programs shall
38 provide to the office data in the aggregate concerning consumer
39 complaints and grievances. For the purpose of publicly reporting
40 information about the problems faced by consumers in obtaining

1 care and coverage, the office shall analyze data on consumer
2 complaints and grievances resolved by these agencies, including
3 demographic data, source of coverage, insurer or plan, resolution
4 of complaints and other information intended to improve health
5 care and coverage for consumers. The office shall develop and
6 provide comprehensive and timely data and analysis based on the
7 information provided by other agencies.

8 (3) The office shall collect and report data to the United States
9 Secretary of Health and Human Services on complaints and
10 consumer assistance as required to comply with requirements of
11 the federal Patient Protection and Affordable Care Act (Public
12 Law 111-148).

13 (e) Commencing January 1, 2013, in order to assist consumers
14 in understanding the impact of federal health care reform as well
15 as navigating and resolving questions and problems with health
16 care coverage and programs, the office shall ensure that either the
17 office or a state agency contracting with the office shall do the
18 following:

19 (1) Operate a toll-free telephone hotline number that can route
20 callers to the proper regulating body or public program for their
21 question, their health plan, or the consumer assistance program in
22 their area.

23 (2) Operate an Internet Web site, other social media, and
24 up-to-date communication systems to give information regarding
25 the consumer assistance programs.

26 (f) (1) The office may contract with community-based consumer
27 assistance organizations to assist in any or all of the duties of
28 subdivision (c) in accordance with Section 19130 of the
29 Government Code or provide grants to community-based consumer
30 assistance organizations for portions of these purposes.

31 (2) Commencing January 1, 2013, any local community-based
32 nonprofit consumer assistance program with which the office
33 contracts shall include in its mission the assistance of, and duty
34 to, health care consumers. Contracting consumer assistance
35 programs shall have experience in the following areas:

36 (A) Assisting consumers in navigating the local health care
37 system.

38 (B) Advising consumers regarding their health care coverage
39 options and helping consumers enroll in and retain health care
40 coverage.

1 (C) Assisting consumers with problems in accessing health care
2 services.

3 (D) Serving consumers with special needs, including, but not
4 limited to, consumers with limited-English language proficiency,
5 consumers requiring culturally competent services, low-income
6 consumers, consumers with disabilities, consumers with low
7 literacy rates, and consumers with multiple health conditions,
8 including behavioral health.

9 (E) Collecting and reporting data, including demographic data,
10 source of coverage, regulator, and resolution of complaints,
11 including timeliness of resolution.

12 (3) Commencing January 1, 2013, the office shall develop
13 protocols, procedures, and training modules for organizations with
14 which it contracts.

15 (4) Commencing January 1, 2013, the office shall adopt
16 standards for organizations with which it contracts regarding
17 confidentiality and conduct.

18 (5) Commencing January 1, 2013, the office may contract with
19 consumer assistance programs to develop a series of appropriate
20 literacy level and culturally and linguistically appropriate
21 educational materials in all threshold languages for consumers
22 regarding health care coverage options and how to resolve
23 problems.

24 (g) Commencing January 1, 2013, the office shall develop
25 protocols and procedures for assisting in the resolution of consumer
26 complaints, including both of the following:

27 (1) A procedure for referral of complaints and grievances to the
28 appropriate regulator or health coverage program for resolution
29 by the relevant regulator or public program.

30 (2) A protocol or procedure for reporting to the appropriate
31 regulator and health coverage program regarding complaints and
32 grievances relevant to that agency that the office received and was
33 able to resolve without further action or referral.

34 (h) For purposes of this section, the following definitions apply:

35 (1) “Consumer” or “individual” includes the individual or his
36 or her parent, guardian, conservator, or authorized representative.

37 (2) “Exchange” means the California Health Benefit Exchange
38 established pursuant to Title 22 (commencing with Section 100500)
39 of the Government Code.

1 (3) “Health care” includes behavioral health, including both
2 mental health and substance abuse treatment.

3 (4) “Health care service plan” has the same meaning as that set
4 forth in subdivision (f) of Section 1345. Health care service plan
5 includes “specialized health care service plans,” including
6 behavioral health plans.

7 (5) “Health coverage program” includes the Medi-Cal program,
8 Healthy Families Program, tax subsidies and premium credits
9 under the Exchange, the Basic Health Program, if enacted, county
10 health coverage programs, and the Access for Infants and Mothers
11 Program.

12 (6) “Health insurance” has the same meaning as set forth in
13 Section 106 of the Insurance Code.

14 (7) “Health insurer” means an insurer that issues policies of
15 health insurance.

16 (8) “Office” means the Office of Patient Advocate.

17 (9) “Threshold languages” shall have the same meaning as for
18 Medi-Cal managed care.

19 *SEC. 132.5. Section 395 of the Insurance Code is amended to*
20 *read:*

21 395. After a covered loss, an insurer shall provide, free of
22 charge, a complete copy of the insured’s current insurance policy
23 or certificate within 30 calendar days of receipt of a request from
24 the insured. The time period for providing the insurance policy or
25 certificate may be extended by the commissioner. An insured who
26 does not experience a covered loss shall, upon request, be entitled
27 to one free copy of his or her current insurance policy or certificate
28 annually. The insurance policy or certificate provided to the insured
29 shall include, where applicable, the policy declarations page. This
30 section shall not apply to commercial policies issued pursuant to
31 Sections 675.5 and ~~675.6~~ 676.6, and policies of workers’
32 compensation insurance, as defined in Section 109.

33 *SEC. 133. Section 676.75 of the Insurance Code is amended*
34 *to read:*

35 676.75. (a) No admitted insurer, licensed to issue and issuing
36 homeowner’s or tenant’s policies, as described in Section 122,
37 shall (1) fail or refuse to accept an application for that insurance
38 or to issue that insurance to an applicant or (2) cancel that
39 insurance, solely on the basis that the applicant or policyholder is

1 engaged in foster home activities in a certified family home, as
2 defined in Section 1506 of the Health and Safety Code.

3 (b) Coverage under policies described in subdivision (a) with
4 respect to a foster child shall be the same as that provided for a
5 natural child. However, unless specifically provided in the policy,
6 there shall be no coverage expressly provided in the policy for any
7 bodily injury arising out of the operation or use of any motor
8 vehicle, aircraft, or watercraft owned or operated by, or rented or
9 loaned to, any foster parent.

10 (c) It is against public policy for a policy of homeowner's or
11 tenant's insurance subject to this section to provide liability
12 coverage for any of the following losses:

13 (1) An insurer shall not be liable, under a policy of insurance
14 subject to this section, to any governmental agency for damage
15 arising from occurrences peculiar to the foster care relationship
16 and the provision of foster care services.

17 (2) Alienation of affection of a foster child.

18 (3) Any loss arising out of licentious, immoral, or sexual
19 behavior on the part of a foster parent intended to lead to, or
20 culminating in, any sexual act.

21 (4) Any loss arising out of a dishonest, fraudulent, criminal, or
22 intentional act.

23 (d) There shall be no penalty for violations of this section prior
24 to January 1, 2013.

25 (e) Insurers may provide a special endorsement to a
26 homeowner's or tenant's policy covering claims related to foster
27 care that are not excluded by subdivision (c).

28 (f) Insurers may provide by a separate policy for some or all of
29 the claims related to foster care that are excluded by subdivision
30 (c).

31 SEC. 134. Section 922.41 of the Insurance Code is amended
32 to read:

33 922.41. (a) Credit shall be allowed a domestic insurer when
34 the reinsurance is ceded to an assuming insurer that has been
35 certified by the commissioner as a reinsurer in this state and secures
36 its obligations in accordance with the requirements of this section.
37 Credit shall be allowed at all times for which statutory financial
38 statement credit for reinsurance is claimed under this section. The
39 credit allowed shall be based upon the security held by or on behalf
40 of the ceding insurer in accordance with a rating assigned to the

1 certified reinsurer by the commissioner. The security shall be in
2 a form consistent with this section, any regulations promulgated
3 by the commissioner, and Section 922.5.

4 (b) In order to be eligible for certification, the assuming insurer
5 shall meet the following requirements:

6 (1) The assuming insurer shall be domiciled and licensed to
7 transact insurance or reinsurance in a qualified jurisdiction, as
8 determined by the commissioner pursuant to subdivisions (f) and
9 (g).

10 (2) The assuming insurer shall maintain minimum capital and
11 surplus, or its equivalent, in an amount to be determined by the
12 commissioner, but no less than two hundred fifty million dollars
13 (\$250,000,000) calculated in accordance with paragraph (4) of
14 subdivision (f) of this section or Section 922.5. This requirement
15 may also be satisfied by an association including incorporated and
16 individual unincorporated underwriters having minimum capital
17 and surplus equivalents (net of liabilities) of at least two hundred
18 fifty million dollars (\$250,000,000) and a central fund containing
19 a balance of at least two hundred fifty million dollars
20 (\$250,000,000).

21 (3) The assuming insurer shall maintain financial strength ratings
22 from two or more rating agencies deemed acceptable by the
23 commissioner. These ratings shall be based on interactive
24 communication between the rating agency and the assuming insurer
25 and shall not be based solely on publicly available information.
26 These financial strength ratings will be one factor used by the
27 commissioner in determining the rating that is assigned to the
28 assuming insurer. Acceptable rating agencies include the following:

29 (A) Standard & Poor's.

30 (B) Moody's Investors Service.

31 (C) Fitch Ratings.

32 (D) A.M. Best Company.

33 (E) Any other nationally recognized statistical rating
34 organization.

35 (4) The assuming insurer shall agree to submit to the jurisdiction
36 of this state, appoint the commissioner or a designated attorney in
37 this state as its agent for service of process in this state, and agree
38 to provide security for 100 percent of the assuming insurer's
39 liabilities attributable to reinsurance ceded by United States ceding
40 insurers if it resists enforcement of a final United States judgment.

1 (5) The assuming insurer shall agree to meet applicable
2 information filing requirements as determined by the commissioner,
3 both with respect to an initial application for certification and on
4 an ongoing basis.

5 (6) The certified reinsurer shall comply with any other
6 requirements deemed relevant by the commissioner.

7 (c) (1) If an applicant for certification has been certified as a
8 reinsurer in a National Association of Insurance Commissioners
9 (NAIC) accredited jurisdiction, the commissioner may defer to
10 that jurisdiction's certification, and has the discretion to defer to
11 the rating assigned by that jurisdiction if the assuming insurer
12 submits a properly executed Form CR-1 (as published on the
13 department's Internet Web site), and such additional information
14 as the commissioner requires. The commissioner, however, may
15 perform an independent review and determination of any applicant.
16 The assuming insurer shall then be considered to be a certified
17 reinsurer in this state.

18 (2) If the commissioner defers to a certification determination
19 by another state, any change in the certified reinsurer's status or
20 rating in the other jurisdiction shall apply automatically in this
21 state as of the date it takes effect in the other jurisdiction unless
22 the commissioner otherwise determines. The certified reinsurer
23 shall notify the commissioner of any change in its status or rating
24 within 10 days after receiving notice of the change.

25 (3) The commissioner may withdraw recognition of the other
26 jurisdiction's rating at any time and assign a new rating in
27 accordance with subdivision (h).

28 (4) The commissioner may withdraw recognition of the other
29 jurisdiction's certification at any time, with written notice to the
30 certified reinsurer. Unless the commissioner suspends or revokes
31 the certified reinsurer's certification in accordance with this section
32 and Section 922.42, the certified reinsurer's certification shall
33 remain in good standing in this state for a period of three months,
34 which shall be extended if additional time is necessary to consider
35 the assuming insurer's application for certification in this state.

36 (d) An association, including incorporated and individual
37 unincorporated underwriters, may be a certified reinsurer. In order
38 to be eligible for certification, in addition to satisfying requirements
39 of subdivision (b), the reinsurer shall meet all of the following
40 requirements:

1 (1) The association shall satisfy its minimum capital and surplus
2 requirements through the capital and surplus equivalents (net of
3 liabilities) of the association and its members, which shall include
4 a joint central fund that may be applied to any unsatisfied
5 obligation of the association or any of its members, in an amount
6 determined by the commissioner to provide adequate protection.

7 (2) The incorporated members of the association shall not be
8 engaged in any business other than underwriting as a member of
9 the association and shall be subject to the same level of regulation
10 and solvency control by the association's domiciliary regulator as
11 are the unincorporated members.

12 (3) Within 90 days after its financial statements are due to be
13 filed with the association's domiciliary regulator, the association
14 shall provide to the commissioner an annual certification by the
15 association's domiciliary regulator of the solvency of each
16 underwriter member or, if a certification is unavailable, financial
17 statements, prepared by independent public accountants, of each
18 underwriter member of the association.

19 (e) (1) The commissioner shall post notice on the department's
20 Internet Web site promptly upon receipt of any application for
21 certification, including instructions on how members of the public
22 may respond to the application. The commissioner shall not take
23 final action on the application until at least 90 days after posting
24 the notice required by this subdivision.

25 (2) The commissioner shall issue written notice to an assuming
26 insurer that has made application and has been approved as a
27 certified reinsurer. Included in that notice shall be the rating
28 assigned the certified reinsurer in accordance with subdivision (h).
29 The commissioner shall publish a list of all certified reinsurers and
30 their ratings.

31 (f) The certified reinsurer shall agree to meet applicable
32 information filing requirements as determined by the commissioner,
33 both with respect to an initial application for certification and on
34 an ongoing basis. All information submitted by certified reinsurers
35 that is not otherwise public information subject to disclosure shall
36 be exempted from disclosure under Chapter 3.5 (commencing with
37 Section 6250) of Division 7 of Title 1 of the Government Code,
38 and shall be withheld from public disclosure. The applicable
39 information filing requirements are as follows:

1 (1) Notification within 10 days of any regulatory actions taken
2 against the certified reinsurer, any change in the provisions of its
3 domiciliary license or any change in rating by an approved rating
4 agency, including a statement describing those changes and the
5 reasons for those changes.

6 (2) Annually, Form CR-F or CR-S, as applicable pursuant to
7 the instructions published on the department's Internet Web site.

8 (3) Annually, the report of the independent auditor on the
9 financial statements of the insurance enterprise, on the basis
10 described in paragraph (4).

11 (4) Annually, audited financial statements, (audited United
12 States Generally Accepted Accounting Principles basis, if available,
13 audited International Financial Reporting Standards basis
14 statements are allowed, but must include an audited footnote
15 reconciling equity and net income to a United States Generally
16 Accepted Accounting Principles basis, or, with the written
17 permission of the commissioner, audited International Financial
18 Reporting Standards statements with reconciliation to United States
19 Generally Accepted Accounting Principles certified by an officer
20 of the company), regulatory filings, and actuarial opinion (as filed
21 with the certified reinsurer's supervisor). Upon the initial
22 certification, audited financial statements for the last three years
23 filed with the certified reinsurer's supervisor.

24 (5) At least annually, an updated list of all disputed and overdue
25 reinsurance claims regarding reinsurance assumed from United
26 States domestic ceding insurers.

27 (6) A certification from the certified reinsurer's domestic
28 regulator that the certified reinsurer is in good standing and
29 maintains capital in excess of the jurisdiction's highest regulatory
30 action level.

31 (7) Any other information that the commissioner may reasonably
32 require.

33 (g) If the commissioner certifies a non-United States domiciled
34 insurer, the commissioner shall create and publish a list of qualified
35 jurisdictions, under which an assuming insurer licensed and
36 domiciled in that jurisdiction is eligible to be considered for
37 certification by the commissioner as a certified reinsurer.

38 (1) In order to determine whether the domiciliary jurisdiction
39 of a non-United States assuming insurer is eligible to be recognized
40 as a qualified jurisdiction, the commissioner shall evaluate the

1 appropriateness and effectiveness of the reinsurance supervisory
2 system of the jurisdiction, both initially and on an ongoing basis,
3 and consider the rights, benefits, and the extent of reciprocal
4 recognition afforded by the non-United States jurisdiction to
5 reinsurers licensed and domiciled in the United States. The
6 commissioner shall determine the appropriate process for
7 evaluating the qualifications of those jurisdictions. Prior to its
8 listing, a qualified jurisdiction shall agree in writing to share
9 information and cooperate with the commissioner with respect to
10 all certified reinsurers domiciled within that jurisdiction. A
11 jurisdiction may not be recognized as a qualified jurisdiction if the
12 commissioner has determined that the jurisdiction does not
13 adequately and promptly enforce final United States judgments
14 and arbitration awards. Additional factors may be considered in
15 the discretion of the commissioner, including, but not limited to,
16 the following:

17 (A) The framework under which the assuming insurer is
18 regulated.

19 (B) The structure and authority of the domiciliary regulator with
20 regard to solvency regulation requirements and financial
21 surveillance.

22 (C) The substance of financial and operating standards for
23 assuming insurers in the domiciliary jurisdiction.

24 (D) The form and substance of financial reports required to be
25 filed or made publicly available by reinsurers in the domiciliary
26 jurisdiction and the accounting principles used.

27 (E) The domiciliary regulator's willingness to cooperate with
28 United States regulators in general and the commissioner in
29 particular.

30 (F) The history of performance by assuming insurers in the
31 domiciliary jurisdiction.

32 (G) Any documented evidence of substantial problems with the
33 enforcement of final United States judgments in the domiciliary
34 jurisdiction.

35 (H) Any relevant international standards or guidance with
36 respect to mutual recognition of reinsurance supervision adopted
37 by the International Association of Insurance Supervisors or a
38 successor organization.

39 (I) Any other matters deemed relevant by the commissioner.

1 (2) The commissioner shall consider the list of qualified
2 jurisdictions published through the NAIC committee process in
3 determining qualified jurisdictions. The commissioner may include
4 on the list published pursuant to this section, any jurisdiction on
5 the NAIC list of qualified jurisdictions, or on any equivalent list
6 of the United States Treasury.

7 (3) If the commissioner approves a jurisdiction as qualified that
8 does not appear on either the NAIC list of qualified jurisdictions,
9 or the United States Treasury list, the commissioner shall provide
10 thoroughly documented justification in accordance with criteria
11 to be developed under this section.

12 (4) United States jurisdictions that meet the requirements for
13 accreditation under the NAIC financial standards and accreditation
14 program shall be recognized as qualified jurisdictions.

15 (5) If a certified reinsurer's domiciliary jurisdiction ceases to
16 be a qualified jurisdiction, the commissioner has the discretion to
17 suspend the reinsurer's certification indefinitely, in lieu of
18 revocation.

19 (h) The commissioner shall assign a rating to each certified
20 reinsurer, giving due consideration to the financial strength ratings
21 that have been assigned by rating agencies deemed acceptable to
22 the commissioner pursuant to this section. The commissioner shall
23 publish a list of all certified reinsurers and their ratings.

24 (1) Each certified reinsurer shall be rated on a legal entity basis,
25 with due consideration being given to the group rating where
26 appropriate, except that an association including incorporated and
27 individual unincorporated underwriters that has been approved to
28 do business as a single certified reinsurer may be evaluated on the
29 basis of its group rating. Factors that may be considered as part of
30 the evaluation process include, but are not limited to, the following:

31 (A) The certified reinsurer's financial strength rating from an
32 acceptable rating agency. The maximum rating that a certified
33 reinsurer may be assigned shall correspond to its financial strength
34 rating as set forth in clauses (i) to (vi), inclusive. The commissioner
35 shall use the lowest financial strength rating received from an
36 approved rating agency in establishing the maximum rating of a
37 certified reinsurer. A failure to obtain or maintain at least two
38 financial strength ratings from acceptable rating agencies shall
39 result in loss of eligibility for certification.

- 1 (i) Ratings category “Secure - 1” corresponds to A.M. Best
- 2 Company rating A++; Standard & Poor’s rating AAA; Moody’s
- 3 Investors Service rating Aaa; and Fitch Ratings rating AAA.
- 4 (ii) Ratings category “Secure - 2” corresponds to A.M. Best
- 5 Company rating A+; Standard & Poor’s rating AA+, AA, or AA-;
- 6 Moody’s Investors Service rating Aa1, Aa2, or Aa3; and Fitch
- 7 Ratings rating AA+, AA, or AA-.
- 8 (iii) Ratings category “Secure - 3” corresponds to A.M. Best
- 9 Company rating A; Standard & Poor’s rating A+ or A; Moody’s
- 10 Investors Service rating A1 or A2; and Fitch Ratings rating A+ or
- 11 A.
- 12 (iv) Ratings category “Secure - 4” corresponds to A.M. Best
- 13 Company rating A-; Standard & Poor’s rating A-; Moody’s
- 14 Investors Service rating A3; and Fitch Ratings rating A-.
- 15 (v) Ratings category “Secure - 5” corresponds to A.M. Best
- 16 Company rating B++ or B+; Standard & Poor’s rating BBB+,
- 17 BBB, or BBB-; Moody’s Investors Service rating Baa1, Baa2, or
- 18 Baa3; and Fitch Ratings rating BBB+, BBB, or BBB-.
- 19 (vi) Ratings category “Vulnerable - 6” corresponds to A.M.
- 20 Best Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard
- 21 & Poor’s rating BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R;
- 22 Moody’s Investors Service rating Ba1, Ba2, Ba3, B1, B2, B3, Caa,
- 23 Ca, or C; and Fitch Ratings rating BB+, BB, BB-, B+, B, B-,
- 24 CCC+, CC, CCC-, or DD.
- 25 (B) The business practices of the certified reinsurer in dealing
- 26 with its ceding insurers, including its record of compliance with
- 27 reinsurance contractual terms and obligations.
- 28 (C) For certified reinsurers domiciled in the United States, a
- 29 review of the most recent applicable NAIC Annual Statement
- 30 Blank, either Schedule F (for property/casualty reinsurers) or
- 31 Schedule S (for life and health reinsurers).
- 32 (D) For certified reinsurers not domiciled in the United States,
- 33 a review annually of Form CR-F (for property/casualty reinsurers)
- 34 or Form CR-S (for life and health reinsurers) (as published on the
- 35 department’s Internet Web site).
- 36 (E) The reputation of the certified reinsurer for prompt payment
- 37 of claims under reinsurance agreements, based on an analysis of
- 38 ceding insurers’ Schedule F reporting of overdue reinsurance
- 39 recoverables, including the proportion of obligations that are more
- 40 than 90 days past due or are in dispute, with specific attention

1 given to obligations payable to companies that are in administrative
2 supervision or receivership.

3 (F) Regulatory actions against the certified reinsurer.

4 (G) The report of the independent auditor on the financial
5 statements of the insurance enterprise, on the basis described in
6 subparagraph (H).

7 (H) For certified reinsurers not domiciled in the United States,
8 audited financial statements, (audited United States Generally
9 Accepted Accounting Principles basis, if available, audited
10 International Financial Reporting Standards basis statements are
11 allowed, but must include an audited footnote reconciling equity
12 and net income to a United States Generally Accepted Accounting
13 Principles basis, or, with the written permission of the
14 commissioner, audited International Financial Reporting Standards
15 statements with reconciliation to United States Generally Accepted
16 Accounting Principles certified by an officer of the company),
17 regulatory filings, and actuarial opinion (as filed with the
18 non-United States jurisdiction supervisor). Upon the initial
19 application for certification, the commissioner shall consider
20 audited financial statements for the last three years filed with its
21 non-United States jurisdiction supervisor.

22 (I) The liquidation priority of obligations to a ceding insurer in
23 the certified reinsurer's domiciliary jurisdiction in the context of
24 an insolvency proceeding.

25 (J) A certified reinsurer's participation in any solvent scheme
26 of arrangement, or similar procedure, which involves United States
27 ceding insurers. The commissioner shall receive prior notice from
28 a certified reinsurer that proposes participation by the certified
29 reinsurer in a solvent scheme of arrangement.

30 (K) Any other information deemed relevant by the
31 commissioner.

32 (2) Based on the analysis conducted under subparagraph (E) of
33 paragraph (1) of a certified reinsurer's reputation for prompt
34 payment of claims, the commissioner may make appropriate
35 adjustments in the security the certified reinsurer is required to
36 post to protect its liabilities to United States ceding insurers,
37 provided that the commissioner shall, at a minimum, increase the
38 security the certified reinsurer is required to post by one rating
39 level under regulations promulgated by the commissioner, if the
40 commissioner finds either of the following:

1 (A) More than 15 percent of the certified reinsurer's ceding
2 insurance clients have overdue reinsurance recoverables on paid
3 losses of 90 days or more that are not in dispute and that exceed
4 one hundred thousand dollars (\$100,000) for each ceding insurer.

5 (B) The aggregate amount of reinsurance recoverables on paid
6 losses that are not in dispute and that are overdue by 90 days or
7 more exceeds fifty million dollars (\$50,000,000).

8 (3) The assuming insurer shall submit a properly executed Form
9 CR-1 (as published on the department's Internet Web site) as
10 evidence of its submission to the jurisdiction of this state,
11 appointment of the commissioner as an agent for service of process
12 in this state, and agreement to provide security for 100 percent of
13 the assuming insurer's liabilities attributable to reinsurance ceded
14 by United States ceding insurers if it resists enforcement of a final
15 United States judgment. The commissioner shall not certify any
16 assuming insurer that is domiciled in a jurisdiction that the
17 commissioner has determined does not adequately and promptly
18 enforce final United States judgments or arbitration awards.

19 (4) (A) In the case of a downgrade by a rating agency or other
20 disqualifying circumstance, the commissioner shall, upon written
21 notice, assign a new rating to the certified reinsurer in accordance
22 with the requirements of this subdivision.

23 (B) The commissioner shall have the authority to suspend,
24 revoke, or otherwise modify a certified reinsurer's certification at
25 any time if the certified reinsurer fails to meet its obligations or
26 security requirements under this section, or if other financial or
27 operating results of the certified reinsurer, or documented
28 significant delays in payment by the certified reinsurer, lead the
29 commissioner to reconsider the certified reinsurer's ability or
30 willingness to meet its contractual obligations.

31 (C) If the rating of a certified reinsurer is upgraded by the
32 commissioner, the certified reinsurer may meet the security
33 requirements applicable to its new rating on a prospective basis,
34 but the commissioner shall require the certified reinsurer to post
35 security under the previously applicable security requirements as
36 to all contracts in force on or before the effective date of the
37 upgraded rating. If the rating of a certified reinsurer is downgraded
38 by the commissioner, the commissioner shall require the certified
39 reinsurer to meet the security requirements applicable to its new
40 rating for all business it has assumed as a certified reinsurer.

1 (D) Upon revocation of the certification of a certified reinsurer
2 by the commissioner, the assuming insurer shall be required to
3 post security in accordance with Section 922.5 in order for the
4 ceding insurer to continue to take credit for reinsurance ceded to
5 the assuming insurer. If funds continue to be held in trust in
6 accordance with subdivision (d) of Section 922.4, the commissioner
7 may allow additional credit equal to the ceding insurer's pro rata
8 share of those funds, discounted to reflect the risk of
9 uncollectibility and anticipated expenses of trust administration.
10 Notwithstanding the change of a certified reinsurer's rating or
11 revocation of its certification, a domestic insurer that has ceded
12 reinsurance to that certified reinsurer shall not be denied credit for
13 reinsurance for a period of three months for all reinsurance ceded
14 to that certified reinsurer, unless the reinsurance is found by the
15 commissioner to be at high risk of uncollectibility.

16 (i) A certified reinsurer shall secure obligations assumed from
17 United States ceding insurers under this subdivision at a level
18 consistent with its rating. The amount of security required in order
19 for full credit to be allowed shall correspond with the following
20 requirements:

- 21 Ratings security required
- 22 Secure - 1: 0%
- 23 Secure - 2: 10%
- 24 Secure - 3: 20%
- 25 Secure - 4: 50%
- 26 Secure - 5: 75%
- 27 Vulnerable - 6: 100%

28 (1) In order for a domestic ceding insurer to qualify for full
29 financial statement credit for reinsurance ceded to a certified
30 reinsurer, the certified reinsurer shall maintain security in a form
31 acceptable to the commissioner and consistent with Section 922.5,
32 or in a multibeneficiary trust in accordance with subdivision (d)
33 of Section 922.4, except as otherwise provided in this subdivision.
34 In order for a domestic insurer to qualify for full financial statement
35 credit, reinsurance contracts entered into or renewed under this
36 section shall include a proper funding clause that requires the
37 certified reinsurer to provide and maintain security in an amount
38 sufficient to avoid the imposition of any financial statement penalty
39 on the ceding insurer under this section for reinsurance ceded to
40 the certified reinsurer.

1 (2) If a certified reinsurer maintains a trust to fully secure its
2 obligations subject to subdivision (d) of Section 922.4, and chooses
3 to secure its obligations incurred as a certified reinsurer in the form
4 of a multibeneficiary trust, the certified reinsurer shall maintain
5 separate trust accounts for its obligations incurred under
6 reinsurance agreements issued or renewed as a certified reinsurer
7 with reduced security as permitted by this subdivision or
8 comparable laws of other United States jurisdictions and for its
9 obligations subject to subdivision (d) of Section 922.4. It shall be
10 a condition to the grant of certification under this section that the
11 certified reinsurer shall have bound itself, by the language of the
12 trust and agreement with the commissioner with principal
13 regulatory oversight of each of those trust accounts, to fund, upon
14 termination of any of those trust accounts, out of the remaining
15 surplus of those trusts any deficiency of any other of those trust
16 accounts.

17 (3) The minimum trustee surplus requirements provided in
18 subdivision (d) of Section 922.4 are not applicable with respect to
19 a multibeneficiary trust maintained by a certified reinsurer for the
20 purpose of securing obligations incurred under this subdivision,
21 except that the trust shall maintain a minimum trustee surplus of
22 ten million dollars (\$10,000,000).

23 (4) With respect to obligations incurred by a certified reinsurer
24 under this subdivision, if the security is insufficient, the
25 commissioner shall reduce the allowable credit by an amount
26 proportionate to the deficiency, and have the discretion to impose
27 further reductions in allowable credit upon finding that there is a
28 material risk that the certified reinsurer's obligations will not be
29 paid in full when due.

30 (5) For purposes of this subdivision, a certified reinsurer whose
31 certification has been terminated for any reason shall be treated
32 as a certified reinsurer required to secure 100 percent of its
33 obligations.

34 (A) As used in this subdivision, the term "terminated" means
35 revocation, suspension, voluntary surrender, and inactive status.

36 (B) If the commissioner continues to assign a higher rating as
37 permitted by other provisions of this section, this requirement shall
38 not apply to a certified reinsurer in inactive status or to a reinsurer
39 whose certification has been suspended.

1 (6) The commissioner shall require the certified reinsurer to
2 post 100-percent security in accordance with Section 922.5, for
3 the benefit of the ceding insurer or its estate, upon the entry of an
4 order of rehabilitation, liquidation, or conservation against the
5 ceding insurer.

6 (7) Affiliated reinsurance transactions shall receive the same
7 opportunity for reduced security requirements as all other
8 reinsurance transactions.

9 (8) In order to facilitate the prompt payment of claims, a certified
10 reinsurer shall not be required to post security for catastrophe
11 recoverables for a period of one year from the date of the first
12 instance of a liability reserve entry by the ceding company as a
13 result of a loss from a catastrophic occurrence that is likely to result
14 in significant insured losses, as recognized by the commissioner.
15 The one-year deferral period is contingent upon the certified
16 reinsurer continuing to pay claims in a timely manner, as
17 determined by the commissioner, in writing. Reinsurance
18 recoverables for only the following lines of business as reported
19 on the NAIC annual financial statement related specifically to the
20 catastrophic occurrence shall be included in the deferral:

- 21 (A) Line 1: Fire.
- 22 (B) Line 2: Allied lines.
- 23 (C) Line 3: Farmowners' multiple peril.
- 24 (D) Line 4: Homeowners' multiple peril.
- 25 (E) Line 5: Commercial multiple peril.
- 26 (F) Line 9: Inland marine.
- 27 (G) Line 12: Earthquake.
- 28 (H) Line 21: Auto physical damage.

29 (9) Credit for reinsurance under this section shall apply only to
30 reinsurance contracts entered into or renewed on or after the
31 effective date of the certification of the assuming insurer. Any
32 reinsurance contract entered into prior to the effective date of the
33 certification of the assuming insurer that is subsequently amended
34 by mutual agreement of the parties to the reinsurance contract after
35 the effective date of the certification of the assuming insurer, or a
36 new reinsurance contract, covering any risk for which collateral
37 was provided previously, shall only be subject to this section with
38 respect to losses incurred and reserves reported from and after the
39 effective date of the amendment or new contract.

1 (10) Nothing in this section shall be construed to prohibit the
2 parties to a reinsurance agreement from agreeing to provisions
3 establishing security requirements that exceed the minimum
4 security requirements established for certified reinsurers under
5 this section.

6 (j) A certified reinsurer that ceases to assume new business in
7 this state may request to maintain its certification in inactive status
8 in order to continue to qualify for a reduction in security for its
9 in-force business. An inactive certified reinsurer shall continue to
10 comply with all applicable requirements of this section, and the
11 commissioner shall assign a rating that takes into account, if
12 relevant, the reasons why the reinsurer is not assuming new
13 business.

14 (k) Notwithstanding this section, credit for reinsurance or
15 deduction from liability by a domestic ceding insurer for cessions
16 to a certified reinsurer may be disallowed upon a finding by the
17 commissioner that the application of the literal provisions of this
18 section does not accomplish its intent, or either the financial
19 condition of the reinsurer or the collateral or other security provided
20 by the reinsurer does not, in substance, satisfy the credit for
21 reinsurance requirements in Section 922.4.

22 (l) This section shall remain in effect only until January 1, 2016,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2016, deletes or extends that date.

25 SEC. 135. Section 1063.1 of the Insurance Code is amended
26 to read:

27 1063.1. As used in this article:

28 (a) "Member insurer" means an insurer required to be a member
29 of the association in accordance with subdivision (a) of Section
30 1063, except and to the extent that the insurer is participating in
31 an insolvency program adopted by the United States government.

32 (b) "Insolvent insurer" means an insurer that was a member
33 insurer of the association, consistent with paragraph (11) of
34 subdivision (c), either at the time the policy was issued or when
35 the insured event occurred, and against which an order of
36 liquidation with a finding of insolvency has been entered by a court
37 of competent jurisdiction, or, in the case of the State Compensation
38 Insurance Fund, if a finding of insolvency is made by a duly
39 enacted legislative measure.

1 (c) (1) “Covered claims” means the obligations of an insolvent
2 insurer, including the obligation for unearned premiums, that satisfy
3 all of the following requirements:

4 (A) Imposed by law and within the coverage of an insurance
5 policy of the insolvent insurer.

6 (B) Which were unpaid by the insolvent insurer.

7 (C) Which are presented as a claim to the liquidator in the state
8 of domicile of the insolvent insurer or to the association on or
9 before the last date fixed for the filing of claims in the domiciliary
10 liquidating proceedings.

11 (D) Which were incurred prior to the date coverage under the
12 policy terminated and prior to, on, or within 30 days after the date
13 the liquidator was appointed.

14 (E) For which the assets of the insolvent insurer are insufficient
15 to discharge in full.

16 (F) In the case of a policy of workers’ compensation insurance,
17 to provide workers’ compensation benefits under the workers’
18 compensation law of this state.

19 (G) In the case of other classes of insurance if the claimant or
20 insured is a resident of this state at the time of the insured
21 occurrence, or the property from which the claim arises is
22 permanently located in this state.

23 (2) “Covered claims” also includes the obligations assumed by
24 an assuming insurer from a ceding insurer where the assuming
25 insurer subsequently becomes an insolvent insurer if, at the time
26 of the insolvency of the assuming insurer, the ceding insurer is no
27 longer admitted to transact business in this state. Both the assuming
28 insurer and the ceding insurer shall have been member insurers at
29 the time the assumption was made. “Covered claims” under this
30 paragraph shall be required to satisfy the requirements of
31 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
32 the requirement that the claims be against policies of the insolvent
33 insurer. The association shall have a right to recover any deposit,
34 bond, or other assets that may have been required to be posted by
35 the ceding company to the extent of covered claim payments and
36 shall be subrogated to any rights the policyholders may have
37 against the ceding insurer.

38 (3) “Covered claims” does not include obligations arising from
39 the following:

40 (A) Life, annuity, health, or disability insurance.

1 (B) Mortgage guaranty, financial guaranty, or other forms of
2 insurance offering protection against investment risks.

3 (C) Fidelity or surety insurance including fidelity or surety
4 bonds, or any other bonding obligations.

5 (D) Credit insurance.

6 (E) Title insurance.

7 (F) Ocean marine insurance or ocean marine coverage under
8 an insurance policy including claims arising from the following:
9 the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore
10 and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et
11 seq.), or any other similar federal statutory enactment, or an
12 endorsement or policy affording protection and indemnity
13 coverage.

14 (G) Any claims servicing agreement or insurance policy
15 providing retroactive insurance of a known loss or losses, except
16 a special excess workers' compensation policy issued pursuant to
17 subdivision (c) of Section 3702.8 of the Labor Code that covers
18 all or any part of workers' compensation liabilities of an employer
19 that is issued, or was previously issued, a certificate of consent to
20 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
21 Code.

22 (4) "Covered claims" does not include any obligations of the
23 insolvent insurer arising out of any reinsurance contracts, nor any
24 obligations incurred after the expiration date of the insurance policy
25 or after the insurance policy has been replaced by the insured or
26 canceled at the insured's request, or after the insurance policy has
27 been canceled by the liquidator, nor any obligations to a state or
28 to the federal government.

29 (5) "Covered claims" does not include any obligations to
30 insurers, insurance pools, or underwriting associations, nor their
31 claims for contribution, indemnity, or subrogation, equitable or
32 otherwise, except as otherwise provided in this chapter.

33 An insurer, insurance pool, or underwriting association may not
34 maintain, in its own name or in the name of its insured, a claim or
35 legal action against the insured of the insolvent insurer for
36 contribution, indemnity, or by way of subrogation, except insofar
37 as, and to the extent only, that the claim exceeds the policy limits
38 of the insolvent insurer's policy. In those claims or legal actions,
39 the insured of the insolvent insurer is entitled to a credit or setoff
40 in the amount of the policy limits of the insolvent insurer's policy,

1 or in the amount of the limits remaining, where those limits have
2 been diminished by the payment of other claims.

3 (6) “Covered claims,” except in cases involving a claim for
4 workers’ compensation benefits or for unearned premiums, does
5 not include a claim in an amount of one hundred dollars (\$100) or
6 less, nor that portion of a claim that is in excess of any applicable
7 limits provided in the insurance policy issued by the insolvent
8 insurer.

9 (7) “Covered claims” does not include that portion of a claim,
10 other than a claim for workers’ compensation benefits, that is in
11 excess of five hundred thousand dollars (\$500,000).

12 (8) “Covered claims” does not include any amount awarded as
13 punitive or exemplary damages, nor any amount awarded by the
14 Workers’ Compensation Appeals Board pursuant to Section 5814
15 or 5814.5 of the Labor Code because payment of compensation
16 was unreasonably delayed or refused by the insolvent insurer.

17 (9) “Covered claims” does not include (A) a claim to the extent
18 it is covered by any other insurance of a class covered by this
19 article available to the claimant or insured or (B) a claim by a
20 person other than the original claimant under the insurance policy
21 in his or her own name, his or her assignee as the person entitled
22 thereto under a premium finance agreement as defined in Section
23 673 and entered into prior to insolvency, his or her executor,
24 administrator, guardian, or other personal representative or trustee
25 in bankruptcy, and does not include a claim asserted by an assignee
26 or one claiming by right of subrogation, except as otherwise
27 provided in this chapter.

28 (10) “Covered claims” does not include any obligations arising
29 out of the issuance of an insurance policy written by the separate
30 division of the State Compensation Insurance Fund pursuant to
31 Sections 11802 and 11803.

32 (11) “Covered claims” does not include any obligations of the
33 insolvent insurer arising from a policy or contract of insurance
34 issued or renewed prior to the insolvent insurer’s admission to
35 transact insurance in the State of California.

36 (12) “Covered claims” does not include surplus deposits of
37 subscribers as defined in Section 1374.1.

38 (13) “Covered claims” shall also include obligations arising
39 under an insurance policy written to indemnify a permissibly
40 self-insured employer pursuant to subdivision (b) or (c) of Section

1 3700 of the Labor Code for its liability to pay workers'
2 compensation benefits in excess of a specific or aggregate retention.
3 However, for purposes of this article, those claims shall not be
4 considered workers' compensation claims and therefore are subject
5 to the per-claim limit in paragraph (7), and any payments and
6 expenses related thereto shall be allocated to category (c) for claims
7 other than workers' compensation, homeowners, and automobile,
8 as provided in Section 1063.5.

9 These provisions shall apply to obligations arising under a policy
10 as described herein issued to a permissibly self-insured employer
11 or group of self-insured employers pursuant to Section 3700 of
12 the Labor Code and notwithstanding any other provision of this
13 code, those obligations shall be governed by this provision in the
14 event that the Self-Insurers' Security Fund is ordered to assume
15 the liabilities of a permissibly self-insured employer or group of
16 self-insured employers pursuant to Section 3701.5 of the Labor
17 Code. The provisions of this paragraph apply only to insurance
18 policies written to indemnify a permissibly self-insured employer
19 or group of self-insured employers under subdivision (b) or (c) of
20 Section 3700 of the Labor Code, for its liability to pay workers'
21 compensation benefits in excess of a specific or aggregate retention,
22 and this paragraph does not apply to special excess workers'
23 compensation insurance policies unless issued pursuant to authority
24 granted in subdivision (c) of Section 3702.8 of the Labor Code,
25 and as provided for in subparagraph (G) of paragraph (3). In
26 addition, this paragraph does not apply to any claims servicing
27 agreement or insurance policy providing retroactive insurance of
28 a known loss or losses as are excluded in subparagraph (G) of
29 paragraph (3).

30 Each permissibly self-insured employer or group of self-insured
31 employers, or the Self-Insurers' Security Fund, shall, to the extent
32 required by the Labor Code, be responsible for paying, adjusting,
33 and defending each claim arising under policies of insurance
34 covered under this section, unless the benefits paid on a claim
35 exceed the specific or aggregate retention, in which case:

36 (A) If the benefits paid on the claim exceed the specific or
37 aggregate retention, and the policy requires the insurer to defend
38 and adjust the claim, the California Insurance Guarantee
39 Association (CIGA) shall be solely responsible for adjusting and
40 defending the claim, and shall make all payments due under the

1 claim, subject to the limitations and exclusions of this article with
2 regard to covered claims. As to each claim subject to this
3 paragraph, notwithstanding any other provisions of this code or
4 the Labor Code, and regardless of whether the amount paid by
5 CIGA is adequate to discharge a claim obligation, neither the
6 self-insured employer, group of self-insured employers, nor the
7 Self-Insurers' Security Fund; shall have any obligation to pay
8 benefits over and above the specific or aggregate retention, except
9 as provided in this subdivision.

10 (B) If the benefits paid on the claim exceed the specific or
11 aggregate retention, and the policy does not require the insurer to
12 defend and adjust the claim, the permissibly self-insured employer
13 or group of self-insured employers, or the Self-Insurers' Security
14 Fund, shall not have any further payment obligations with respect
15 to the claim, but shall continue defending and adjusting the claim,
16 and shall have the right, but not the obligation, in any proceeding
17 to assert all applicable statutory limitations and exclusions as
18 contained in this article with regard to the covered claim. CIGA
19 shall have the right, but not the obligation, to intervene in any
20 proceeding where the self-insured employer, group of self-insured
21 employers, or the Self-Insurers' Security Fund is defending a claim
22 and shall be permitted to raise the appropriate statutory limitations
23 and exclusions as contained in this article with respect to covered
24 claims. Regardless of whether the self-insured employer or group
25 of self-insured employers, or the Self-Insurers' Security Fund,
26 asserts the applicable statutory limitations and exclusions, or
27 whether CIGA intervenes in a proceeding, CIGA shall be solely
28 responsible for paying all benefits due on the claim, subject to the
29 exclusions and limitations of this article with respect to covered
30 claims. As to each claim subject to this paragraph, notwithstanding
31 any other provision of the Insurance Code or the Labor Code and
32 regardless of whether the amount paid by CIGA is adequate to
33 discharge a claim obligation, neither the self-insured employer,
34 group of self-insured employers, nor the Self-Insurers' Security
35 Fund, shall have an obligation to pay benefits over and above the
36 specific or aggregate retention, except as provided in this
37 subdivision.

38 (C) In the event that the benefits paid on the covered claim
39 exceed the per-claim limit in paragraph (7), the responsibility for
40 paying, adjusting, and defending the claim shall be returned to the

1 permissibly self-insured employer or group of employers, or the
2 Self-Insurers' Security Fund.

3 These provisions shall apply to all pending and future
4 insolvencies. For purposes of this paragraph, a pending insolvency
5 is one involving a company that is currently receiving benefits
6 from the guarantee association.

7 (d) "Admitted to transact insurance in this state" means an
8 insurer possessing a valid certificate of authority issued by the
9 department.

10 (e) "Affiliate" means a person who directly or indirectly, through
11 one or more intermediaries, controls, is controlled by, or is under
12 common control with an insolvent insurer on December 31 of the
13 year next preceding the date the insurer becomes an insolvent
14 insurer.

15 (f) "Control" means the possession, direct or indirect, of the
16 power to direct or cause the direction of the management and
17 policies of a person, whether through the ownership of voting
18 securities, by contract other than a commercial contract for goods
19 or nonmanagement services, or otherwise, unless the power is the
20 result of an official position with or corporate office held by the
21 person. Control is presumed to exist if a person, directly or
22 indirectly, owns, controls, holds with the power to vote, or holds
23 proxies representing, 10 percent or more of the voting securities
24 of any other person. This presumption may be rebutted by showing
25 that control does not in fact exist.

26 (g) "Claimant" means an insured making a first party claim or
27 a person instituting a liability claim. However, no person who is
28 an affiliate of the insolvent insurer may be a claimant.

29 (h) "Ocean marine insurance" includes marine insurance as
30 defined in Section 103, except for inland marine insurance, as well
31 as any other form of insurance, regardless of the name, label, or
32 marketing designation of the insurance policy, that insures against
33 maritime perils or risks and other related perils or risks, that are
34 usually insured against by traditional marine insurance such as
35 hull and machinery, marine builders' risks, and marine protection
36 and indemnity. Those perils and risks insured against include,
37 without limitation, loss, damage, or expense or legal liability of
38 the insured arising out of or incident to ownership, operation,
39 chartering, maintenance, use, repair, or construction of a vessel,
40 craft, or instrumentality in use in ocean or inland waterways,

1 including liability of the insured for personal injury, illness, or
2 death for loss or damage to the property of the insured or another
3 person.

4 (i) “Unearned premium” means that portion of a premium as
5 calculated by the liquidator that had not been earned because of
6 the cancellation of the insolvent insurer’s policy and is that
7 premium remaining for the unexpired term of the insolvent
8 insurer’s policy. “Unearned premium” does not include any amount
9 sought as return of a premium under a policy providing retroactive
10 insurance of a known loss or return of a premium under a
11 retrospectively rated policy or a policy subject to a contingent
12 surcharge or a policy in which the final determination of the
13 premium cost is computed after expiration of the policy and is
14 calculated on the basis of actual loss ~~experience~~ *experienced* during
15 the policy period.

16 SEC. 136. Section 1754 of the Insurance Code is amended to
17 read:

18 1754. Transaction of travel insurance under the license of an
19 organization holding a limited lines travel insurance agent license
20 shall be subject to the following conditions:

21 (a) A limited lines travel insurance agent may authorize a travel
22 retailer to transact travel insurance on behalf of and under its
23 authority under the following conditions:

24 (1) The limited lines travel insurance agent is clearly identified
25 on marketing materials and fulfillment packages distributed by the
26 travel retailers to customers. The marketing materials and
27 fulfillment packages shall include the agent’s name, business
28 address, email address, telephone number, license number, and
29 the availability of the department’s toll-free consumer hotline.

30 (2) The limited lines travel insurance agent, at the time of
31 licensure and thereafter, maintains a register noting each travel
32 retailer that transacts travel insurance on the licensee’s behalf. The
33 register shall be maintained and updated annually by the licensee
34 in a form prescribed by, or format acceptable to, the commissioner
35 and shall include the name and contact information of the travel
36 retailer and an officer or person who directs or controls the travel
37 retailer’s operations, and the travel retailer’s federal employer
38 identification number (FEIN). The licensee shall also certify that
39 the registered travel retailer complies with Section 1033 of Title

1 18 of the United States Code. The licensee shall submit the register
2 for review and inspection upon request by the department.

3 (3) The limited lines travel insurance agent has designated one
4 of its employees to be responsible for its compliance with the
5 insurance laws, rules, and regulations of the state. The limited lines
6 travel insurance agent and its designated responsible employees
7 shall hold property, casualty, life-only, and accident and health
8 agent licenses, to the extent required by this chapter, based upon
9 the types of insurance transacted by the licensee.

10 (4) The employee designated by the limited lines travel
11 insurance agent, pursuant to paragraph (3), and any of the
12 organization's partners, members, controlling persons, officers,
13 directors, and managers comply with the background check
14 requirements as required by the commissioner.

15 (5) The limited lines travel insurance agent has paid all
16 applicable licensing fees required under California law.

17 (6) The limited lines travel insurance agent uses all reasonable
18 means at its disposal to ensure compliance by the travel retailer
19 and the travel retailer's employees with their obligations under
20 this article. This includes requiring each employee of the travel
21 retailer whose duties include transacting travel insurance to receive
22 training. The training shall be provided whenever there is a material
23 change that requires a modification to the training materials, but
24 in no event less frequently than every three years. Training
25 materials used by or on behalf of the limited lines travel insurance
26 agent to train the employees of a travel retailer shall be submitted
27 to the department at the time the travel insurance agent applies for
28 a license under this article, and whenever modified thereafter. The
29 training materials, at a minimum, should contain instruction on
30 the types of insurance offered, ethical sales practices, and
31 disclosures to prospective insurance customers. Any changes to
32 previously submitted training materials shall be submitted to the
33 department with the changes highlighted 30 days prior to their use
34 by the limited lines travel insurance agent. Training materials and
35 changes to those materials submitted to the department pursuant
36 to this subdivision shall be deemed approved for use by the limited
37 lines travel insurance agent unless it is notified by the department
38 to the contrary. Failure by a limited lines travel insurance agent to
39 submit training materials or changes for departmental review or
40 use of unapproved or disapproved training materials shall constitute

1 grounds for denial of an application for a license, nonrenewal of
2 a license, or suspension of a license, or other action as deemed
3 appropriate by the commissioner.

4 (7) The limited lines travel insurance agent or the travel retailer
5 provides disclosure to the consumer, in either the marketing
6 materials or fulfillment packages, that is substantively similar to
7 the following:

8 This plan provides insurance coverage that only applies during
9 the covered trip. You may have coverage from other sources that
10 provides you with similar benefits but may be subject to different
11 restrictions depending upon your other coverages. You may wish
12 to compare the terms of this policy with your existing life, health,
13 home, and automobile insurance policies. If you have any questions
14 about your current coverage, call your insurer or insurance agent
15 or broker.

16 (8) The limited lines travel insurance agent or the travel retailer
17 makes all of the following disclosures to the prospective insured,
18 which shall be acknowledged in writing by the purchaser or
19 displayed by clear and conspicuous signs that are posted at every
20 location where contracts are executed, including, but not limited
21 to, the counter where the purchaser signs the service agreement,
22 or provided in writing to the purchaser:

23 (A) That purchasing travel insurance is not required in order to
24 purchase any other product or service offered by the travel retailer.

25 (B) If not individually licensed, that the travel retailer's
26 employee is not qualified or authorized to:

27 (i) Answer technical questions about the benefits, exclusions,
28 and conditions of any of the insurance offered by the travel retailer.

29 (ii) Evaluate the adequacy of the prospective insured's existing
30 insurance coverage.

31 (b) A travel retailer that meets the requirements set forth in this
32 section and whose activities are limited to offering and selling
33 travel insurance on behalf of a licensed limited lines travel
34 insurance agent is authorized to receive compensation.

35 (c) (1) If the commissioner determines that a travel retailer, or
36 a travel retailer's employee, has violated any provision of this
37 article or any other provision of this code, the commissioner may:

38 (A) Direct the limited lines travel insurance agent to implement
39 a corrective action plan with the travel retailer.

1 (B) Direct the limited lines travel insurance agent to revoke the
2 authorization of the travel retailer to transact travel insurance on
3 its behalf and under its license and to remove the travel retailer's
4 name from its register.

5 (2) If the commissioner determines that a travel retailer, or a
6 travel retailer's employee, has violated any provision in this article
7 or any other provision of this code, the commissioner, after notice
8 and hearing, may:

9 (A) Suspend or revoke the license of the limited lines travel
10 insurance agent as authorized under this code.

11 (B) Impose a monetary fine on the limited lines travel insurance
12 agent.

13 (3) A limited lines travel insurance agent who aids and abets a
14 travel retailer in the transaction of travel insurance, as defined in
15 this code, or aids and abets a travel retailer in any activity
16 concerning travel insurance after being directed to revoke the travel
17 retailer's authorization, in addition to any other action authorized
18 under this code, shall be subject to a monetary penalty pursuant
19 to paragraph (3) of subdivision (a) of Section 12921.8.

20 (d) The conduct of employees of the travel retailer who have
21 been designated to transact travel insurance on behalf of the
22 licensed limited lines travel insurance agent shall be deemed the
23 conduct of the licensed limited lines travel insurance agent for
24 purposes of this article.

25 SEC. 137. Section 10113.71 of the Insurance Code is amended
26 to read:

27 10113.71. (a) Each life insurance policy issued or delivered
28 in this state shall contain a provision for a grace period of not less
29 than 60 days from the premium due date. The 60-day grace period
30 shall not run concurrently with the period of paid coverage. The
31 provision shall provide that the policy shall remain in force during
32 the grace period.

33 (b) (1) A notice of pending lapse and termination of a life
34 insurance policy shall not be effective unless mailed by the insurer
35 to the named policy owner, a designee named pursuant to Section
36 10113.72 for an individual life insurance policy, and a known
37 assignee or other person having an interest in the individual life
38 insurance policy, at least 30 days prior to the effective date of
39 termination if termination is for nonpayment of premium.

40 (2) This subdivision shall not apply to nonrenewal.

1 (3) Notice shall be given to the policy owner and to the designee
2 by first-class United States mail within 30 days after a premium
3 is due and unpaid. However, notices made to assignees pursuant
4 to this section may be done electronically with the consent of the
5 assignee.

6 (c) For purposes of this section, a life insurance policy includes,
7 but is not limited to, an individual life insurance policy and a group
8 life insurance policy, except where otherwise provided.

9 SEC. 138. Section 10124 of the Insurance Code is amended
10 to read:

11 10124. (a) A self-insured employee welfare benefit plan
12 delivered or issued for delivery in this state more than 120 days
13 after the effective date of this section, which provides that coverage
14 of a dependent child of an employee shall terminate upon
15 attainment of the limiting age for dependent children specified in
16 the policy or contract, shall also provide in substance that
17 attainment of the limiting age shall not operate to terminate the
18 coverage of the child while the child is and continues to be both
19 (1) incapable of self-sustaining employment by reason of an
20 intellectual disability or physical handicap and (2) chiefly
21 dependent upon the employee for support and maintenance,
22 provided proof of the incapacity and dependency is furnished to
23 the employer or employee organization providing the plan or
24 program of benefits by the employee within 31 days of the child's
25 attainment of the limiting age and subsequently as may be required
26 by the employer or employee organization, but not more frequently
27 than annually after the two-year period following the child's
28 attainment of the limiting age.

29 (b) As used in this section, "self-insured employee welfare
30 benefit plan" means a plan or program of benefits provided by an
31 employer or an employee organization, or both, for the purpose
32 of providing hospital, medical, surgical, nursing, or dental services,
33 or indemnification for the costs incurred for these services, to the
34 employer's employees or their dependents.

35 SEC. 139. Section 10271 of the Insurance Code is amended
36 to read:

37 10271. (a) Except as set forth in this section, this chapter shall
38 not apply to, or in any way affect, provisions in life insurance,
39 endowment, or annuity contracts, or contracts supplemental thereto,
40 that provide additional benefits in case of death or dismemberment

1 or loss of sight by accident, or that operate to safeguard those
2 contracts against lapse, as described in subdivision (a) of Section
3 10271.1, or give a special surrender benefit, as defined in
4 subdivision (b) of Section 10271.1, or a special benefit, in the
5 event that the owner, insured, or annuitant, as applicable, meets
6 the benefit triggers specified in the life insurance or annuity
7 contract or supplemental contract.

8 (b) (1) A provision or supplemental contract described in
9 subdivision (a) shall contain all of the provisions set forth in
10 paragraph (2). However, an insurer, at its option, may substitute
11 for one or more of the provisions a corresponding provision of
12 different wording approved by the commissioner that is not less
13 favorable in any respect to the owner, insured, or annuitant, as
14 applicable. The provisions required by paragraph (2) shall be
15 preceded individually by the appropriate caption, or, at the option
16 of the insurer, by the appropriate individual or group captions or
17 subcaptions as the commissioner may approve.

18 (2) With respect to the benefit standards described in
19 subdivisions (a) and (b) of Section 10271.1, the following
20 requirements apply to the supplemental contracts with these
21 benefits:

22 (A) Either the contract or supplemental contract shall provide
23 that the contract and the supplemental contract constitute the entire
24 insurance or annuity contract consistent with paragraph (7) of
25 subdivision (c) of Section 2534.3 of Title 10 of the California Code
26 of Regulations, and shall also provide that no agent has the
27 authority to change the contract or to waive any of its provisions.
28 This requirement applies without regard to whether the contract
29 is a variable or nonvariable contract, or a group or individual
30 contract. This provision shall be preceded individually by a caption
31 stating “ENTIRE CONTRACT: CHANGES:” or other appropriate
32 caption as the commissioner may approve.

33 (B) Either the contract or supplemental contract shall provide
34 for reinstatement consistent with paragraph (3) of subdivision (c)
35 of Section 2534.3 of Title 10 of the California Code of Regulations.
36 This requirement applies without regard to whether the contract
37 is a variable or nonvariable contract, or a group or individual
38 contract. This provision shall be preceded individually by a caption
39 stating “REINSTATEMENT:” or other appropriate caption as the
40 commissioner may approve.

1 (C) Supplemental contracts subject to underwriting shall include
2 an incontestability statement that provides that the insurer shall
3 not contest the supplemental contract after it has been in force
4 during the lifetime of the insured for two years from its date of
5 issue, and may only be contested based on a statement made in
6 the application for the supplemental contract, if the statement is
7 attached to the contract. The statement upon which the contest is
8 made shall be material to the risk accepted or the hazard assumed
9 by the insurer. This provision shall be preceded individually by a
10 caption stating "INCONTESTABLE:" or other appropriate caption
11 as the commissioner may approve.

12 (D) A provision or supplemental contract described in
13 subdivision (a) shall also include:

14 (i) NOTICE OF CLAIM: The insurer may require written notice
15 of claim no less than 20 days after an occurrence covered by the
16 provision or supplemental contract, or commencement of any loss
17 covered by the provision or supplemental contract. Notice given
18 by or on behalf of the insured or the beneficiary, as applicable to
19 the insurer at the insurer's address or telephone number, or to any
20 authorized agent of the insurer, with information sufficient to
21 identify the insured, shall be deemed notice to the insurer.

22 (ii) CLAIM FORMS: The insurer, upon receipt of a notice of
23 claim, shall furnish to the claimant such forms as are usually
24 furnished by it for filing a proof of occurrence or a proof of loss.
25 If the forms are not furnished within 15 days after giving notice,
26 the claimant shall be deemed to have complied with the
27 requirements of the provision or supplemental contract as to proof
28 of occurrence or proof of loss upon submitting, within the time
29 fixed in the provision or supplemental contract for filing proof of
30 occurrence or proof of loss, written proof covering the character
31 and the extent of the occurrence or loss.

32 (iii) PROOF OF LOSS: The insurer may require that the insured
33 provide written proof of occurrence or proof of loss no less than
34 90 days after the termination of the period for which the insurer
35 is liable, and, in the case of claim for any other occurrence or loss,
36 within 90 days after the date of the occurrence or loss. Failure to
37 furnish proof within the time required shall not invalidate or reduce
38 the claim if it was not reasonably possible to give proof within the
39 time, provided proof is furnished as soon as reasonably possible

1 and, except in the absence of legal capacity, no later than one year
2 from the time proof is otherwise required.

3 (iv) PHYSICAL EXAMINATIONS: The insurer, at its own
4 expense, shall have the right and opportunity to examine the person
5 of the insured when and as often as the insurer may reasonably
6 require during the pendency of a claim.

7 (c) The commissioner shall review contracts and supplemental
8 contracts to ensure that the language can be readily understood
9 and interpreted, and shall not approve any contract or supplemental
10 contract for insurance or delivery in this state if the commissioner
11 finds that the contract or supplemental contract does any of the
12 following:

13 (1) Contains any provision, label, description of its contents,
14 title, heading, backing, or other indication of its provisions that is
15 unintelligible, uncertain, ambiguous, or abstruse, or likely to
16 mislead a person to whom the contract or supplemental contract
17 is offered, delivered, or issued.

18 (2) Constitutes fraud, unfair trade practices, and insurance
19 economically unsound to the owner, insured, or annuitant, as
20 applicable.

21 (d) A provision or supplemental contract described in
22 subdivision (a) shall not contain any title, description, or any other
23 indication that would describe or imply that the policy or
24 supplemental contract provides long-term care coverage.

25 (e) Commencing two years from the date of the issuance of the
26 provision or supplemental contract, no claim for loss incurred or
27 disability, as defined in the provision or supplemental contract,
28 may be reduced or denied on the grounds that a disease or physical
29 condition not excluded from coverage by name or specific
30 description effective on the date of loss had existed prior to the
31 effective date on the coverage of the provision or supplemental
32 contract.

33 (f) With regard to benefits set forth in Section 10271.1, the
34 provisions and supplemental contracts shall specify any applicable
35 exclusions, which shall be limited to the following:

36 (1) Total disability caused or substantially contributed to by any
37 attempt at suicide or intentionally self-inflicted injury, while sane
38 or insane.

1 (2) Total disability caused or substantially contributed to by
2 war or an act of war, as defined in the exclusion provisions of the
3 contract.

4 (3) Total disability caused or substantially contributed to by
5 active participation in a riot, insurrection, or terrorist activity.

6 (4) Total disability caused or substantially contributed to by
7 committing or attempting to commit a felony.

8 (5) Total disability caused or substantially contributed to by
9 voluntary intake of either:

10 (A) Any drug, unless prescribed or administered by a physician
11 and taken in accordance with the physician's instructions.

12 (B) Poison, gas, or fumes, unless they are the direct result of an
13 occupational accident.

14 (6) Total disability occurring after the policy anniversary or
15 supplemental contract anniversary, as applicable and as defined
16 in the policy or supplemental contract, on which the insured attains
17 a specified age of no less than 65 years.

18 (7) Total disability in consequence of the insured being
19 intoxicated, as defined by the jurisdiction where the total disability
20 occurred.

21 (8) Total disability caused or materially contributed to by
22 engaging in an illegal occupation.

23 (g) If the commissioner notifies the insurer, in writing, that the
24 filed form does not comply with the requirements of law and
25 specifies the reasons for his or her opinion, it is unlawful for an
26 insurer to issue any policy in that form.

27 SEC. 140. Section 11665 of the Insurance Code is amended
28 to read:

29 11665. (a) An insurer who issues a workers' compensation
30 insurance policy to a roofing contractor holding a C-39 license
31 from the Contractors' State License Board shall perform an annual
32 payroll audit for the contractor. This audit shall include an
33 in-person visit to the place of business of the roofing contractor
34 to verify whether the number of employees reported by the
35 contractor is accurate. The insurer may impose a surcharge on each
36 policyholder audited under this subdivision in an amount necessary
37 to recoup the reasonable costs of conducting the annual payroll
38 audits.

39 (b) The commissioner shall direct the rating organization
40 designated as his or her statistical agent to compile pertinent

1 statistical data on those holding C-39 licenses, as reported by the
 2 appropriate state entity, on an annual basis and provide a report to
 3 him or her each year. The data shall track the total annual payroll
 4 and loss data reported on those holding C-39 licenses in accordance
 5 with the standard workers' compensation insurance classifications
 6 applicable to roofing operations. The data shall include the number
 7 of employers, total payroll, total losses, and the losses per one
 8 hundred dollars (\$100) of payroll by the employers' annual payroll
 9 intervals as follows:

10		
11		
12	1 to	4,999
13	5,000 to	9,999
14	10,000 to	14,999
15	15,000 to	19,999
16	20,000 to	24,999
17	25,000 to	29,999
18	30,000 to	39,999
19	40,000 to	49,999
20	50,000 to	74,999
21	75,000 to	99,999
22	100,000 to	199,999
23	200,000 to	299,999
24	300,000 to	399,999
25	400,000 to	499,999
26	500,000 to	599,999
27	600,000 to	699,999
28	700,000 to	799,999
29	800,000 to	899,999
30	900,000 to	999,999
31	1,000,000 to	1,099,999
32	1,100,000 to	1,199,999
33	1,200,000 to	1,299,999
34	1,300,000 to	1,399,999
35	1,400,000 to	1,499,999
36	1,500,000 or more	

37
 38

1 The report shall also be provided to the Legislature by the
2 commissioner, in compliance with Section 9795 of the Government
3 Code.

4 SEC. 141. Section 12694.1 of the Insurance Code is amended
5 to read:

6 12694.1. (a) Pursuant to Sections 14005.26 and 14005.27 of
7 the Welfare and Institutions Code, subscribers enrolled in the
8 Healthy Families Program pursuant to this part shall, no sooner
9 than January 1, 2013, transition to the Medi-Cal program pursuant
10 to Sections 14005.26 and 14005.27 of the Welfare and Institutions
11 Code to the extent they are otherwise eligible. AIM-linked infants,
12 as defined in Section 12695.03, with incomes above 250 percent
13 of the federal poverty level are exempt from this transition.

14 (b) The board shall coordinate with the State Department of
15 Health Care Services to implement Sections 14005.26 and
16 14005.27 of the Welfare and Institutions Code.

17 (c) The board's actions to coordinate with the State Department
18 of Health Care Services to implement Sections 14005.26 and
19 14005.27 of the Welfare and Institutions Code, as specified in
20 subdivision (b), shall include, but not be limited to, all of the
21 following:

22 (1) Notwithstanding Section 12693.74, disenrollment of
23 subscribers in the manner, and at the times, specified in Section
24 14005.27 of the Welfare and Institutions Code. The board may
25 retain a subscriber in the program for longer than 12 months if
26 needed to ensure a smooth transition to the Medi-Cal program.

27 (2) In coordination with the State Department of Health Care
28 Services, provision of reasonable notice to applicants concerning
29 disenrollment of subscribers consistent with Section 14005.27 of
30 the Welfare and Institutions Code.

31 (3) Notwithstanding Section 12693.51, transfers of subscribers
32 from one participating plan to another at the times and under the
33 conditions prescribed by the board, without the obligation that the
34 board provide an annual opportunity for subscribers to transfer
35 from one participating plan to another.

36 (d) Nothing in subdivision (e) of Section 12693.43 shall be
37 construed to require any refund or adjustment of family
38 contributions if an applicant has paid for three months of required
39 family contributions in advance and the subscriber for whom the
40 applicant has paid these family contributions is disenrolled pursuant

1 to this section, or for any other reason, without receiving a fourth
 2 consecutive month of coverage.

3 (e) (1) Notwithstanding Chapter 3.5 (commencing with Section
 4 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
 5 the board shall, without taking any further regulatory action,
 6 implement, interpret, or make specific this section by means of
 7 business rules, program bulletins, program correspondence to
 8 subscribers and contractors, letters, or similar instructions.

9 (2) The board may adopt and readopt emergency regulations
 10 implementing this section. The adoption and readoption, by the
 11 board, of regulations implementing this section shall be deemed
 12 an emergency and necessary to avoid serious harm to the public
 13 peace, health, safety, or general welfare for purposes of Sections
 14 11346.1 and 11349.6 of the Government Code, and the board is
 15 hereby exempted from the requirement that it describe facts
 16 showing the need for immediate action and from review by the
 17 Office of Administrative Law.

18 (f) The Healthy Families Program, pursuant to this part, shall
 19 cease to enroll new subscribers no sooner than the date transition
 20 begins pursuant to subdivision (a), and any transition of children
 21 shall be in compliance with the implementation plan or plans as
 22 contained in Section 14005.27 of the Welfare and Institutions
 23 Code.

24 SEC. 142. Section 980 of the Labor Code is amended to read:

25 980. (a) As used in this chapter, “social media” means an
 26 electronic service or account, or electronic content, including, but
 27 not limited to, videos, still photographs, blogs, video blogs,
 28 podcasts, instant and text messages, email, online services or
 29 accounts, or Internet Web site profiles or locations.

30 (b) An employer shall not require or request an employee or
 31 applicant for employment to do any of the following:

32 (1) Disclose a username or password for the purpose of
 33 accessing personal social media.

34 (2) Access personal social media in the presence of the
 35 employer.

36 (3) Divulge any personal social media, except as provided in
 37 subdivision (c).

38 (c) Nothing in this section shall affect an employer’s existing
 39 rights and obligations to request an employee to divulge personal
 40 social media reasonably believed to be relevant to an investigation

1 of allegations of employee misconduct or employee violation of
2 applicable laws and regulations, provided that the social media is
3 used solely for purposes of that investigation or a related
4 proceeding.

5 (d) Nothing in this section precludes an employer from requiring
6 or requesting an employee to disclose a username, password, or
7 other method for the purpose of accessing an employer-issued
8 electronic device.

9 (e) An employer shall not discharge, discipline, threaten to
10 discharge or discipline, or otherwise retaliate against an employee
11 or applicant for not complying with a request or demand by the
12 employer that violates this section. However, this section does not
13 prohibit an employer from terminating or otherwise taking an
14 adverse action against an employee or applicant if otherwise
15 permitted by law.

16 SEC. 143. Section 4709 of the Labor Code is amended to read:

17 4709. (a) Notwithstanding any other law, a dependent of a
18 peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31,
19 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39,
20 830.4, 830.5, or 830.6 of the Penal Code, or a Sheriff's Special
21 Officer of the County of Orange, who is killed in the performance
22 of duty or who dies or is totally disabled as a result of an accident
23 or an injury caused by external violence or physical force, incurred
24 in the performance of duty, when the death, accident, or injury is
25 compensable under this division or Division 4.5 (commencing
26 with Section 6100) shall be entitled to a scholarship at any
27 qualifying institution described in subdivision (l) of Section
28 69432.7 of the Education Code. The scholarship shall be in an
29 amount equal to the amount provided a student who has been
30 awarded a Cal Grant scholarship as specified in Chapter 1.7
31 (commencing with Section 69430) of Part 42 of Division 5 of Title
32 3 of the Education Code.

33 (b) A dependent of an officer or employee of the Department
34 of Corrections and Rehabilitation or the Department of Corrections
35 and Rehabilitation, Division of Juvenile Justice, described in
36 Section 20403 of the Government Code, who is killed in the
37 performance of duty, or who dies or is totally disabled as a result
38 of an accident or an injury incurred in the performance of duty,
39 when the death, accident, or injury is caused by the direct action
40 of an inmate, and is compensable under this division or Division

1 4.5 (commencing with Section 6100), shall also be entitled to a
2 scholarship specified in this section.

3 (c) Notwithstanding any other law, a dependent of a firefighter
4 employed by a county, city, city and county, district, or other
5 political subdivision of the state, who is killed in the performance
6 of duty or who dies or is totally disabled as a result of an accident
7 or injury incurred in the performance of duty, when the death,
8 accident, or injury is compensable under this division or Division
9 4.5 (commencing with Section 6100), shall also be entitled to a
10 scholarship specified in this section.

11 (d) Nothing in this section shall be interpreted to allow the
12 admittance of the dependent into a college or university unless the
13 dependent is otherwise qualified to gain admittance to the college
14 or university.

15 (e) The scholarship provided for by this section shall be paid
16 out of funds annually appropriated in the Budget Act to the Student
17 Aid Commission established by Article 2 (commencing with
18 Section 69510) of Chapter 2 of Part 42 of Division 5 of Title 3 of
19 the Education Code.

20 (f) The receipt of a scholarship provided for by this section shall
21 not preclude a dependent from receiving a Cal Grant award
22 pursuant to Chapter 1.7 (commencing with Section 69430) of Part
23 42 of Division 5 of Title 3 of the Education Code, any other grant,
24 or any fee waivers that may be provided by an institution of higher
25 education. The receipt of a Cal Grant award pursuant to Chapter
26 1.7 (commencing with Section 69430) of Part 42 of Division 5 of
27 Title 3 of the Education Code, any other grant, or any fee waivers
28 that may be provided by an institution of higher education shall
29 not preclude a dependent from receiving a scholarship provided
30 for by this section.

31 (g) As used in this section, “dependent” means the children
32 (natural or adopted) or spouse, at the time of the death or injury,
33 of the peace officer, law enforcement officer, or firefighter.

34 (h) Eligibility for a scholarship under this section shall be limited
35 to a person who demonstrates financial need as determined by the
36 Student Aid Commission pursuant to Article 1.5 (commencing
37 with Section 69503) of Chapter 2 of Part 42 of Division 5 of Title
38 3 of the Education Code. For purposes of determining financial
39 need, the proceeds of death benefits received by the dependent,
40 including, but not limited to, a continuation of income received

1 from the Public Employees' Retirement System, the proceeds from
2 the federal Public Safety Officers' Benefits Act, life insurance
3 policies, proceeds from Sections 4702 and 4703.5, any private
4 scholarship where receipt is predicated upon the recipient being
5 the survivor of a deceased public safety officer, the scholarship
6 awarded pursuant to Section 68120 of the Education Code, and
7 any interest received from these benefits, shall not be considered.

8 SEC. 144. Section 5502 of the Labor Code is amended to read:

9 5502. (a) Except as provided in subdivisions (b) and (d), the
10 hearing shall be held not less than 10 days, and not more than 60
11 days, after the date a declaration of readiness to proceed, on a form
12 prescribed by the appeals board, is filed. If a claim form has been
13 filed for an injury occurring on or after January 1, 1990, and before
14 January 1, 1994, an application for adjudication shall accompany
15 the declaration of readiness to proceed.

16 (b) The administrative director shall establish a priority calendar
17 for issues requiring an expedited hearing and decision. A hearing
18 shall be held and a determination as to the rights of the parties
19 shall be made and filed within 30 days after the declaration of
20 readiness to proceed is filed if the issues in dispute are any of the
21 following, provided that if an expedited hearing is requested, no
22 other issue may be heard until the medical provider network dispute
23 is resolved:

24 (1) The employee's entitlement to medical treatment pursuant
25 to Section 4600, except for treatment issues determined pursuant
26 to Sections 4610 and 4610.5.

27 (2) Whether the injured employee is required to obtain treatment
28 within a medical provider network.

29 (3) A medical treatment appointment or medical-legal
30 examination.

31 (4) The employee's entitlement to, or the amount of, temporary
32 disability indemnity payments.

33 (5) The employee's entitlement to compensation from one or
34 more responsible employers when two or more employers dispute
35 liability as among themselves.

36 (6) Any other issues requiring an expedited hearing and
37 determination as prescribed in rules and regulations of the
38 administrative director.

39 (c) The administrative director shall establish a priority
40 conference calendar for cases in which the employee is represented

1 by an attorney and the issues in dispute are employment or injury
2 arising out of employment or in the course of employment. The
3 conference shall be conducted by a workers' compensation
4 administrative law judge within 30 days after the declaration of
5 readiness to proceed. If the dispute cannot be resolved at the
6 conference, a trial shall be set as expeditiously as possible, unless
7 good cause is shown why discovery is not complete, in which case
8 status conferences shall be held at regular intervals. The case shall
9 be set for trial when discovery is complete, or when the workers'
10 compensation administrative law judge determines that the parties
11 have had sufficient time in which to complete reasonable discovery.
12 A determination as to the rights of the parties shall be made and
13 filed within 30 days after the trial.

14 (d) (1) In all cases, a mandatory settlement conference, except
15 a lien conference or a mandatory settlement lien conference, shall
16 be conducted not less than 10 days, and not more than 30 days,
17 after the filing of a declaration of readiness to proceed. If the
18 dispute is not resolved, the regular hearing, except a lien trial, shall
19 be held within 75 days after the declaration of readiness to proceed
20 is filed.

21 (2) The settlement conference shall be conducted by a workers'
22 compensation administrative law judge or by a referee who is
23 eligible to be a workers' compensation administrative law judge
24 or eligible to be an arbitrator under Section 5270.5. At the
25 mandatory settlement conference, the referee or workers'
26 compensation administrative law judge shall have the authority to
27 resolve the dispute, including the authority to approve a
28 compromise and release or issue a stipulated finding and award,
29 and if the dispute cannot be resolved, to frame the issues and
30 stipulations for trial. The appeals board shall adopt any regulations
31 needed to implement this subdivision. The presiding workers'
32 compensation administrative law judge shall supervise settlement
33 conference referees in the performance of their judicial functions
34 under this subdivision.

35 (3) If the claim is not resolved at the mandatory settlement
36 conference, the parties shall file a pretrial conference statement
37 noting the specific issues in dispute, each party's proposed
38 permanent disability rating, and listing the exhibits, and disclosing
39 witnesses. Discovery shall close on the date of the mandatory
40 settlement conference. Evidence not disclosed or obtained

1 thereafter shall not be admissible unless the proponent of the
2 evidence can demonstrate that it was not available or could not
3 have been discovered by the exercise of due diligence prior to the
4 settlement conference.

5 (e) In cases involving the Director of Industrial Relations in his
6 or her capacity as administrator of the Uninsured Employers Fund,
7 this section shall not apply unless proof of service, as specified in
8 paragraph (1) of subdivision (d) of Section 3716, has been filed
9 with the appeals board and provided to the Director of Industrial
10 Relations, valid jurisdiction has been established over the employer,
11 and the fund has been joined.

12 (f) Except as provided in subdivision (a) and in Section 4065,
13 the provisions of this section shall apply irrespective of the date
14 of injury.

15 SEC. 145. Section 136.2 of the Penal Code is amended to read:

16 136.2. (a) Except as provided in subdivision (c), upon a good
17 cause belief that harm to, or intimidation or dissuasion of, a victim
18 or witness has occurred or is reasonably likely to occur, a court
19 with jurisdiction over a criminal matter may issue orders, including,
20 but not limited to, the following:

21 (1) An order issued pursuant to Section 6320 of the Family
22 Code.

23 (2) An order that a defendant shall not violate any provision of
24 Section 136.1.

25 (3) An order that a person before the court other than a
26 defendant, including, but not limited to, a subpoenaed witness or
27 other person entering the courtroom of the court, shall not violate
28 any provisions of Section 136.1.

29 (4) An order that a person described in this section shall have
30 no communication whatsoever with a specified witness or a victim,
31 except through an attorney under reasonable restrictions that the
32 court may impose.

33 (5) An order calling for a hearing to determine if an order as
34 described in paragraphs (1) to (4), inclusive, should be issued.

35 (6) (A) An order that a particular law enforcement agency
36 within the jurisdiction of the court provide protection for a victim
37 or a witness, or both, or for immediate family members of a victim
38 or a witness who reside in the same household as the victim or
39 witness or within reasonable proximity of the victim's or witness'
40 household, as determined by the court. The order shall not be made

1 without the consent of the law enforcement agency except for
2 limited and specified periods of time and upon an express finding
3 by the court of a clear and present danger of harm to the victim or
4 witness or immediate family members of the victim or witness.

5 (B) For purposes of this paragraph, “immediate family
6 members” include the spouse, children, or parents of the victim
7 or witness.

8 (7) (A) An order protecting victims of violent crime from all
9 contact by the defendant, or contact, with the intent to annoy,
10 harass, threaten, or commit acts of violence, by the defendant. The
11 court or its designee shall transmit orders made under this
12 paragraph to law enforcement personnel within one business day
13 of the issuance, modification, extension, or termination of the
14 order, pursuant to subdivision (a) of Section 6380 of the Family
15 Code. It is the responsibility of the court to transmit the
16 modification, extension, or termination orders made under this
17 paragraph to the same agency that entered the original protective
18 order into the Domestic Violence Restraining Order System.

19 (B) (i) If a court does not issue an order pursuant to
20 subparagraph (A) in a case in which the defendant is charged with
21 a crime of domestic violence as defined in Section 13700, the court
22 on its own motion shall consider issuing a protective order upon
23 a good cause belief that harm to, or intimidation or dissuasion of,
24 a victim or witness has occurred or is reasonably likely to occur,
25 that provides as follows:

26 (I) The defendant shall not own, possess, purchase, receive, or
27 attempt to purchase or receive, a firearm while the protective order
28 is in effect.

29 (II) The defendant shall relinquish any firearms that he or she
30 owns or possesses pursuant to Section 527.9 of the Code of Civil
31 Procedure.

32 (ii) Every person who owns, possesses, purchases, or receives,
33 or attempts to purchase or receive, a firearm while this protective
34 order is in effect is punishable pursuant to Section 29825.

35 (C) An order issued, modified, extended, or terminated by a
36 court pursuant to this paragraph shall be issued on forms adopted
37 by the Judicial Council and that have been approved by the
38 Department of Justice pursuant to subdivision (i) of Section 6380
39 of the Family Code. However, the fact that an order issued by a
40 court pursuant to this section was not issued on forms adopted by

1 the Judicial Council and approved by the Department of Justice
2 shall not, in and of itself, make the order unenforceable.

3 (D) A protective order under this paragraph may require the
4 defendant to be placed on electronic monitoring if the local
5 government, with the concurrence of the county sheriff or the chief
6 probation officer with jurisdiction, adopts a policy to authorize
7 electronic monitoring of defendants and specifies the agency with
8 jurisdiction for this purpose. If the court determines that the
9 defendant has the ability to pay for the monitoring program, the
10 court shall order the defendant to pay for the monitoring. If the
11 court determines that the defendant does not have the ability to
12 pay for the electronic monitoring, the court may order electronic
13 monitoring to be paid for by the local government that adopted
14 the policy to authorize electronic monitoring. The duration of
15 electronic monitoring shall not exceed one year from the date the
16 order is issued. At no time shall the electronic monitoring be in
17 place if the protective order is not in place.

18 (b) A person violating an order made pursuant to paragraphs
19 (1) to (7), inclusive, of subdivision (a) may be punished for any
20 substantive offense described in Section 136.1, or for a contempt
21 of the court making the order. A finding of contempt shall not be
22 a bar to prosecution for a violation of Section 136.1. However, a
23 person so held in contempt shall be entitled to credit for punishment
24 imposed therein against a sentence imposed upon conviction of
25 an offense described in Section 136.1. A conviction or acquittal
26 for a substantive offense under Section 136.1 shall be a bar to a
27 subsequent punishment for contempt arising out of the same act.

28 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
29 protective order issued pursuant to Chapter 2 (commencing with
30 Section 6250) of Part 3 of Division 10 of the Family Code or
31 Section 646.91 of this code shall have precedence in enforcement
32 over any other restraining or protective order, provided that the
33 emergency protective order meets all of the following requirements:

34 (A) The emergency protective order is issued to protect one or
35 more individuals who are already protected persons under another
36 restraining or protective order.

37 (B) The emergency protective order restrains the individual who
38 is the restrained person in the other restraining or protective order
39 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 (2) An emergency protective order that meets the requirements
6 of paragraph (1) shall have precedence in enforcement over the
7 provisions of any other restraining or protective order only with
8 respect to those provisions of the emergency protective order that
9 are more restrictive in relation to the restrained person.

10 (d) (1) A person subject to a protective order issued under this
11 section shall not own, possess, purchase, receive, or attempt to
12 purchase or receive a firearm while the protective order is in effect.

13 (2) The court shall order a person subject to a protective order
14 issued under this section to relinquish any firearms he or she owns
15 or possesses pursuant to Section 527.9 of the Code of Civil
16 Procedure.

17 (3) A person who owns, possesses, purchases, or receives, or
18 attempts to purchase or receive, a firearm while the protective
19 order is in effect is punishable pursuant to Section 29825.

20 (e) (1) In all cases where the defendant is charged with a crime
21 of domestic violence, as defined in Section 13700, the court shall
22 consider issuing the above-described orders on its own motion.
23 All interested parties shall receive a copy of those orders. In order
24 to facilitate this, the court's records of all criminal cases involving
25 domestic violence shall be marked to clearly alert the court to this
26 issue.

27 (2) In those cases in which a complaint, information, or
28 indictment charging a crime of domestic violence, as defined in
29 Section 13700, has been issued, a restraining order or protective
30 order against the defendant issued by the criminal court in that
31 case has precedence in enforcement over a civil court order against
32 the defendant, unless a court issues an emergency protective order
33 pursuant to Chapter 2 (commencing with Section 6250) of Part 3
34 of Division 10 of the Family Code or Section 646.91 of this code,
35 in which case the emergency protective order shall have precedence
36 in enforcement over any other restraining or protective order,
37 provided that the emergency protective order meets the following
38 requirements:

1 (A) The emergency protective order is issued to protect one or
2 more individuals who are already protected persons under another
3 restraining or protective order.

4 (B) The emergency protective order restrains the individual who
5 is the restrained person in the other restraining or protective order
6 specified in subparagraph (A).

7 (C) The provisions of the emergency protective order are more
8 restrictive in relation to the restrained person than are the provisions
9 of the other restraining or protective order specified in
10 subparagraph (A).

11 (3) Custody and visitation with respect to the defendant and his
12 or her minor children may be ordered by a family or juvenile court
13 consistent with the protocol established pursuant to subdivision
14 (f), but if ordered after a criminal protective order has been issued
15 pursuant to this section, the custody and visitation order shall make
16 reference to, and acknowledge the precedence of enforcement of,
17 an appropriate criminal protective order. On or before July 1, 2006,
18 the Judicial Council shall modify the criminal and civil court forms
19 consistent with this subdivision.

20 (f) On or before January 1, 2003, the Judicial Council shall
21 promulgate a protocol, for adoption by each local court in
22 substantially similar terms, to provide for the timely coordination
23 of all orders against the same defendant and in favor of the same
24 named victim or victims. The protocol shall include, but shall not
25 be limited to, mechanisms for assuring appropriate communication
26 and information sharing between criminal, family, and juvenile
27 courts concerning orders and cases that involve the same parties,
28 and shall permit a family or juvenile court order to coexist with a
29 criminal court protective order subject to the following conditions:

30 (1) An order that permits contact between the restrained person
31 and his or her children shall provide for the safe exchange of the
32 children and shall not contain language either printed or
33 handwritten that violates a “no contact order” issued by a criminal
34 court.

35 (2) Safety of all parties shall be the courts’ paramount concern.
36 The family or juvenile court shall specify the time, day, place, and
37 manner of transfer of the child, as provided in Section 3100 of the
38 Family Code.

1 (g) On or before January 1, 2003, the Judicial Council shall
2 modify the criminal and civil court protective order forms
3 consistent with this section.

4 (h) In any case in which a complaint, information, or indictment
5 charging a crime of domestic violence, as defined in Section 13700,
6 has been filed, the court may consider, in determining whether
7 good cause exists to issue an order under paragraph (1) of
8 subdivision (a), the underlying nature of the offense charged, and
9 the information provided to the court pursuant to Section 273.75.

10 (i) (1) In all cases in which a criminal defendant has been
11 convicted of a crime of domestic violence as defined in Section
12 13700, the court, at the time of sentencing, shall consider issuing
13 an order restraining the defendant from any contact with the victim.
14 The order may be valid for up to 10 years, as determined by the
15 court. This protective order may be issued by the court regardless
16 of whether the defendant is sentenced to the state prison or a county
17 jail, or whether imposition of sentence is suspended and the
18 defendant is placed on probation. It is the intent of the Legislature
19 in enacting this subdivision that the duration of any restraining
20 order issued by the court be based upon the seriousness of the facts
21 before the court, the probability of future violations, and the safety
22 of the victim and his or her immediate family.

23 (2) An order under this subdivision may include provisions for
24 electronic monitoring if the local government, upon receiving the
25 concurrence of the county sheriff or the chief probation officer
26 with jurisdiction, adopts a policy authorizing electronic monitoring
27 of defendants and specifies the agency with jurisdiction for this
28 purpose. If the court determines that the defendant has the ability
29 to pay for the monitoring program, the court shall order the
30 defendant to pay for the monitoring. If the court determines that
31 the defendant does not have the ability to pay for the electronic
32 monitoring, the court may order the electronic monitoring to be
33 paid for by the local government that adopted the policy authorizing
34 electronic monitoring. The duration of the electronic monitoring
35 shall not exceed one year from the date the order is issued.

36 (j) For purposes of this section, “local government” means the
37 county that has jurisdiction over the protective order.

38 *SEC. 145.3. Section 166 of the Penal Code is amended to read:*

1 166. (a) Except as provided in subdivisions (b), (c), and (d),
2 a person guilty of any of the following contempts of court is guilty
3 of a misdemeanor:

4 (1) Disorderly, contemptuous, or insolent behavior committed
5 during the sitting of a court of justice, in the immediate view and
6 presence of the court, and directly tending to interrupt its
7 proceedings or to impair the respect due to its authority.

8 (2) Behavior specified in paragraph (1) that is committed in the
9 presence of a referee, while actually engaged in a trial or hearing,
10 pursuant to the order of a court, or in the presence of any jury while
11 actually sitting for the trial of a cause, or upon an inquest or other
12 proceeding authorized by law.

13 (3) A breach of the peace, noise, or other disturbance directly
14 tending to interrupt the proceedings of the court.

15 (4) Willful disobedience of the terms as written of any process
16 or court order or out-of-state court order, lawfully issued by a
17 court, including orders pending trial.

18 (5) Resistance willfully offered by any person to the lawful
19 order or process of a court.

20 (6) Willful disobedience by a juror of a court admonishment
21 related to the prohibition on any form of communication or research
22 about the case, including all forms of electronic or wireless
23 communication or research.

24 (7) The contumacious and unlawful refusal of a person to be
25 sworn as a witness or, when so sworn, the like refusal to answer
26 a material question.

27 (8) The publication of a false or grossly inaccurate report of the
28 proceedings of a court.

29 (9) Presenting to a court having power to pass sentence upon a
30 prisoner under conviction, or to a member of the court, an affidavit,
31 testimony, or representation of any kind, verbal or written, in
32 aggravation or mitigation of the punishment to be imposed upon
33 the prisoner, except as provided in this code.

34 (10) Willful disobedience of the terms of an injunction that
35 restrains the activities of a criminal street gang or any of its
36 members, lawfully issued by a court, including an order pending
37 trial.

38 (b) (1) A person who is guilty of contempt of court under
39 paragraph (4) of subdivision (a) by willfully contacting a victim
40 by telephone or mail, or directly, and who has been previously

1 convicted of a violation of Section 646.9 shall be punished by
2 imprisonment in a county jail for not more than one year, by a fine
3 of five thousand dollars (\$5,000), or by both that fine and
4 imprisonment.

5 (2) For the purposes of sentencing under this subdivision, each
6 contact shall constitute a separate violation of this subdivision.

7 (3) The present incarceration of a person who makes contact
8 with a victim in violation of paragraph (1) is not a defense to a
9 violation of this subdivision.

10 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
11 willful and knowing violation of a protective order or stay-away
12 court order issued pursuant to Section 136.2, in a pending criminal
13 proceeding involving domestic violence, as defined in Section
14 13700, or issued as a condition of probation after a conviction in
15 a criminal proceeding involving domestic violence, as defined in
16 Section 13700, or elder or dependent adult abuse, as defined in
17 Section 368, or that is an order described in paragraph (3), shall
18 constitute contempt of court, a misdemeanor, punishable by
19 imprisonment in a county jail for not more than one year, by a fine
20 of not more than one thousand dollars (\$1,000), or by both that
21 imprisonment and fine.

22 (2) If a violation of paragraph (1) results in a physical injury,
23 the person shall be imprisoned in a county jail for at least 48 hours,
24 whether a fine or imprisonment is imposed, or the sentence is
25 suspended.

26 (3) Paragraphs (1) and (2) apply to the following court orders:

27 (A) An order issued pursuant to Section 6320 or 6389 of the
28 Family Code.

29 (B) An order excluding one party from the family dwelling or
30 from the dwelling of the other.

31 (C) An order enjoining a party from specified behavior that the
32 court determined was necessary to effectuate the orders described
33 in paragraph (1).

34 (4) A second or subsequent conviction for a violation of an order
35 described in paragraph (1) occurring within seven years of a prior
36 conviction for a violation of any of those orders and involving an
37 act of violence or “a credible threat” of violence, as provided in
38 subdivisions (b) and (c) ~~and (d)~~ of Section 139, is punishable by
39 imprisonment in a county jail not to exceed one year, or in the
40 state prison for 16 months or two or three years.

1 (5) The prosecuting agency of each county shall have the
2 primary responsibility for the enforcement of the orders described
3 in paragraph (1).

4 (d) (1) A person who owns, possesses, purchases, or receives
5 a firearm knowing he or she is prohibited from doing so by the
6 provisions of a protective order, as defined in Section 136.2 of this
7 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
8 of the Code of Civil Procedure, shall be punished under ~~subdivision~~
9 ~~(g) of Section 12021~~ *Section 29825*.

10 (2) A person subject to a protective order described in paragraph
11 (1) shall not be prosecuted under this section for owning,
12 possessing, purchasing, or receiving a firearm to the extent that
13 firearm is granted an exemption pursuant to subdivision (h) of
14 Section 6389 of the Family Code.

15 (e) (1) If probation is granted upon conviction of a violation of
16 subdivision (c), the court shall impose probation consistent with
17 Section 1203.097.

18 (2) If probation is granted upon conviction of a violation of
19 subdivision (c), the conditions of probation may include, in lieu
20 of a fine, one or both of the following requirements:

21 (A) That the defendant make payments to a battered women's
22 shelter, up to a maximum of one thousand dollars (\$1,000).

23 (B) That the defendant provide restitution to reimburse the
24 victim for reasonable costs of counseling and other reasonable
25 expenses that the court finds are the direct result of the defendant's
26 offense.

27 (3) For an order to pay a fine, make payments to a battered
28 women's shelter, or pay restitution as a condition of probation
29 under this subdivision or subdivision (c), the court shall make a
30 determination of the defendant's ability to pay. In no event shall
31 an order to make payments to a battered women's shelter be made
32 if it would impair the ability of the defendant to pay direct
33 restitution to the victim or court-ordered child support.

34 (4) If the injury to a married person is caused in whole, or in
35 part, by the criminal acts of his or her spouse in violation of
36 subdivision (c), the community property shall not be used to
37 discharge the liability of the offending spouse for restitution to the
38 injured spouse required by Section 1203.04, as operative on or
39 before August 2, 1995, or Section 1202.4, or to a shelter for costs
40 with regard to the injured spouse and dependents required by this

1 subdivision, until all separate property of the offending spouse is
2 exhausted.

3 (5) A person violating an order described in subdivision (c) may
4 be punished for any substantive offenses described under Section
5 136.1 or 646.9. A finding of contempt shall not be a bar to
6 prosecution for a violation of Section 136.1 or 646.9. However, a
7 person held in contempt for a violation of subdivision (c) shall be
8 entitled to credit for any punishment imposed as a result of that
9 violation against any sentence imposed upon conviction of an
10 offense described in Section 136.1 or 646.9. A conviction or
11 acquittal for a substantive offense under Section 136.1 or 646.9
12 shall be a bar to a subsequent punishment for contempt arising out
13 of the same act.

14 *SEC. 145.5. Section 171c of the Penal Code is amended to*
15 *read:*

16 171c. (a) (1) Any person who brings a loaded firearm into,
17 or possesses a loaded firearm within, the State Capitol, any
18 legislative office, any office of the Governor or other constitutional
19 officer, or any hearing room in which any committee of the Senate
20 or Assembly is conducting a hearing, or upon the grounds of the
21 State Capitol, which is bounded by 10th, L, 15th, and N Streets in
22 the City of Sacramento, shall be punished by imprisonment in a
23 county jail for a period of not more than one year, a fine of not
24 more than one thousand dollars (\$1,000), or both such
25 imprisonment and fine, or by imprisonment pursuant to subdivision
26 (h) of Section 1170.

27 (2) Any person who brings or possesses, within the State Capitol,
28 any legislative office, any hearing room in which any committee
29 of the Senate or Assembly is conducting a hearing, the Legislative
30 Office Building at 1020 N Street in the City of Sacramento, or
31 upon the grounds of the State Capitol, which is bounded by 10th,
32 L, 15th, and N Streets in the City of Sacramento, any of the
33 following, is guilty of a misdemeanor punishable by imprisonment
34 in a county jail for a period not to exceed one year, or by a fine
35 not exceeding one thousand dollars (\$1,000), or by both that fine
36 and imprisonment, if the area is posted with a statement providing
37 reasonable notice that prosecution may result from possession of
38 any of these items:

39 (A) Any firearm.

1 (B) Any deadly weapon described in Section ~~653k or 12020~~
2 *21510 or in any provision listed in Section 16590.*

3 (C) Any knife with a blade length in excess of four inches, the
4 blade of which is fixed or is capable of being fixed in an unguarded
5 position by the use of one or two hands.

6 (D) Any unauthorized tear gas weapon.

7 (E) Any stun gun, as defined in Section 244.5.

8 (F) Any instrument that expels a metallic projectile, such as a
9 BB or pellet, through the force of air pressure, CO₂ pressure, or
10 spring action, or any spot marker gun or paint gun.

11 (G) Any ammunition as defined in ~~Section 12316~~ *Sections 16150*
12 *and 16650.*

13 (H) Any explosive as defined in Section 12000 of the Health
14 and Safety Code.

15 (b) Subdivision (a) shall not apply to, or affect, any of the
16 following:

17 (1) A duly appointed peace officer as defined in Chapter 4.5
18 (commencing with Section 830) of Title 3 of Part 2, a retired peace
19 officer with authorization to carry concealed weapons as described
20 ~~in subdivision (a) of Section 12027~~ *Article 2 (commencing with*
21 *Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6*, a
22 full-time paid peace officer of another state or the federal
23 government who is carrying out official duties while in California,
24 or any person summoned by any of these officers to assist in
25 making arrests or preserving the peace while he or she is actually
26 engaged in assisting the officer.

27 (2) A person holding a valid license to carry the firearm pursuant
28 ~~to Article 3 (commencing with Section 12050) of Chapter 4~~
29 *(commencing with Section 26150) of Division 5 of Title 4 of Part*
30 ~~4 6~~, and who has permission granted by the Chief Sergeants at
31 Arms of the State Assembly and the State Senate to possess a
32 concealed weapon upon the premises described in subdivision (a).

33 (3) A person who has permission granted by the Chief Sergeants
34 at Arms of the State Assembly and the State Senate to possess a
35 weapon upon the premises described in subdivision (a).

36 (c) (1) Nothing in this section shall preclude prosecution under
37 ~~Sections 12021 and 12021.1~~ *Chapter 2 (commencing with Section*
38 *29800) or Chapter 3 (commencing with Section 29900) of Division*
39 *9 of Title 4 of Part 6 of this code*, Section 8100 or 8103 of the

1 Welfare and Institutions Code, or any other law with a penalty
 2 greater than is set forth in this section.

3 (2) The provisions of this section are cumulative, and shall not
 4 be construed as restricting the application of any other law.
 5 However, an act or omission punishable in different ways by
 6 different provisions of law shall not be punished under more than
 7 one provision.

8 *SEC. 145.7. Section 273.6 of the Penal Code is amended to*
 9 *read:*

10 273.6. (a) Any intentional and knowing violation of a
 11 protective order, as defined in Section 6218 of the Family Code,
 12 or of an order issued pursuant to Section 527.6, 527.8, or 527.85
 13 of the Code of Civil Procedure, or Section 15657.03 of the Welfare
 14 and Institutions Code, is a misdemeanor punishable by a fine of
 15 not more than one thousand dollars (\$1,000), or by imprisonment
 16 in a county jail for not more than one year, or by both that fine and
 17 imprisonment.

18 (b) In the event of a violation of subdivision (a) that results in
 19 physical injury, the person shall be punished by a fine of not more
 20 than two thousand dollars (\$2,000), or by imprisonment in a county
 21 jail for not less than 30 days nor more than one year, or by both
 22 that fine and imprisonment. However, if the person is imprisoned
 23 in a county jail for at least 48 hours, the court may, in the interest
 24 of justice and for reasons stated on the record, reduce or eliminate
 25 the 30-day minimum imprisonment required by this subdivision.
 26 In determining whether to reduce or eliminate the minimum
 27 imprisonment pursuant to this subdivision, the court shall consider
 28 the seriousness of the facts before the court, whether there are
 29 additional allegations of a violation of the order during the
 30 pendency of the case before the court, the probability of future
 31 violations, the safety of the victim, and whether the defendant has
 32 successfully completed or is making progress with counseling.

33 (c) Subdivisions (a) and (b) shall apply to the following court
 34 orders:

35 (1) Any order issued pursuant to Section 6320 or 6389 of the
 36 Family Code.

37 (2) An order excluding one party from the family dwelling or
 38 from the dwelling of the other.

1 (3) An order enjoining a party from specified behavior that the
2 court determined was necessary to effectuate the order described
3 in subdivision (a).

4 (4) Any order issued by another state that is recognized under
5 Part 5 (commencing with Section 6400) of Division 10 of the
6 Family Code.

7 (d) A subsequent conviction for a violation of an order described
8 in subdivision (a), occurring within seven years of a prior
9 conviction for a violation of an order described in subdivision (a)
10 and involving an act of violence or “a credible threat” of violence,
11 as defined in subdivision (c) of Section 139, is punishable by
12 imprisonment in a county jail not to exceed one year, or pursuant
13 to subdivision (h) of Section 1170.

14 (e) In the event of a subsequent conviction for a violation of an
15 order described in subdivision (a) for an act occurring within one
16 year of a prior conviction for a violation of an order described in
17 subdivision (a) that results in physical injury to a victim, the person
18 shall be punished by a fine of not more than two thousand dollars
19 (\$2,000), or by imprisonment in a county jail for not less than six
20 months nor more than one year, by both that fine and
21 imprisonment, or by imprisonment pursuant to subdivision (h) of
22 Section 1170. However, if the person is imprisoned in a county
23 jail for at least 30 days, the court may, in the interest of justice and
24 for reasons stated in the record, reduce or eliminate the six-month
25 minimum imprisonment required by this subdivision. In
26 determining whether to reduce or eliminate the minimum
27 imprisonment pursuant to this subdivision, the court shall consider
28 the seriousness of the facts before the court, whether there are
29 additional allegations of a violation of the order during the
30 pendency of the case before the court, the probability of future
31 violations, the safety of the victim, and whether the defendant has
32 successfully completed or is making progress with counseling.

33 (f) The prosecuting agency of each county shall have the primary
34 responsibility for the enforcement of orders described in
35 subdivisions (a), (b), (d), and (e).

36 (g) (1) Every person who owns, possesses, purchases, or
37 receives a firearm knowing he or she is prohibited from doing so
38 by the provisions of a protective order as defined in Section 136.2
39 of this code, Section 6218 of the Family Code, or Section 527.6
40 ~~or~~, 527.8, *or* 527.85 of the Code of Civil Procedure, or Section

1 15657.03 of the Welfare and Institutions Code, shall be punished
2 under Section 29825.

3 (2) Every person subject to a protective order described in
4 paragraph (1) shall not be prosecuted under this section for owning,
5 possessing, purchasing, or receiving a firearm to the extent that
6 firearm is granted an exemption pursuant to subdivision (f) of
7 Section 527.9 of the Code of Civil Procedure, or subdivision (h)
8 of Section 6389 of the Family Code.

9 (h) If probation is granted upon conviction of a violation of
10 subdivision (a), (b), (c), (d), or (e), the court shall impose probation
11 consistent with Section 1203.097, and the conditions of probation
12 may include, in lieu of a fine, one or both of the following
13 requirements:

14 (1) That the defendant make payments to a battered women's
15 shelter or to a shelter for abused elder persons or dependent adults,
16 up to a maximum of five thousand dollars (\$5,000), pursuant to
17 Section 1203.097.

18 (2) That the defendant reimburse the victim for reasonable costs
19 of counseling and other reasonable expenses that the court finds
20 are the direct result of the defendant's offense.

21 (i) For any order to pay a fine, make payments to a battered
22 women's shelter, or pay restitution as a condition of probation
23 under subdivision (e), the court shall make a determination of the
24 defendant's ability to pay. In no event shall any order to make
25 payments to a battered women's shelter be made if it would impair
26 the ability of the defendant to pay direct restitution to the victim
27 or court-ordered child support. Where the injury to a married person
28 is caused in whole or in part by the criminal acts of his or her
29 spouse in violation of this section, the community property may
30 not be used to discharge the liability of the offending spouse for
31 restitution to the injured spouse, required by Section 1203.04, as
32 operative on or before August 2, 1995, or Section 1202.4, or to a
33 shelter for costs with regard to the injured spouse and dependents,
34 required by this section, until all separate property of the offending
35 spouse is exhausted.

36 SEC. 146. Section 289.6 of the Penal Code is amended to read:

37 289.6. (a) (1) An employee or officer of a public entity health
38 facility, or an employee, officer, or agent of a private person or
39 entity that provides a health facility or staff for a health facility
40 under contract with a public entity, who engages in sexual activity

1 with a consenting adult who is confined in a health facility is guilty
2 of a public offense. As used in this paragraph, “health facility”
3 means a health facility as defined in subdivisions (b), (e), (g), (h),
4 and (j) of, and subparagraph (C) of paragraph (2) of subdivision
5 (i) of, Section 1250 of the Health and Safety Code, in which the
6 victim has been confined involuntarily.

7 (2) An employee or officer of a public entity detention facility,
8 or an employee, officer, or agent of a private person or entity that
9 provides a detention facility or staff for a detention facility, a
10 person or agent of a public or private entity under contract with a
11 detention facility, a volunteer of a private or public entity detention
12 facility, or a peace officer who engages in sexual activity with a
13 consenting adult who is confined in a detention facility is guilty
14 of a public offense.

15 (3) An employee with a department, board, or authority under
16 the Department of Corrections and Rehabilitation or a facility
17 under contract with a department, board, or authority under the
18 Department of Corrections and Rehabilitation, who, during the
19 course of his or her employment directly provides treatment, care,
20 control, or supervision of inmates, wards, or parolees, and who
21 engages in sexual activity with a consenting adult who is an inmate,
22 ward, or parolee, is guilty of a public offense.

23 (b) As used in this section, the term “public entity” means the
24 state, the federal government, a city, a county, a city and county,
25 a joint county jail district, or any entity created as a result of a joint
26 powers agreement between two or more public entities.

27 (c) As used in this section, the term “detention facility” means:

28 (1) A prison, jail, camp, or other correctional facility used for
29 the confinement of adults or both adults and minors.

30 (2) A building or facility used for the confinement of adults or
31 adults and minors pursuant to a contract with a public entity.

32 (3) A room that is used for holding persons for interviews,
33 interrogations, or investigations and that is separate from a jail or
34 located in the administrative area of a law enforcement facility.

35 (4) A vehicle used to transport confined persons during their
36 period of confinement, including transporting a person after he or
37 she has been arrested but has not been booked.

38 (5) A court holding facility located within or adjacent to a court
39 building that is used for the confinement of persons for the purpose
40 of court appearances.

- 1 (d) As used in this section, “sexual activity” means:
- 2 (1) Sexual intercourse.
- 3 (2) Sodomy, as defined in subdivision (a) of Section 286.
- 4 (3) Oral copulation, as defined in subdivision (a) of Section
- 5 288a.
- 6 (4) Sexual penetration, as defined in subdivision (k) of Section
- 7 289.
- 8 (5) The rubbing or touching of the breasts or sexual organs of
- 9 another, or of oneself in the presence of and with knowledge of
- 10 another, with the intent of arousing, appealing to, or gratifying the
- 11 lust, passions, or sexual desires of oneself or another.
- 12 (e) Consent by a confined person or parolee to sexual activity
- 13 proscribed by this section is not a defense to a criminal prosecution
- 14 for violation of this section.
- 15 (f) This section does not apply to sexual activity between
- 16 consenting adults that occurs during an overnight conjugal visit
- 17 that takes place pursuant to a court order or with the written
- 18 approval of an authorized representative of the public entity that
- 19 operates or contracts for the operation of the detention facility
- 20 where the conjugal visit takes place, to physical contact or
- 21 penetration made pursuant to a lawful search, or bona fide medical
- 22 examinations or treatments, including clinical treatments.
- 23 (g) Any violation of paragraph (1) of subdivision (a), or a
- 24 violation of paragraph (2) or (3) of subdivision (a) as described in
- 25 paragraph (5) of subdivision (d), is a misdemeanor.
- 26 (h) Any violation of paragraph (2) or (3) of subdivision (a), as
- 27 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall
- 28 be punished by imprisonment in a county jail not exceeding one
- 29 year, or in the state prison, or by a fine of not more than ten
- 30 thousand dollars (\$10,000), or by both that fine and imprisonment.
- 31 (i) Any person previously convicted of a violation of this section
- 32 shall, upon a subsequent violation, be guilty of a felony.
- 33 (j) Anyone who is convicted of a felony violation of this section
- 34 who is employed by a department, board, or authority within the
- 35 Department of Corrections and Rehabilitation shall be terminated
- 36 in accordance with the State Civil Service Act (Part 2 (commencing
- 37 with Section 18500) of Division 5 of Title 2 of the Government
- 38 Code). Anyone who has been convicted of a felony violation of
- 39 this section shall not be eligible to be hired or reinstated by a

1 department, board, or authority within the Department of
2 Corrections and Rehabilitation.

3 SEC. 147. Section 496a of the Penal Code is amended to read:

4 496a. (a) Every person who is a dealer in or collector of junk,
5 metals, or secondhand materials, or the agent, employee, or
6 representative of such dealer or collector, and who buys or receives
7 any wire, cable, copper, lead, solder, mercury, iron, or brass which
8 he or she knows or reasonably should know is ordinarily used by
9 or ordinarily belongs to a railroad or other transportation,
10 telephone, telegraph, gas, water, or electric light company, or a
11 county, city, city and county, or other political subdivision of this
12 state engaged in furnishing public utility service, without using
13 due diligence to ascertain that the person selling or delivering the
14 same has a legal right to do so, is guilty of criminally receiving
15 that property, and shall be punished by imprisonment in a county
16 jail for not more than one year, or by imprisonment pursuant to
17 subdivision (h) of Section 1170, or by a fine of not more than one
18 thousand dollars (\$1,000), or by both that fine and imprisonment.

19 (b) Any person who buys or receives material pursuant to
20 subdivision (a) shall obtain evidence of his or her identity from
21 the seller, including, but not limited to, that person's full name,
22 signature, address, driver's license number, and vehicle license
23 number, and the license number of the vehicle delivering the
24 material.

25 (c) The record of the transaction shall include an appropriate
26 description of the material purchased and the record shall be
27 maintained pursuant to Section 21607 of the Business and
28 Professions Code.

29 SEC. 147.3. Section 626.95 of the Penal Code is amended to
30 read:

31 626.95. (a) Any person who is in violation of paragraph (2)
32 of subdivision (a), or subdivision (b), of Section 417, or Section
33 25400 or 25850, upon the grounds of or within a playground, or
34 a public or private youth center during hours in which the facility
35 is open for business, classes, or school-related programs, or at any
36 time when minors are using the facility, knowing that he or she is
37 on or within those grounds, shall be punished by imprisonment
38 pursuant to subdivision (h) of Section 1170 for one, two, or three
39 years, or in a county jail not exceeding one year.

1 (b) State and local authorities are encouraged to cause signs to
2 be posted around playgrounds and youth centers giving warning
3 of prohibition of the possession of firearms upon the grounds of
4 or within playgrounds or youth centers.

5 (c) For purposes of this section, the following definitions shall
6 apply:

7 (1) “Playground” means any park or recreational area
8 specifically designed to be used by children that has play equipment
9 installed, including public grounds designed for athletic activities
10 such as baseball, football, soccer, or basketball, or any similar
11 facility located on public or private school grounds, or on city or
12 county parks.

13 (2) “Youth center” means any public or private facility that is
14 used to host recreational or social activities for minors while minors
15 are present.

16 (d) It is the Legislature’s intent that only an actual conviction
17 of a felony of one of the offenses specified in this section would
18 subject the person to firearms disabilities under the federal Gun
19 Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921 *et seq.*).

20 *SEC. 147.5. Section 626.10 of the Penal Code is amended to*
21 *read:*

22 626.10. (a) (1) Any person, except a duly appointed peace
23 officer as defined in Chapter 4.5 (commencing with Section 830)
24 of Title 3 of Part 2, a full-time paid peace officer of another state
25 or the federal government who is carrying out official duties while
26 in this state, a person summoned by any officer to assist in making
27 arrests or preserving the peace while the person is actually engaged
28 in assisting any officer, or a member of the military forces of this
29 state or the United States who is engaged in the performance of
30 his or her duties, who brings or possesses any dirk, dagger, ice
31 pick, knife having a blade longer than 2½ inches, folding knife
32 with a blade that locks into place, razor with an unguarded blade,
33 taser, or stun gun, as defined in subdivision (a) of Section 244.5,
34 any instrument that expels a metallic projectile, such as a BB or a
35 pellet, through the force of air pressure, CO₂ pressure, or spring
36 action, or any spot marker gun, upon the grounds of, or within,
37 any public or private school providing instruction in kindergarten
38 or any of grades 1 to 12, inclusive, is guilty of a public offense,
39 punishable by imprisonment in a county jail not exceeding one

1 year, or by imprisonment pursuant to subdivision (h) of Section
2 1170.

3 (2) Any person, except a duly appointed peace officer as defined
4 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
5 2, a full-time paid peace officer of another state or the federal
6 government who is carrying out official duties while in this state,
7 a person summoned by any officer to assist in making arrests or
8 preserving the peace while the person is actually engaged in
9 assisting any officer, or a member of the military forces of this
10 state or the United States who is engaged in the performance of
11 his or her duties, who brings or possesses a razor blade or a box
12 cutter upon the grounds of, or within, any public or private school
13 providing instruction in kindergarten or any of grades 1 to 12,
14 inclusive, is guilty of a public offense, punishable by imprisonment
15 in a county jail not exceeding one year.

16 (b) Any person, except a duly appointed peace officer as defined
17 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
18 2, a full-time paid peace officer of another state or the federal
19 government who is carrying out official duties while in this state,
20 a person summoned by any officer to assist in making arrests or
21 preserving the peace while the person is actually engaged in
22 assisting any officer, or a member of the military forces of this
23 state or the United States who is engaged in the performance of
24 his or her duties, who brings or possesses any dirk, dagger, ice
25 pick, or knife having a fixed blade longer than 2½ inches upon
26 the grounds of, or within, any private university, the University of
27 California, the California State University, or the California
28 Community Colleges is guilty of a public offense, punishable by
29 imprisonment in a county jail not exceeding one year, or by
30 imprisonment pursuant to subdivision (h) of Section 1170.

31 (c) Subdivisions (a) and (b) do not apply to any person who
32 brings or possesses a knife having a blade longer than 2½ inches,
33 a razor with an unguarded blade, a razor blade, or a box cutter
34 upon the grounds of, or within, a public or private school providing
35 instruction in kindergarten or any of grades 1 to 12, inclusive, or
36 any private university, state university, or community college at
37 the direction of a faculty member of the private university, state
38 university, or community college, or a certificated or classified
39 employee of the school for use in a private university, state

1 university, community college, or school-sponsored activity or
2 class.

3 (d) Subdivisions (a) and (b) do not apply to any person who
4 brings or possesses an ice pick, a knife having a blade longer than
5 2½ inches, a razor with an unguarded blade, a razor blade, or a
6 box cutter upon the grounds of, or within, a public or private school
7 providing instruction in kindergarten or any of grades 1 to 12,
8 inclusive, or any private university, state university, or community
9 college for a lawful purpose within the scope of the person's
10 employment.

11 (e) Subdivision (b) does not apply to any person who brings or
12 possesses an ice pick or a knife having a fixed blade longer than
13 2½ inches upon the grounds of, or within, any private university,
14 state university, or community college for lawful use in or around
15 a residence or residential facility located upon those grounds or
16 for lawful use in food preparation or consumption.

17 (f) Subdivision (a) does not apply to any person who brings an
18 instrument that expels a metallic projectile, such as a BB or a pellet,
19 through the force of air pressure, CO₂ pressure, or spring action,
20 or any spot marker gun, or any razor blade or box cutter upon the
21 grounds of, or within, a public or private school providing
22 instruction in kindergarten or any of grades 1 to 12, inclusive, if
23 the person has the written permission of the school principal or
24 his or her designee.

25 (g) Any certificated or classified employee or school peace
26 officer of a public or private school providing instruction in
27 kindergarten or any of grades 1 to 12, inclusive, may seize any of
28 the weapons described in subdivision (a), and any certificated or
29 classified employee or school peace officer of any private
30 university, state university, or community college may seize any
31 of the weapons described in subdivision (b), from the possession
32 of any person upon the grounds of, or within, the school if he or
33 she knows, or has reasonable cause to know, the person is
34 prohibited from bringing or possessing the weapon upon the
35 grounds of, or within, the school.

36 (h) As used in this section, "dirk" or "dagger" means a knife or
37 other instrument with or without a handguard that is capable of
38 ready use as a stabbing weapon that may inflict great bodily injury
39 or death.

1 (i) Any person who, without the written permission of the
2 college or university president or chancellor or his or her designee,
3 brings or possesses a less lethal weapon, as defined in Section
4 16780, or a stun gun, as defined in Section 17230, upon the grounds
5 of, or within, a public or private college or university campus is
6 guilty of a misdemeanor.

7 SEC. 148. Section 781 of the Penal Code is amended to read:

8 781. Except as provided in Section 923, when a public offense
9 is committed in part in one jurisdictional territory and in part in
10 another jurisdictional territory, or the acts or effects thereof
11 constituting or requisite to the consummation of the offense occur
12 in two or more jurisdictional territories, the jurisdiction for the
13 offense is in any competent court within either jurisdictional
14 territory.

15 SEC. 149. Section 830.41 of the Penal Code is amended to
16 read:

17 830.41. Notwithstanding any other provision of law, the City
18 of Tulelake, California, is authorized to enter into a mutual aid
19 agreement with the City of Malin, Oregon, for the purpose of
20 permitting their police departments to provide mutual aid to each
21 other when necessary. Before the effective date of the agreement,
22 the agreement shall be reviewed and approved by the
23 Commissioner of the California Highway Patrol.

24 SEC. 150. Section 830.55 of the Penal Code is amended to
25 read:

26 830.55. (a) (1) As used in this section, a correctional officer
27 is a peace officer, employed by a city, county, or city and county
28 that operates a facility described in Section 2910.5 of this code or
29 Section 1753.3 of the Welfare and Institutions Code or facilities
30 operated by counties pursuant to Section 6241 or 6242 of this code
31 under contract with the Department of Corrections and
32 Rehabilitation or the Division of Juvenile Justice within the
33 department, who has the authority and responsibility for
34 maintaining custody of specified state prison inmates or wards,
35 and who performs tasks related to the operation of a detention
36 facility used for the detention of persons who have violated parole
37 or are awaiting parole back into the community or, upon court
38 order, either for their own safekeeping or for the specific purpose
39 of serving a sentence therein.

1 (2) As used in this section, a correctional officer is also a peace
2 officer, employed by a city, county, or city and county that operates
3 a facility described in Section 4115.55, who has the authority and
4 responsibility for maintaining custody of inmates sentenced to or
5 housed in that facility, and who performs tasks related to the
6 operation of that facility.

7 (b) A correctional officer shall have no right to carry or possess
8 firearms in the performance of his or her prescribed duties, except,
9 under the direction of the superintendent of the facility, while
10 engaged in transporting prisoners, guarding hospitalized prisoners,
11 or suppressing riots, lynchings, escapes, or rescues in or about a
12 detention facility established pursuant to Section 2910.5 or 4115.55
13 of this code or Section 1753.3 of the Welfare and Institutions Code.

14 (c) Each person described in this section as a correctional officer,
15 within 90 days following the date of the initial assignment to that
16 position, shall satisfactorily complete the training course specified
17 in Section 832. In addition, each person designated as a correctional
18 officer, within one year following the date of the initial assignment
19 as an officer, shall have satisfactorily met the minimum selection
20 and training standards prescribed by the Board of State and
21 Community Corrections pursuant to Section 6035. Persons
22 designated as correctional officers, before the expiration of the
23 90-day and one-year periods described in this subdivision, who
24 have not yet completed the required training, may perform the
25 duties of a correctional officer only while under the direct
26 supervision of a correctional officer who has completed the training
27 required in this section, and shall not carry or possess firearms in
28 the performance of their prescribed duties.

29 (d) This section shall not be construed to confer any authority
30 upon a correctional officer except while on duty.

31 (e) A correctional officer may use reasonable force in
32 establishing and maintaining custody of persons delivered to him
33 or her by a law enforcement officer, may make arrests for
34 misdemeanors and felonies within the local detention facility
35 pursuant to a duly issued warrant, and may make warrantless arrests
36 pursuant to Section 836.5 only during the duration of his or her
37 job.

38 SEC. 151. Section 1001.20 of the Penal Code is amended to
39 read:

40 1001.20. As used in this chapter:

1 (a) “Cognitive Developmental Disability” means any of the
2 following:

3 (1) “Intellectual disability” means a condition of significantly
4 subaverage general intellectual functioning existing concurrently
5 with deficits in adaptive behavior and manifested during the
6 developmental period.

7 (2) “Autism” means a diagnosed condition of markedly
8 abnormal or impaired development in social interaction, in
9 communication, or in both, with a markedly restricted repertoire
10 of activity and interests.

11 (3) Disabling conditions found to be closely related to
12 intellectual disability or autism, or that require treatment similar
13 to that required for individuals with intellectual disability or autism,
14 and that would qualify an individual for services provided under
15 the Lanterman Developmental Disabilities Services Act.

16 (b) “Diversion-related treatment and habilitation” means, but
17 is not limited to, specialized services or special adaptations of
18 generic services, directed toward the alleviation of cognitive
19 developmental disability or toward social, personal, physical, or
20 economic habilitation or rehabilitation of an individual with a
21 cognitive developmental disability, and includes, but is not limited
22 to, diagnosis, evaluation, treatment, personal care, day care,
23 domiciliary care, special living arrangements, physical,
24 occupational, and speech therapy, training, education, sheltered
25 employment, mental health services, recreation, counseling of the
26 individual with this disability and of his or her family, protective
27 and other social and sociolegal services, information and referral
28 services, follow-along services, and transportation services
29 necessary to ensure delivery of services to persons with cognitive
30 developmental disabilities.

31 (c) “Regional center” means a regional center for the
32 developmentally disabled established under the Lanterman
33 Developmental Disabilities Services Act that is organized as a
34 private nonprofit community agency to plan, purchase, and
35 coordinate the delivery of services that cannot be provided by state
36 agencies to developmentally disabled persons residing in a
37 particular geographic catchment area, and that is licensed and
38 funded by the State Department of Developmental Services.

1 (d) “Director of a regional center” means the executive director
2 of a regional center for the developmentally disabled or his or her
3 designee.

4 (e) “Agency” means the prosecutor, the probation department,
5 and the regional center involved in a particular defendant’s case.

6 (f) “Dual agency diversion” means a treatment and habilitation
7 program developed with court approval by the regional center,
8 administered jointly by the regional center and by the probation
9 department, that is individually tailored to the needs of the
10 defendant as derived from the defendant’s individual program plan
11 pursuant to Section 4646 of the Welfare and Institutions Code,
12 and that includes, but is not limited to, treatment specifically
13 addressed to the criminal offense charged, for a specified period
14 of time as prescribed in Section 1001.28.

15 (g) “Single agency diversion” means a treatment and habilitation
16 program developed with court approval by the regional center,
17 administered solely by the regional center without involvement
18 by the probation department, that is individually tailored to the
19 needs of the defendant as derived from the defendant’s individual
20 program plan pursuant to Section 4646 of the Welfare and
21 Institutions Code, and that includes, but is not limited to, treatment
22 specifically addressed to the criminal offense charged, for a
23 specified period of time as prescribed in Section 1001.28.

24 SEC. 152. Section 1170 of the Penal Code, as amended by
25 Section 2 of Chapter 828 of the Statutes of 2012, is amended to
26 read:

27 1170. (a) (1) The Legislature finds and declares that the
28 purpose of imprisonment for crime is punishment. This purpose
29 is best served by terms proportionate to the seriousness of the
30 offense with provision for uniformity in the sentences of offenders
31 committing the same offense under similar circumstances. The
32 Legislature further finds and declares that the elimination of
33 disparity and the provision of uniformity of sentences can best be
34 achieved by determinate sentences fixed by statute in proportion
35 to the seriousness of the offense as determined by the Legislature
36 to be imposed by the court with specified discretion.

37 (2) Notwithstanding paragraph (1), the Legislature further finds
38 and declares that programs should be available for inmates,
39 including, but not limited to, educational programs, that are
40 designed to prepare nonviolent felony offenders for successful

1 reentry into the community. The Legislature encourages the
2 development of policies and programs designed to educate and
3 rehabilitate nonviolent felony offenders. In implementing this
4 section, the Department of Corrections and Rehabilitation is
5 encouraged to give priority enrollment in programs to promote
6 successful return to the community to an inmate with a short
7 remaining term of commitment and a release date that would allow
8 him or her adequate time to complete the program.

9 (3) In any case in which the punishment prescribed by statute
10 for a person convicted of a public offense is a term of imprisonment
11 in the state prison of any specification of three time periods, the
12 court shall sentence the defendant to one of the terms of
13 imprisonment specified unless the convicted person is given any
14 other disposition provided by law, including a fine, jail, probation,
15 or the suspension of imposition or execution of sentence or is
16 sentenced pursuant to subdivision (b) of Section 1168 because he
17 or she had committed his or her crime prior to July 1, 1977. In
18 sentencing the convicted person, the court shall apply the
19 sentencing rules of the Judicial Council. The court, unless it
20 determines that there are circumstances in mitigation of the
21 punishment prescribed, shall also impose any other term that it is
22 required by law to impose as an additional term. Nothing in this
23 article shall affect any provision of law that imposes the death
24 penalty, that authorizes or restricts the granting of probation or
25 suspending the execution or imposition of sentence, or expressly
26 provides for imprisonment in the state prison for life, except as
27 provided in paragraph (2) of subdivision (d). In any case in which
28 the amount of preimprisonment credit under Section 2900.5 or any
29 other provision of law is equal to or exceeds any sentence imposed
30 pursuant to this chapter, the entire sentence shall be deemed to
31 have been served and the defendant shall not be actually delivered
32 to the custody of the secretary. The court shall advise the defendant
33 that he or she shall serve a period of parole and order the defendant
34 to report to the parole office closest to the defendant's last legal
35 residence, unless the in-custody credits equal the total sentence,
36 including both confinement time and the period of parole. The
37 sentence shall be deemed a separate prior prison term under Section
38 667.5, and a copy of the judgment and other necessary
39 documentation shall be forwarded to the secretary.

1 (b) When a judgment of imprisonment is to be imposed and the
2 statute specifies three possible terms, the court shall order
3 imposition of the middle term, unless there are circumstances in
4 aggravation or mitigation of the crime. At least four days prior to
5 the time set for imposition of judgment, either party or the victim,
6 or the family of the victim if the victim is deceased, may submit
7 a statement in aggravation or mitigation to dispute facts in the
8 record or the probation officer's report, or to present additional
9 facts. In determining whether there are circumstances that justify
10 imposition of the upper or lower term, the court may consider the
11 record in the case, the probation officer's report, other reports,
12 including reports received pursuant to Section 1203.03, and
13 statements in aggravation or mitigation submitted by the
14 prosecution, the defendant, or the victim, or the family of the victim
15 if the victim is deceased, and any further evidence introduced at
16 the sentencing hearing. The court shall set forth on the record the
17 facts and reasons for imposing the upper or lower term. The court
18 may not impose an upper term by using the fact of any
19 enhancement upon which sentence is imposed under any provision
20 of law. A term of imprisonment shall not be specified if imposition
21 of sentence is suspended.

22 (c) The court shall state the reasons for its sentence choice on
23 the record at the time of sentencing. The court shall also inform
24 the defendant that as part of the sentence after expiration of the
25 term he or she may be on parole for a period as provided in Section
26 3000.

27 (d) (1) When a defendant subject to this section or subdivision
28 (b) of Section 1168 has been sentenced to be imprisoned in the
29 state prison and has been committed to the custody of the secretary,
30 the court may, within 120 days of the date of commitment on its
31 own motion, or at any time upon the recommendation of the
32 secretary or the Board of Parole Hearings, recall the sentence and
33 commitment previously ordered and resentence the defendant in
34 the same manner as if he or she had not previously been sentenced,
35 provided the new sentence, if any, is no greater than the initial
36 sentence. The court resentencing under this subdivision shall apply
37 the sentencing rules of the Judicial Council so as to eliminate
38 disparity of sentences and to promote uniformity of sentencing.
39 Credit shall be given for time served.

1 (2) (A) (i) When a defendant who was under 18 years of age
2 at the time of the commission of the offense for which the
3 defendant was sentenced to imprisonment for life without the
4 possibility of parole has served at least 15 years of that sentence,
5 the defendant may submit to the sentencing court a petition for
6 recall and resentencing.

7 (ii) Notwithstanding clause (i), this paragraph shall not apply
8 to defendants sentenced to life without parole for an offense where
9 the defendant tortured, as described in Section 206, his or her
10 victim or the victim was a public safety official, including any law
11 enforcement personnel mentioned in Chapter 4.5 (commencing
12 with Section 830) of Title 3, or any firefighter as described in
13 Section 245.1, as well as any other officer in any segment of law
14 enforcement who is employed by the federal government, the state,
15 or any of its political subdivisions.

16 (B) The defendant shall file the original petition with the
17 sentencing court. A copy of the petition shall be served on the
18 agency that prosecuted the case. The petition shall include the
19 defendant's statement that he or she was under 18 years of age at
20 the time of the crime and was sentenced to life in prison without
21 the possibility of parole, the defendant's statement describing his
22 or her remorse and work towards rehabilitation, and the defendant's
23 statement that one of the following is true:

24 (i) The defendant was convicted pursuant to felony murder or
25 aiding and abetting murder provisions of law.

26 (ii) The defendant does not have juvenile felony adjudications
27 for assault or other felony crimes with a significant potential for
28 personal harm to victims prior to the offense for which the sentence
29 is being considered for recall.

30 (iii) The defendant committed the offense with at least one adult
31 codefendant.

32 (iv) The defendant has performed acts that tend to indicate
33 rehabilitation or the potential for rehabilitation, including, but not
34 limited to, availing himself or herself of rehabilitative, educational,
35 or vocational programs, if those programs have been available at
36 his or her classification level and facility, using self-study for
37 self-improvement, or showing evidence of remorse.

38 (C) If any of the information required in subparagraph (B) is
39 missing from the petition, or if proof of service on the prosecuting
40 agency is not provided, the court shall return the petition to the

1 defendant and advise the defendant that the matter cannot be
2 considered without the missing information.

3 (D) A reply to the petition, if any, shall be filed with the court
4 within 60 days of the date on which the prosecuting agency was
5 served with the petition, unless a continuance is granted for good
6 cause.

7 (E) If the court finds by a preponderance of the evidence that
8 the statements in the petition are true, the court shall hold a hearing
9 to consider whether to recall the sentence and commitment
10 previously ordered and to resentence the defendant in the same
11 manner as if the defendant had not previously been sentenced,
12 provided that the new sentence, if any, is not greater than the initial
13 sentence. Victims, or victim family members if the victim is
14 deceased, shall retain the rights to participate in the hearing.

15 (F) The factors that the court may consider when determining
16 whether to recall and resentence include, but are not limited to,
17 the following:

18 (i) The defendant was convicted pursuant to felony murder or
19 aiding and abetting murder provisions of law.

20 (ii) The defendant does not have juvenile felony adjudications
21 for assault or other felony crimes with a significant potential for
22 personal harm to victims prior to the offense for which the sentence
23 is being considered for recall.

24 (iii) The defendant committed the offense with at least one adult
25 codefendant.

26 (iv) Prior to the offense for which the sentence is being
27 considered for recall, the defendant had insufficient adult support
28 or supervision and had suffered from psychological or physical
29 trauma, or significant stress.

30 (v) The defendant suffers from cognitive limitations due to
31 mental illness, developmental disabilities, or other factors that did
32 not constitute a defense, but influenced the defendant's
33 involvement in the offense.

34 (vi) The defendant has performed acts that tend to indicate
35 rehabilitation or the potential for rehabilitation, including, but not
36 limited to, availing himself or herself of rehabilitative, educational,
37 or vocational programs, if those programs have been available at
38 his or her classification level and facility, using self-study for
39 self-improvement, or showing evidence of remorse.

1 (vii) The defendant has maintained family ties or connections
2 with others through letter writing, calls, or visits, or has eliminated
3 contact with individuals outside of prison who are currently
4 involved with crime.

5 (viii) The defendant has had no disciplinary actions for violent
6 activities in the last five years in which the defendant was
7 determined to be the aggressor.

8 (G) The court shall have the discretion to recall the sentence
9 and commitment previously ordered and to resentence the
10 defendant in the same manner as if the defendant had not
11 previously been sentenced, provided that the new sentence, if any,
12 is not greater than the initial sentence. The discretion of the court
13 shall be exercised in consideration of the criteria in subparagraph
14 (B). Victims, or victim family members if the victim is deceased,
15 shall be notified of the resentencing hearing and shall retain their
16 rights to participate in the hearing.

17 (H) If the sentence is not recalled, the defendant may submit
18 another petition for recall and resentencing to the sentencing court
19 when the defendant has been committed to the custody of the
20 department for at least 20 years. If recall and resentencing is not
21 granted under that petition, the defendant may file another petition
22 after having served 24 years. The final petition may be submitted,
23 and the response to that petition shall be determined, during the
24 25th year of the defendant's sentence.

25 (I) In addition to the criteria in subparagraph (F), the court may
26 consider any other criteria that the court deems relevant to its
27 decision, so long as the court identifies them on the record,
28 provides a statement of reasons for adopting them, and states why
29 the defendant does or does not satisfy the criteria.

30 (J) This subdivision shall have retroactive application.

31 (e) (1) Notwithstanding any other law and consistent with
32 paragraph (1) of subdivision (a), if the secretary or the Board of
33 Parole Hearings or both determine that a prisoner satisfies the
34 criteria set forth in paragraph (2), the secretary or the board may
35 recommend to the court that the prisoner's sentence be recalled.

36 (2) The court shall have the discretion to resentence or recall if
37 the court finds that the facts described in subparagraphs (A) and
38 (B) or subparagraphs (B) and (C) exist:

39 (A) The prisoner is terminally ill with an incurable condition
40 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the
2 department.

3 (B) The conditions under which the prisoner would be released
4 or receive treatment do not pose a threat to public safety.

5 (C) The prisoner is permanently medically incapacitated with
6 a medical condition that renders him or her permanently unable
7 to perform activities of basic daily living, and results in the prisoner
8 requiring 24-hour total care, including, but not limited to, coma,
9 persistent vegetative state, brain death, ventilator-dependency, loss
10 of control of muscular or neurological function, and that
11 incapacitation did not exist at the time of the original sentencing.

12 The Board of Parole Hearings shall make findings pursuant to
13 this subdivision before making a recommendation for resentencing
14 or recall to the court. This subdivision does not apply to a prisoner
15 sentenced to death or a term of life without the possibility of parole.

16 (3) Within 10 days of receipt of a positive recommendation by
17 the secretary or the board, the court shall hold a hearing to consider
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines
20 that a prisoner has six months or less to live shall notify the chief
21 medical officer of the prognosis. If the chief medical officer
22 concurs with the prognosis, he or she shall notify the warden.
23 Within 48 hours of receiving notification, the warden or the
24 warden's representative shall notify the prisoner of the recall and
25 resentencing procedures, and shall arrange for the prisoner to
26 designate a family member or other outside agent to be notified
27 as to the prisoner's medical condition and prognosis, and as to the
28 recall and resentencing procedures. If the inmate is deemed
29 mentally unfit, the warden or the warden's representative shall
30 contact the inmate's emergency contact and provide the information
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the
33 prisoner and his or her family member, agent, or emergency
34 contact, as described in paragraph (4), updated information
35 throughout the recall and resentencing process with regard to the
36 prisoner's medical condition and the status of the prisoner's recall
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the
2 secretary. Upon receipt of the request, the chief medical officer
3 and the warden or the warden's representative shall follow the
4 procedures described in paragraph (4). If the secretary determines
5 that the prisoner satisfies the criteria set forth in paragraph (2), the
6 secretary or board may recommend to the court that the prisoner's
7 sentence be recalled. The secretary shall submit a recommendation
8 for release within 30 days in the case of inmates sentenced to
9 determinate terms and, in the case of inmates sentenced to
10 indeterminate terms, the secretary shall make a recommendation
11 to the Board of Parole Hearings with respect to the inmates who
12 have applied under this section. The board shall consider this
13 information and make an independent judgment pursuant to
14 paragraph (2) and make findings related thereto before rejecting
15 the request or making a recommendation to the court. This action
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by
18 the secretary or the Board of Parole Hearings shall include one or
19 more medical evaluations, a postrelease plan, and findings pursuant
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,
24 the prisoner shall be released by the department within 48 hours
25 of receipt of the court's order, unless a longer time period is agreed
26 to by the inmate. At the time of release, the warden or the warden's
27 representative shall ensure that the prisoner has each of the
28 following in his or her possession: a discharge medical summary,
29 full medical records, state identification, parole medications, and
30 all property belonging to the prisoner. After discharge, any
31 additional records shall be sent to the prisoner's forwarding
32 address.

33 (10) The secretary shall issue a directive to medical and
34 correctional staff employed by the department that details the
35 guidelines and procedures for initiating a recall and resentencing
36 procedure. The directive shall clearly state that any prisoner who
37 is given a prognosis of six months or less to live is eligible for
38 recall and resentencing consideration, and that recall and
39 resentencing procedures shall be initiated upon that prognosis.

1 (f) Notwithstanding any other provision of this section, for
2 purposes of paragraph (3) of subdivision (h), any allegation that
3 a defendant is eligible for state prison due to a prior or current
4 conviction, sentence enhancement, or because he or she is required
5 to register as a sex offender shall not be subject to dismissal
6 pursuant to Section 1385.

7 (g) A sentence to state prison for a determinate term for which
8 only one term is specified, is a sentence to state prison under this
9 section.

10 (h) (1) Except as provided in paragraph (3), a felony punishable
11 pursuant to this subdivision where the term is not specified in the
12 underlying offense shall be punishable by a term of imprisonment
13 in a county jail for 16 months, or two or three years.

14 (2) Except as provided in paragraph (3), a felony punishable
15 pursuant to this subdivision shall be punishable by imprisonment
16 in a county jail for the term described in the underlying offense.

17 (3) Notwithstanding paragraphs (1) and (2), where the defendant
18 (A) has a prior or current felony conviction for a serious felony
19 described in subdivision (c) of Section 1192.7 or a prior or current
20 conviction for a violent felony described in subdivision (c) of
21 Section 667.5, (B) has a prior felony conviction in another
22 jurisdiction for an offense that has all the elements of a serious
23 felony described in subdivision (c) of Section 1192.7 or a violent
24 felony described in subdivision (c) of Section 667.5, (C) is required
25 to register as a sex offender pursuant to Chapter 5.5 (commencing
26 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
27 and as part of the sentence an enhancement pursuant to Section
28 186.11 is imposed, an executed sentence for a felony punishable
29 pursuant to this subdivision shall be served in state prison.

30 (4) This subdivision does not prevent other dispositions
31 authorized by law, including pretrial diversion, deferred entry of
32 judgment, or an order granting probation pursuant to Section
33 1203.1.

34 (5) The court, when imposing a sentence pursuant to paragraph
35 (1) or (2) of this subdivision, may commit the defendant to county
36 jail as follows:

37 (A) For a full term in custody as determined in accordance with
38 the applicable sentencing law.

39 (B) (i) For a term as determined in accordance with the
40 applicable sentencing law, but suspend execution of a concluding

1 portion of the term selected in the court’s discretion, during which
2 time the defendant shall be supervised by the county probation
3 officer in accordance with the terms, conditions, and procedures
4 generally applicable to persons placed on probation, for the
5 remaining unserved portion of the sentence imposed by the court.
6 The period of supervision shall be mandatory, and may not be
7 earlier terminated except by court order. Any proceeding to revoke
8 or modify mandatory supervision under this subparagraph shall
9 be conducted pursuant to either subdivisions (a) and (b) of Section
10 1203.2 or Section 1203.3. During the period when the defendant
11 is under such supervision, unless in actual custody related to the
12 sentence imposed by the court, the defendant shall be entitled to
13 only actual time credit against the term of imprisonment imposed
14 by the court. Any time period that is suspended because a person
15 has absconded shall not be credited toward the period of
16 supervision.

17 (ii) The portion of a defendant’s sentenced term during which
18 time he or she is supervised by the county probation officer
19 pursuant to this subparagraph shall be known as mandatory
20 supervision.

21 (6) The sentencing changes made by the act that added this
22 subdivision shall be applied prospectively to any person sentenced
23 on or after October 1, 2011.

24 (i) This section shall become operative on January 1, 2014.

25 SEC. 153. Section 1203.097 of the Penal Code is amended to
26 read:

27 1203.097. (a) If a person is granted probation for a crime in
28 which the victim is a person defined in Section 6211 of the Family
29 Code, the terms of probation shall include all of the following:

30 (1) A minimum period of probation of 36 months, which may
31 include a period of summary probation as appropriate.

32 (2) A criminal court protective order protecting the victim from
33 further acts of violence, threats, stalking, sexual abuse, and
34 harassment, and, if appropriate, containing residence exclusion or
35 stay-away conditions.

36 (3) Notice to the victim of the disposition of the case.

37 (4) Booking the defendant within one week of sentencing if the
38 defendant has not already been booked.

39 (5) (A) A minimum payment by the defendant of five hundred
40 dollars (\$500) to be disbursed as specified in this paragraph. If,

1 after a hearing in open court, the court finds that the defendant
2 does not have the ability to pay, the court may reduce or waive
3 this fee. If the court exercises its discretion to reduce or waive the
4 fee, it shall state the reason on the record.

5 (B) Two-thirds of the moneys deposited with the county
6 treasurer pursuant to this section shall be retained by counties and
7 deposited in the domestic violence programs special fund created
8 pursuant to Section 18305 of the Welfare and Institutions Code,
9 to be expended for the purposes of Chapter 5 (commencing with
10 Section 18290) of Part 6 of Division 9 of the Welfare and
11 Institutions Code. The remainder shall be transferred, once a month,
12 to the Controller for deposit in equal amounts in the Domestic
13 Violence Restraining Order Reimbursement Fund and in the
14 Domestic Violence Training and Education Fund, which are hereby
15 created, in an amount equal to one-third of funds collected during
16 the preceding month. Moneys deposited into these funds pursuant
17 to this section shall be available upon appropriation by the
18 Legislature and shall be distributed each fiscal year as follows:

19 (i) Funds from the Domestic Violence Restraining Order
20 Reimbursement Fund shall be distributed to local law enforcement
21 or other criminal justice agencies for state-mandated local costs
22 resulting from the notification requirements set forth in subdivision
23 (b) of Section 6380 of the Family Code, based on the annual
24 notification from the Department of Justice of the number of
25 restraining orders issued and registered in the state domestic
26 violence restraining order registry maintained by the Department
27 of Justice, for the development and maintenance of the domestic
28 violence restraining order databank system.

29 (ii) Funds from the Domestic Violence Training and Education
30 Fund shall support a statewide training and education program to
31 increase public awareness of domestic violence and to improve
32 the scope and quality of services provided to the victims of
33 domestic violence. Grants to support this program shall be awarded
34 on a competitive basis and be administered by the State Department
35 of Public Health, in consultation with the statewide domestic
36 violence coalition, which is eligible to receive funding under this
37 section.

38 (6) Successful completion of a batterer's program, as defined
39 in subdivision (c), or if none is available, another appropriate
40 counseling program designated by the court, for a period not less

1 than one year with periodic progress reports by the program to the
2 court every three months or less and weekly sessions of a minimum
3 of two hours class time duration. The defendant shall attend
4 consecutive weekly sessions, unless granted an excused absence
5 for good cause by the program for no more than three individual
6 sessions during the entire program, and shall complete the program
7 within 18 months, unless, after a hearing, the court finds good
8 cause to modify the requirements of consecutive attendance or
9 completion within 18 months.

10 (7) (A) (i) The court shall order the defendant to comply with
11 all probation requirements, including the requirements to attend
12 counseling, keep all program appointments, and pay program fees
13 based upon the ability to pay.

14 (ii) The terms of probation for offenders shall not be lifted until
15 all reasonable fees due to the counseling program have been paid
16 in full, but in no case shall probation be extended beyond the term
17 provided in subdivision (a) of Section 1203.1. If the court finds
18 that the defendant does not have the ability to pay the fees based
19 on the defendant's changed circumstances, the court may reduce
20 or waive the fees.

21 (B) Upon request by the batterer's program, the court shall
22 provide the defendant's arrest report, prior incidents of violence,
23 and treatment history to the program.

24 (8) The court also shall order the defendant to perform a
25 specified amount of appropriate community service, as designated
26 by the court. The defendant shall present the court with proof of
27 completion of community service and the court shall determine if
28 the community service has been satisfactorily completed. If
29 sufficient staff and resources are available, the community service
30 shall be performed under the jurisdiction of the local agency
31 overseeing a community service program.

32 (9) If the program finds that the defendant is unsuitable, the
33 program shall immediately contact the probation department or
34 the court. The probation department or court shall either recalendar
35 the case for hearing or refer the defendant to an appropriate
36 alternative batterer's program.

37 (10) (A) Upon recommendation of the program, a court shall
38 require a defendant to participate in additional sessions throughout
39 the probationary period, unless it finds that it is not in the interests
40 of justice to do so, states its reasons on the record, and enters them

1 into the minutes. In deciding whether the defendant would benefit
2 from more sessions, the court shall consider whether any of the
3 following conditions exists:

4 (i) The defendant has been violence free for a minimum of six
5 months.

6 (ii) The defendant has cooperated and participated in the
7 batterer's program.

8 (iii) The defendant demonstrates an understanding of and
9 practices positive conflict resolution skills.

10 (iv) The defendant blames, degrades, or has committed acts that
11 dehumanize the victim or puts at risk the victim's safety, including,
12 but not limited to, molesting, stalking, striking, attacking,
13 threatening, sexually assaulting, or battering the victim.

14 (v) The defendant demonstrates an understanding that the use
15 of coercion or violent behavior to maintain dominance is
16 unacceptable in an intimate relationship.

17 (vi) The defendant has made threats to harm anyone in any
18 manner.

19 (vii) The defendant has complied with applicable requirements
20 under paragraph (6) of subdivision (c) or subparagraph (C) to
21 receive alcohol counseling, drug counseling, or both.

22 (viii) The defendant demonstrates acceptance of responsibility
23 for the abusive behavior perpetrated against the victim.

24 (B) The program shall immediately report any violation of the
25 terms of the protective order, including any new acts of violence
26 or failure to comply with the program requirements, to the court,
27 the prosecutor, and, if formal probation has been ordered, to the
28 probation department. The probationer shall file proof of
29 enrollment in a batterer's program with the court within 30 days
30 of conviction.

31 (C) Concurrent with other requirements under this section, in
32 addition to, and not in lieu of, the batterer's program, and unless
33 prohibited by the referring court, the probation department or the
34 court may make provisions for a defendant to use his or her
35 resources to enroll in a chemical dependency program or to enter
36 voluntarily a licensed chemical dependency recovery hospital or
37 residential treatment program that has a valid license issued by the
38 state to provide alcohol or drug services to receive program
39 participation credit, as determined by the court. The probation

1 department shall document evidence of this hospital or residential
2 treatment participation in the defendant's program file.

3 (11) The conditions of probation may include, in lieu of a fine,
4 but not in lieu of the fund payment required under paragraph (5),
5 one or more of the following requirements:

6 (A) That the defendant make payments to a battered women's
7 shelter, up to a maximum of five thousand dollars (\$5,000).

8 (B) That the defendant reimburse the victim for reasonable
9 expenses that the court finds are the direct result of the defendant's
10 offense.

11 For any order to pay a fine, to make payments to a battered
12 women's shelter, or to pay restitution as a condition of probation
13 under this subdivision, the court shall make a determination of the
14 defendant's ability to pay. Determination of a defendant's ability
15 to pay may include his or her future earning capacity. A defendant
16 shall bear the burden of demonstrating lack of his or her ability to
17 pay. Express findings by the court as to the factors bearing on the
18 amount of the fine shall not be required. In no event shall any order
19 to make payments to a battered women's shelter be made if it
20 would impair the ability of the defendant to pay direct restitution
21 to the victim or court-ordered child support. When the injury to a
22 married person is caused, in whole or in part, by the criminal acts
23 of his or her spouse in violation of this section, the community
24 property shall not be used to discharge the liability of the offending
25 spouse for restitution to the injured spouse, as required by Section
26 1203.04, as operative on or before August 2, 1995, or Section
27 1202.4, or to a shelter for costs with regard to the injured spouse,
28 until all separate property of the offending spouse is exhausted.

29 (12) If it appears to the prosecuting attorney, the court, or the
30 probation department that the defendant is performing
31 unsatisfactorily in the assigned program, is not benefiting from
32 counseling, or has engaged in criminal conduct, upon request of
33 the probation officer, the prosecuting attorney, or on its own
34 motion, the court, as a priority calendar item, shall hold a hearing
35 to determine whether further sentencing should proceed. The court
36 may consider factors, including, but not limited to, any violence
37 by the defendant against the former or a new victim while on
38 probation and noncompliance with any other specific condition of
39 probation. If the court finds that the defendant is not performing
40 satisfactorily in the assigned program, is not benefiting from the

1 program, has not complied with a condition of probation, or has
2 engaged in criminal conduct, the court shall terminate the
3 defendant's participation in the program and shall proceed with
4 further sentencing.

5 (b) If a person is granted formal probation for a crime in which
6 the victim is a person defined in Section 6211 of the Family Code,
7 in addition to the terms specified in subdivision (a), all of the
8 following shall apply:

9 (1) The probation department shall make an investigation and
10 take into consideration the defendant's age, medical history,
11 employment and service records, educational background,
12 community and family ties, prior incidents of violence, police
13 report, treatment history, if any, demonstrable motivation, and
14 other mitigating factors in determining which batterer's program
15 would be appropriate for the defendant. This information shall be
16 provided to the batterer's program if it is requested. The probation
17 department shall also determine which community programs the
18 defendant would benefit from and which of those programs would
19 accept the defendant. The probation department shall report its
20 findings and recommendations to the court.

21 (2) The court shall advise the defendant that the failure to report
22 to the probation department for the initial investigation, as directed
23 by the court, or the failure to enroll in a specified program, as
24 directed by the court or the probation department, shall result in
25 possible further incarceration. The court, in the interests of justice,
26 may relieve the defendant from the prohibition set forth in this
27 subdivision based upon the defendant's mistake or excusable
28 neglect. Application for this relief shall be filed within 20 court
29 days of the missed deadline. This time limitation may not be
30 extended. A copy of any application for relief shall be served on
31 the office of the prosecuting attorney.

32 (3) After the court orders the defendant to a batterer's program,
33 the probation department shall conduct an initial assessment of
34 the defendant, including, but not limited to, all of the following:

- 35 (A) Social, economic, and family background.
- 36 (B) Education.
- 37 (C) Vocational achievements.
- 38 (D) Criminal history.
- 39 (E) Medical history.
- 40 (F) Substance abuse history.

1 (G) Consultation with the probation officer.

2 (H) Verbal consultation with the victim, only if the victim
3 desires to participate.

4 (I) Assessment of the future probability of the defendant
5 committing murder.

6 (4) The probation department shall attempt to notify the victim
7 regarding the requirements for the defendant's participation in the
8 batterer's program, as well as regarding available victim resources.
9 The victim also shall be informed that attendance in any program
10 does not guarantee that an abuser will not be violent.

11 (c) The court or the probation department shall refer defendants
12 only to batterer's programs that follow standards outlined in
13 paragraph (1), which may include, but are not limited to, lectures,
14 classes, group discussions, and counseling. The probation
15 department shall design and implement an approval and renewal
16 process for batterer's programs and shall solicit input from criminal
17 justice agencies and domestic violence victim advocacy programs.

18 (1) The goal of a batterer's program under this section shall be
19 to stop domestic violence. A batterer's program shall consist of
20 the following components:

21 (A) Strategies to hold the defendant accountable for the violence
22 in a relationship, including, but not limited to, providing the
23 defendant with a written statement that the defendant shall be held
24 accountable for acts or threats of domestic violence.

25 (B) A requirement that the defendant participate in ongoing
26 same-gender group sessions.

27 (C) An initial intake that provides written definitions to the
28 defendant of physical, emotional, sexual, economic, and verbal
29 abuse, and the techniques for stopping these types of abuse.

30 (D) Procedures to inform the victim regarding the requirements
31 for the defendant's participation in the intervention program as
32 well as regarding available victim resources. The victim also shall
33 be informed that attendance in any program does not guarantee
34 that an abuser will not be violent.

35 (E) A requirement that the defendant attend group sessions free
36 of chemical influence.

37 (F) Educational programming that examines, at a minimum,
38 gender roles, socialization, the nature of violence, the dynamics
39 of power and control, and the effects of abuse on children and
40 others.

1 (G) A requirement that excludes any couple counseling or family
2 counseling, or both.

3 (H) Procedures that give the program the right to assess whether
4 or not the defendant would benefit from the program and to refuse
5 to enroll the defendant if it is determined that the defendant would
6 not benefit from the program, so long as the refusal is not because
7 of the defendant's inability to pay. If possible, the program shall
8 suggest an appropriate alternative program.

9 (I) Program staff who, to the extent possible, have specific
10 knowledge regarding, but not limited to, spousal abuse, child abuse,
11 sexual abuse, substance abuse, the dynamics of violence and abuse,
12 the law, and procedures of the legal system.

13 (J) Program staff who are encouraged to utilize the expertise,
14 training, and assistance of local domestic violence centers.

15 (K) A requirement that the defendant enter into a written
16 agreement with the program, which shall include an outline of the
17 contents of the program, the attendance requirements, the
18 requirement to attend group sessions free of chemical influence,
19 and a statement that the defendant may be removed from the
20 program if it is determined that the defendant is not benefiting
21 from the program or is disruptive to the program.

22 (L) A requirement that the defendant sign a confidentiality
23 statement prohibiting disclosure of any information obtained
24 through participating in the program or during group sessions
25 regarding other participants in the program.

26 (M) Program content that provides cultural and ethnic
27 sensitivity.

28 (N) A requirement of a written referral from the court or
29 probation department prior to permitting the defendant to enroll
30 in the program. The written referral shall state the number of
31 minimum sessions required by the court.

32 (O) Procedures for submitting to the probation department all
33 of the following uniform written responses:

34 (i) Proof of enrollment, to be submitted to the court and the
35 probation department and to include the fee determined to be
36 charged to the defendant, based upon the ability to pay, for each
37 session.

38 (ii) Periodic progress reports that include attendance, fee
39 payment history, and program compliance.

1 (iii) Final evaluation that includes the program's evaluation of
2 the defendant's progress, using the criteria set forth in subparagraph
3 (A) of paragraph (10) of subdivision (a) and recommendation for
4 either successful or unsuccessful termination or continuation in
5 the program.

6 (P) A sliding fee schedule based on the defendant's ability to
7 pay. The batterer's program shall develop and utilize a sliding fee
8 scale that recognizes both the defendant's ability to pay and the
9 necessity of programs to meet overhead expenses. An indigent
10 defendant may negotiate a deferred payment schedule, but shall
11 pay a nominal fee, if the defendant has the ability to pay the
12 nominal fee. Upon a hearing and a finding by the court that the
13 defendant does not have the financial ability to pay the nominal
14 fee, the court shall waive this fee. The payment of the fee shall be
15 made a condition of probation if the court determines the defendant
16 has the present ability to pay the fee. The fee shall be paid during
17 the term of probation unless the program sets other conditions.
18 The acceptance policies shall be in accordance with the scaled fee
19 system.

20 (2) The court shall refer persons only to batterer's programs
21 that have been approved by the probation department pursuant to
22 paragraph (5). The probation department shall do both of the
23 following:

24 (A) Provide for the issuance of a provisional approval, provided
25 that the applicant is in substantial compliance with applicable laws
26 and regulations and an urgent need for approval exists. A
27 provisional approval shall be considered an authorization to provide
28 services and shall not be considered a vested right.

29 (B) If the probation department determines that a program is
30 not in compliance with standards set by the department, the
31 department shall provide written notice of the noncompliant areas
32 to the program. The program shall submit a written plan of
33 corrections within 14 days from the date of the written notice on
34 noncompliance. A plan of correction shall include, but not be
35 limited to, a description of each corrective action and timeframe
36 for implementation. The department shall review and approve all
37 or any part of the plan of correction and notify the program of
38 approval or disapproval in writing. If the program fails to submit
39 a plan of correction or fails to implement the approved plan of
40 correction, the department shall consider whether to revoke or

1 suspend approval and, upon revoking or suspending approval, shall
2 have the option to cease referrals of defendants under this section.

3 (3) No program, regardless of its source of funding, shall be
4 approved unless it meets all of the following standards:

5 (A) The establishment of guidelines and criteria for education
6 services, including standards of services that may include lectures,
7 classes, and group discussions.

8 (B) Supervision of the defendant for the purpose of evaluating
9 the person's progress in the program.

10 (C) Adequate reporting requirements to ensure that all persons
11 who, after being ordered to attend and complete a program, may
12 be identified for either failure to enroll in, or failure to successfully
13 complete, the program or for the successful completion of the
14 program as ordered. The program shall notify the court and the
15 probation department, in writing, within the period of time and in
16 the manner specified by the court of any person who fails to
17 complete the program. Notification shall be given if the program
18 determines that the defendant is performing unsatisfactorily or if
19 the defendant is not benefiting from the education, treatment, or
20 counseling.

21 (D) No victim shall be compelled to participate in a program
22 or counseling, and no program may condition a defendant's
23 enrollment on participation by the victim.

24 (4) In making referrals of indigent defendants to approved
25 batterer's programs, the probation department shall apportion these
26 referrals evenly among the approved programs.

27 (5) The probation department shall have the sole authority to
28 approve a batterer's program for probation. The program shall be
29 required to obtain only one approval but shall renew that approval
30 annually.

31 (A) The procedure for the approval of a new or existing program
32 shall include all of the following:

33 (i) The completion of a written application containing necessary
34 and pertinent information describing the applicant program.

35 (ii) The demonstration by the program that it possesses adequate
36 administrative and operational capability to operate a batterer's
37 treatment program. The program shall provide documentation to
38 prove that the program has conducted batterer's programs for at
39 least one year prior to application. This requirement may be waived

1 under subparagraph (A) of paragraph (2) if there is no existing
2 batterer’s program in the city, county, or city and county.

3 (iii) The onsite review of the program, including monitoring of
4 a session to determine that the program adheres to applicable
5 statutes and regulations.

6 (iv) The payment of the approval fee.

7 (B) The probation department shall fix a fee for approval not
8 to exceed two hundred fifty dollars (\$250) and for approval renewal
9 not to exceed two hundred fifty dollars (\$250) every year in an
10 amount sufficient to cover its costs in administering the approval
11 process under this section. No fee shall be charged for the approval
12 of local governmental entities.

13 (C) The probation department has the sole authority to approve
14 the issuance, denial, suspension, or revocation of approval and to
15 cease new enrollments or referrals to a batterer’s program under
16 this section. The probation department shall review information
17 relative to a program’s performance or failure to adhere to
18 standards, or both. The probation department may suspend or
19 revoke an approval issued under this subdivision or deny an
20 application to renew an approval or to modify the terms and
21 conditions of approval, based on grounds established by probation,
22 including, but not limited to, either of the following:

23 (i) Violation of this section by any person holding approval or
24 by a program employee in a program under this section.

25 (ii) Misrepresentation of any material fact in obtaining the
26 approval.

27 (6) For defendants who are chronic users or serious abusers of
28 drugs or alcohol, standard components in the program shall include
29 concurrent counseling for substance abuse and violent behavior,
30 and in appropriate cases, detoxification and abstinence from the
31 abused substance.

32 (7) The program shall conduct an exit conference that assesses
33 the defendant’s progress during his or her participation in the
34 batterer’s program.

35 (d) An act or omission relating to the approval of a batterer’s
36 treatment program under paragraph (5) of subdivision (c) is a
37 discretionary act pursuant to Section 820.2 of the Government
38 Code.

39 *SEC. 153.5. Section 1203.4a of the Penal Code is amended to*
40 *read:*

1 1203.4a. (a) Every defendant convicted of a misdemeanor and
2 not granted probation, and every defendant convicted of an
3 infraction shall, at any time after the lapse of one year from the
4 date of pronouncement of judgment, if he or she has fully complied
5 with and performed the sentence of the court, is not then serving
6 a sentence for any offense and is not under charge of commission
7 of any crime, and has, since the pronouncement of judgment, lived
8 an honest and upright life and has conformed to and obeyed the
9 laws of the land, be permitted by the court to withdraw his or her
10 plea of guilty or nolo contendere and enter a plea of not guilty; or
11 if he or she has been convicted after a plea of not guilty, the court
12 shall set aside the verdict of guilty; and in either case the court
13 shall thereupon dismiss the accusatory pleading against the
14 defendant, who shall thereafter be released from all penalties and
15 disabilities resulting from the offense of which he or she has been
16 convicted, except as provided in ~~Section 12021.1~~ *Chapter 3*
17 *(commencing with Section 29900) of Division 9 of Title 4 of Part*
18 *6 of this code or Section 13555 of the Vehicle Code.*

19 (b) If a defendant does not satisfy all the requirements of
20 subdivision (a), after a lapse of one year from the date of
21 pronouncement of judgment, a court, in its discretion and in the
22 interests of justice, may grant the relief available pursuant to
23 subdivision (a) to a defendant convicted of an infraction, or of a
24 misdemeanor and not granted probation, or both, if he or she has
25 fully complied with and performed the sentence of the court, is
26 not then serving a sentence for any offense, and is not under charge
27 of commission of any crime.

28 (c) (1) The defendant shall be informed of the provisions of
29 this section, either orally or in writing, at the time he or she is
30 sentenced. The defendant may make an application and change of
31 plea in person or by attorney, or by the probation officer authorized
32 in writing, provided that, in any subsequent prosecution of the
33 defendant for any other offense, the prior conviction may be
34 pleaded and proved and shall have the same effect as if relief had
35 not been granted pursuant to this section.

36 (2) Dismissal of an accusatory pleading pursuant to this section
37 does not permit a person to own, possess, or have in his or her
38 custody or control any firearm or prevent his or her conviction
39 under Chapter 2 (commencing with Section 29800) of Division 9
40 of Title 4 of Part 6.

1 (3) Dismissal of an accusatory pleading underlying a conviction
2 pursuant to this section does not permit a person prohibited from
3 holding public office as a result of that conviction to hold public
4 office.

5 (d) This section applies to any conviction specified in
6 subdivision (a) or (b) that occurred before, as well as those
7 occurring after, the effective date of this section, except that this
8 section does not apply to the following:

9 (1) A misdemeanor violation of subdivision (c) of Section 288.

10 (2) Any misdemeanor falling within the provisions of Section
11 42002.1 of the Vehicle Code.

12 (3) Any infraction falling within the provisions of Section 42001
13 of the Vehicle Code.

14 (e) A person who petitions for a dismissal of a charge under
15 this section may be required to reimburse the county and the court
16 for the cost of services rendered at a rate to be determined by the
17 county board of supervisors for the county and by the court for the
18 court, not to exceed sixty dollars (\$60), and to reimburse any city
19 for the cost of services rendered at a rate to be determined by the
20 city council not to exceed sixty dollars (\$60). Ability to make this
21 reimbursement shall be determined by the court using the standards
22 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
23 shall not be a prerequisite to a person's eligibility under this
24 section. The court may order reimbursement in any case in which
25 the petitioner appears to have the ability to pay, without undue
26 hardship, all or any portion of the cost for services established
27 pursuant to this subdivision.

28 (f) A petition for dismissal of an infraction pursuant to this
29 section shall be by written declaration, except upon a showing of
30 compelling need. Dismissal of an infraction shall not be granted
31 under this section unless the prosecuting attorney has been given
32 at least 15 days' notice of the petition for dismissal. It shall be
33 presumed that the prosecuting attorney has received notice if proof
34 of service is filed with the court.

35 (g) Any determination of amount made by a court under this
36 section shall be valid only if either (1) made under procedures
37 adopted by the Judicial Council or (2) approved by the Judicial
38 Council.

39 SEC. 154. Section 1230 of the Penal Code is amended to read:

1 1230. (a) Each county is hereby authorized to establish in each
2 county treasury a Community Corrections Performance Incentives
3 Fund (CCPIF), to receive all amounts allocated to that county for
4 purposes of implementing this chapter.

5 (b) In any fiscal year for which a county receives moneys to be
6 expended for the implementation of this chapter, the moneys,
7 including any interest, shall be made available to the CPO of that
8 county, within 30 days of the deposit of those moneys into the
9 fund, for the implementation of the community corrections program
10 authorized by this chapter.

11 (1) The community corrections program shall be developed and
12 implemented by probation and advised by a local Community
13 Corrections Partnership.

14 (2) The local Community Corrections Partnership shall be
15 chaired by the CPO and comprised of the following membership:

16 (A) The presiding judge of the superior court, or his or her
17 designee.

18 (B) A county supervisor or the chief administrative officer for
19 the county or a designee of the board of supervisors.

20 (C) The district attorney.

21 (D) The public defender.

22 (E) The sheriff.

23 (F) A chief of police.

24 (G) The head of the county department of social services.

25 (H) The head of the county department of mental health.

26 (I) The head of the county department of employment.

27 (J) The head of the county alcohol and substance abuse program.

28 (K) The head of the county office of education.

29 (L) A representative from a community-based organization with
30 experience in successfully providing rehabilitative services to
31 persons who have been convicted of a criminal offense.

32 (M) An individual who represents the interests of victims.

33 (3) Funds allocated to probation pursuant to this act shall be
34 used to provide supervision and rehabilitative services for adult
35 felony offenders subject to probation, and shall be spent on
36 evidence-based community corrections practices and programs,
37 as defined in subdivision (d) of Section 1229, which may include,
38 but are not limited to, the following:

39 (A) Implementing and expanding evidence-based risk and needs
40 assessments.

1 (B) Implementing and expanding intermediate sanctions that
2 include, but are not limited to, electronic monitoring, mandatory
3 community service, home detention, day reporting, restorative
4 justice programs, work furlough programs, and incarceration in a
5 county jail for up to 90 days.

6 (C) Providing more intensive probation supervision.

7 (D) Expanding the availability of evidence-based rehabilitation
8 programs, including, but not limited to, drug and alcohol treatment,
9 mental health treatment, anger management, cognitive behavior
10 programs, and job training and employment services.

11 (E) Evaluating the effectiveness of rehabilitation and supervision
12 programs and ensuring program fidelity.

13 (4) The CPO shall have discretion to spend funds on any of the
14 above practices and programs consistent with this act but, at a
15 minimum, shall devote at least 5 percent of all funding received
16 to evaluate the effectiveness of those programs and practices
17 implemented with the funds provided pursuant to this chapter. A
18 CPO may petition the Administrative Office of the Courts to have
19 this restriction waived, and the Administrative Office of the Courts
20 shall have the authority to grant such a petition, if the CPO can
21 demonstrate that the department is already devoting sufficient
22 funds to the evaluation of these programs and practices.

23 (5) Each probation department receiving funds under this chapter
24 shall maintain a complete and accurate accounting of all funds
25 received pursuant to this chapter.

26 SEC. 155. The heading of Title 4.5 (commencing with Section
27 13600) of Part 4 of the Penal Code, as amended by Section 7 of
28 Chapter 136 of the Statutes of 2011, is repealed.

29 SEC. 156. Section 1370.1 of the Penal Code is amended to
30 read:

31 1370.1. (a) (1) (A) If the defendant is found mentally
32 competent, the criminal process shall resume, the trial on the
33 offense charged shall proceed, and judgment may be pronounced.

34 (B) If the defendant is found mentally incompetent and is
35 developmentally disabled, the trial or judgment shall be suspended
36 until the defendant becomes mentally competent.

37 (i) Except as provided in clause (ii) or (iii), the court shall
38 consider a recommendation for placement, which recommendation
39 shall be made to the court by the director of a regional center or
40 designee. In the meantime, the court shall order that the mentally

1 incompetent defendant be delivered by the sheriff or other person
2 designated by the court to a state hospital or developmental center
3 for the care and treatment of the developmentally disabled or any
4 other available residential facility approved by the director of a
5 regional center for the developmentally disabled established under
6 Division 4.5 (commencing with Section 4500) of the Welfare and
7 Institutions Code as will promote the defendant's speedy attainment
8 of mental competence, or be placed on outpatient status pursuant
9 to the provisions of Section 1370.4 and Title 15 (commencing with
10 Section 1600).

11 (ii) However, if the action against the defendant who has been
12 found mentally incompetent is on a complaint charging a felony
13 offense specified in Section 290, the prosecutor shall determine
14 whether the defendant previously has been found mentally
15 incompetent to stand trial pursuant to this chapter on a charge of
16 a Section 290 offense, or whether the defendant is currently the
17 subject of a pending Section 1368 proceeding arising out of a
18 charge of a Section 290 offense. If either determination is made,
19 the prosecutor shall so notify the court and defendant in writing.
20 After this notification, and opportunity for hearing, the court shall
21 order that the defendant be delivered by the sheriff to a state
22 hospital or other secure treatment facility for the care and treatment
23 of the developmentally disabled unless the court makes specific
24 findings on the record that an alternative placement would provide
25 more appropriate treatment for the defendant and would not pose
26 a danger to the health and safety of others.

27 (iii) If the action against the defendant who has been found
28 mentally incompetent is on a complaint charging a felony offense
29 specified in Section 290 and the defendant has been denied bail
30 pursuant to subdivision (b) of Section 12 of Article I of the
31 California Constitution because the court has found, based upon
32 clear and convincing evidence, a substantial likelihood that the
33 person's release would result in great bodily harm to others, the
34 court shall order that the defendant be delivered by the sheriff to
35 a state hospital for the care and treatment of the developmentally
36 disabled unless the court makes specific findings on the record
37 that an alternative placement would provide more appropriate
38 treatment for the defendant and would not pose a danger to the
39 health and safety of others.

1 (iv) The clerk of the court shall notify the Department of Justice
2 in writing of any finding of mental incompetence with respect to
3 a defendant who is subject to clause (ii) or (iii) for inclusion in his
4 or her state summary criminal history information.

5 (C) Upon becoming competent, the court shall order that the
6 defendant be returned to the committing court pursuant to the
7 procedures set forth in paragraph (2) of subdivision (a) of Section
8 1372 or by another person designated by the court. The court shall
9 further determine conditions under which the person may be absent
10 from the placement for medical treatment, social visits, and other
11 similar activities. Required levels of supervision and security for
12 these activities shall be specified.

13 (D) The court shall transmit a copy of its order to the regional
14 center director or designee and to the Director of Developmental
15 Services.

16 (E) A defendant charged with a violent felony may not be placed
17 in a facility or delivered to a state hospital, developmental center,
18 or residential facility pursuant to this subdivision unless the facility,
19 state hospital, developmental center, or residential facility has a
20 secured perimeter or a locked and controlled treatment facility,
21 and the judge determines that the public safety will be protected.

22 (F) For purposes of this paragraph, “violent felony” means an
23 offense specified in subdivision (c) of Section 667.5.

24 (G) A defendant charged with a violent felony may be placed
25 on outpatient status, as specified in Section 1370.4 or 1600, only
26 if the court finds that the placement will not pose a danger to the
27 health or safety of others.

28 (H) As used in this section, “developmental disability” means
29 a disability that originates before an individual attains 18 years of
30 age, continues, or can be expected to continue, indefinitely and
31 constitutes a substantial handicap for the individual, and shall not
32 include other handicapping conditions that are solely physical in
33 nature. As defined by the Director of Developmental Services, in
34 consultation with the Superintendent of Public Instruction, this
35 term shall include intellectual disability, cerebral palsy, epilepsy,
36 and autism. This term shall also include handicapping conditions
37 found to be closely related to intellectual disability or to require
38 treatment similar to that required for individuals with an intellectual
39 disability, but shall not include other handicapping conditions that
40 are solely physical in nature.

1 (2) Prior to making the order directing that the defendant be
2 confined in a state hospital, developmental center, or other
3 residential facility, or be placed on outpatient status, the court shall
4 order the regional center director or designee to evaluate the
5 defendant and to submit to the court within 15 judicial days of the
6 order a written recommendation as to whether the defendant should
7 be committed to a state hospital or developmental center or to any
8 other available residential facility approved by the regional center
9 director. A person shall not be admitted to a state hospital,
10 developmental center, or other residential facility or accepted for
11 outpatient status under Section 1370.4 without having been
12 evaluated by the regional center director or designee.

13 (3) When the court orders that the defendant be confined in a
14 state hospital or other secure treatment facility pursuant to clause
15 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall
16 provide copies of the following documents which shall be taken
17 with the defendant to the state hospital or other secure treatment
18 facility where the defendant is to be confined:

19 (A) State summary criminal history information.

20 (B) Any arrest reports prepared by the police department or
21 other law enforcement agency.

22 (C) Records of a finding of mental incompetence pursuant to
23 this chapter arising out of a complaint charging a felony offense
24 specified in Section 290 or a pending Section 1368 proceeding
25 arising out of a charge of a Section 290 offense.

26 (4) When the defendant is committed to a residential facility
27 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
28 court makes the findings specified in clause (ii) or (iii) of
29 subparagraph (B) of paragraph (1) to assign the defendant to a
30 facility other than a state hospital or other secure treatment facility,
31 the court shall order that notice be given to the appropriate law
32 enforcement agency or agencies having local jurisdiction at the
33 site of the placement facility of a finding of mental incompetence
34 pursuant to this chapter arising out of a charge of a Section 290
35 offense.

36 (5) (A) If the defendant is committed or transferred to a state
37 hospital or developmental center pursuant to this section, the court
38 may, upon receiving the written recommendation of the executive
39 director of the state hospital or developmental center and the
40 regional center director that the defendant be transferred to a

1 residential facility approved by the regional center director, order
2 the defendant transferred to that facility. If the defendant is
3 committed or transferred to a residential facility approved by the
4 regional center director, the court may, upon receiving the written
5 recommendation of the regional center director, transfer the
6 defendant to a state hospital or developmental center or to another
7 residential facility approved by the regional center director.

8 In the event of dismissal of the criminal charges before the
9 defendant recovers competence, the person shall be subject to the
10 applicable provisions of the Lanterman-Petris-Short Act (Part 1
11 (commencing with Section 5000) of Division 5 of the Welfare and
12 Institutions Code) or to commitment or detention pursuant to a
13 petition filed pursuant to Section 6502 of the Welfare and
14 Institutions Code.

15 The defendant or prosecuting attorney may contest either kind
16 of order of transfer by filing a petition with the court for a hearing,
17 which shall be held if the court determines that sufficient grounds
18 exist. At the hearing, the prosecuting attorney or the defendant
19 may present evidence bearing on the order of transfer. The court
20 shall use the same standards as used in conducting probation
21 revocation hearings pursuant to Section 1203.2.

22 Prior to making an order for transfer under this section, the court
23 shall notify the defendant, the attorney of record for the defendant,
24 the prosecuting attorney, and the regional center director or
25 designee.

26 (B) If the defendant is committed to a state hospital or secure
27 treatment facility pursuant to clause (ii) or (iii) of subparagraph
28 (B) of paragraph (1) and is subsequently transferred to another
29 facility, copies of the documents specified in paragraph (3) shall
30 be taken with the defendant to the new facility. The transferring
31 facility shall also notify the appropriate law enforcement agency
32 or agencies having local jurisdiction at the site of the new facility
33 that the defendant is a person subject to clause (ii) or (iii) of
34 subparagraph (B) of paragraph (1).

35 (b) (1) Within 90 days of admission of a person committed
36 pursuant to subdivision (a), the executive director or designee of
37 the state hospital, developmental center, or other facility to which
38 the defendant is committed, or the outpatient supervisor where the
39 defendant is placed on outpatient status, shall make a written report
40 to the committing court and the regional center director or a

1 designee concerning the defendant's progress toward becoming
2 mentally competent. If the defendant has not become mentally
3 competent, but the report discloses a substantial likelihood the
4 defendant will become mentally competent within the next 90
5 days, the court may order that the defendant shall remain in the
6 state hospital, developmental center, or other facility or on
7 outpatient status for that period of time. Within 150 days of an
8 admission made pursuant to subdivision (a) or if the defendant
9 becomes mentally competent, the executive director or designee
10 of the hospital or developmental center or person in charge of the
11 facility or the outpatient supervisor shall report to the court and
12 the regional center director or his or her designee regarding the
13 defendant's progress toward becoming mentally competent. The
14 court shall provide to the prosecutor and defense counsel copies
15 of all reports under this section. If the report indicates that there
16 is no substantial likelihood that the defendant has become mentally
17 competent, the committing court shall order the defendant to be
18 returned to the court for proceedings pursuant to paragraph (2) of
19 subdivision (c). The court shall transmit a copy of its order to the
20 regional center director or designee and to the executive director
21 of the developmental center.

22 (2) A defendant who has been committed or has been on
23 outpatient status for 18 months, and is still hospitalized or on
24 outpatient status, shall be returned to the committing court where
25 a hearing shall be held pursuant to the procedures set forth in
26 Section 1369. The court shall transmit a copy of its order to the
27 regional center director or designee and the executive director of
28 the developmental center.

29 (3) If it is determined by the court that no treatment for the
30 defendant's mental impairment is being conducted, the defendant
31 shall be returned to the committing court. A copy of this order
32 shall be sent to the regional center director or designee and to the
33 executive director of the developmental center.

34 (4) At each review by the court specified in this subdivision,
35 the court shall determine if the security level of housing and
36 treatment is appropriate and may make an order in accordance
37 with its determination.

38 (c) (1) (A) At the end of three years from the date of
39 commitment or a period of commitment equal to the maximum
40 term of imprisonment provided by law for the most serious offense

1 charged in the information, indictment, or misdemeanor complaint,
2 whichever is shorter, a defendant who has not become mentally
3 competent shall be returned to the committing court.

4 (B) The court shall notify the regional center director or designee
5 and the executive director of the developmental center of that
6 return and of any resulting court orders.

7 (2) In the event of dismissal of the criminal charges before the
8 defendant becomes mentally competent, the defendant shall be
9 subject to the applicable provisions of the Lanterman-Petris-Short
10 Act (Part 1 (commencing with Section 5000) of Division 5 of the
11 Welfare and Institutions Code), or to commitment and detention
12 pursuant to a petition filed pursuant to Section 6502 of the Welfare
13 and Institutions Code. If it is found that the person is not subject
14 to commitment or detention pursuant to the applicable provision
15 of the Lanterman-Petris-Short Act (Part 1 (commencing with
16 Section 5000) of Division 5 of the Welfare and Institutions Code)
17 or to commitment or detention pursuant to a petition filed pursuant
18 to Section 6502 of the Welfare and Institutions Code, the individual
19 shall not be subject to further confinement pursuant to this article
20 and the criminal action remains subject to dismissal pursuant to
21 Section 1385. The court shall notify the regional center director
22 and the executive director of the developmental center of any
23 dismissal.

24 (d) Notwithstanding any other provision of this section, the
25 criminal action remains subject to dismissal pursuant to Section
26 1385. If at any time prior to the maximum period of time allowed
27 for proceedings under this article, the regional center director
28 concludes that the behavior of the defendant related to the
29 defendant's criminal offense has been eliminated during time spent
30 in court-ordered programs, the court may, upon recommendation
31 of the regional center director, dismiss the criminal charges. The
32 court shall transmit a copy of any order of dismissal to the regional
33 center director and to the executive director of the developmental
34 center.

35 (e) For the purpose of this section, "secure treatment facility"
36 shall not include, except for state mental hospitals, state
37 developmental centers, and correctional treatment facilities, a
38 facility licensed pursuant to Chapter 2 (commencing with Section
39 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter

1 3.2 (commencing with Section 1569) of, Division 2 of the Health
2 and Safety Code, or a community board and care facility.

3 SEC. 157. Section 2602 of the Penal Code is amended to read:

4 2602. (a) Except as provided in subdivision (b), no person
5 sentenced to imprisonment or housed in a state prison shall be
6 administered any psychiatric medication without his or her prior
7 informed consent.

8 (b) If a psychiatrist determines that an inmate should be treated
9 with psychiatric medication, but the inmate does not consent, the
10 inmate may be involuntarily treated with the medication. Treatment
11 may be given on either a nonemergency basis as provided in
12 subdivision (c), or on an emergency or interim basis as provided
13 in subdivision (d).

14 (c) The Department of Corrections and Rehabilitation may seek
15 to initiate involuntary medication on a nonemergency basis only
16 if all of the following conditions have been met:

17 (1) A psychiatrist has determined that the inmate has a serious
18 mental disorder.

19 (2) A psychiatrist has determined that, as a result of that mental
20 disorder, the inmate is gravely disabled and does not have the
21 capacity to refuse treatment with psychiatric medications or is a
22 danger to self or others.

23 (3) A psychiatrist has prescribed one or more psychiatric
24 medications for the treatment of the inmate's disorder, has
25 considered the risks, benefits, and treatment alternatives to
26 involuntary medication, and has determined that the treatment
27 alternatives to involuntary medication are unlikely to meet the
28 needs of the patient.

29 (4) The inmate has been advised of the risks and benefits of,
30 and treatment alternatives to, the psychiatric medication and refuses
31 or is unable to consent to the administration of the medication.

32 (5) The inmate is provided a hearing before an administrative
33 law judge.

34 (6) The inmate is provided counsel at least 21 days prior to the
35 hearing, unless emergency or interim medication is being
36 administered pursuant to subdivision (d), in which case the inmate
37 would receive expedited access to counsel. The hearing shall be
38 held not more than 30 days after the filing of the notice with the
39 Office of Administrative Hearings, unless counsel for the inmate
40 agrees to extend the date of the hearing.

1 (7) The inmate and counsel are provided with written notice of
2 the hearing at least 21 days prior to the hearing, unless emergency
3 or interim medication is being administered pursuant to subdivision
4 (d), in which case the inmate would receive an expedited hearing.
5 The written notice shall do all of the following:

6 (A) Set forth the diagnosis, the factual basis for the diagnosis,
7 the basis upon which psychiatric medication is recommended, the
8 expected benefits of the medication, any potential side effects and
9 risks to the inmate from the medication, and any alternatives to
10 treatment with the medication.

11 (B) Advise the inmate of the right to be present at the hearing,
12 the right to be represented by counsel at all stages of the
13 proceedings, the right to present evidence, and the right to
14 cross-examine witnesses. Counsel for the inmate shall have access
15 to all medical records and files of the inmate, but shall not have
16 access to the confidential section of the inmate's central file which
17 contains materials unrelated to medical treatment.

18 (C) Inform the inmate of his or her right to contest the finding
19 of an administrative law judge authorizing treatment with
20 involuntary medication by filing a petition for writ of
21 administrative mandamus pursuant to Section 1094.5 of the Code
22 of Civil Procedure, and his or her right to file a petition for writ
23 of habeas corpus with respect to any decision of the Department
24 of Corrections and Rehabilitation to continue treatment with
25 involuntary medication after the administrative law judge has
26 authorized treatment with involuntary medication.

27 (8) An administrative law judge determines by clear and
28 convincing evidence that the inmate has a mental illness or
29 disorder, that as a result of that illness the inmate is gravely
30 disabled and lacks the capacity to consent to or refuse treatment
31 with psychiatric medications or is a danger to self or others if not
32 medicated, that there is no less intrusive alternative to involuntary
33 medication, and that the medication is in the inmate's best medical
34 interest. Failure of the department to provide timely or adequate
35 notice pursuant to this section shall be excused only upon a
36 showing of good cause and the absence of prejudice to the inmate.
37 In making this determination, the administrative law judge may
38 consider factors, including, but not limited to, the ability of the
39 inmate's counsel to adequately prepare the case and to confer with
40 the inmate, the continuity of care, and, if applicable, the need for

1 protection of the inmate or institutional staff that would be
2 compromised by a procedural default.

3 (9) The historical course of the inmate's mental disorder, as
4 determined by available relevant information about the course of
5 the inmate's mental disorder, shall be considered when it has direct
6 bearing on the determination of whether the inmate is a danger to
7 self or others, or is gravely disabled and incompetent to refuse
8 medication as the result of a mental disorder.

9 (10) An inmate is entitled to file one motion for reconsideration
10 following a determination that he or she may receive involuntary
11 medication, and may seek a hearing to present new evidence, upon
12 good cause shown.

13 (d) This section does not prohibit a physician from taking
14 appropriate action in an emergency. An emergency exists when
15 there is a sudden and marked change in an inmate's mental
16 condition so that action is immediately necessary for the
17 preservation of life or the prevention of serious bodily harm to the
18 inmate or others, and it is impractical, due to the seriousness of
19 the emergency, to first obtain informed consent. If psychiatric
20 medication is administered during an emergency, the medication
21 shall only be that which is required to treat the emergency condition
22 and shall be administered for only so long as the emergency
23 continues to exist. If the Department of Corrections and
24 Rehabilitation's clinicians identify a situation that jeopardizes the
25 inmate's health or well-being as the result of a serious mental
26 illness, and necessitates the continuation of medication beyond
27 the initial 72 hours pending the full mental health hearing, the
28 department shall give notice to the inmate and his or her counsel
29 of the department's intention to seek an ex parte order to allow the
30 continuance of medication pending the full hearing. The notice
31 shall be served upon the inmate and counsel at the same time the
32 inmate is given the written notice that the involuntary medication
33 proceedings are being initiated and is appointed counsel as
34 provided in subdivision (c). The order may be issued ex parte upon
35 a showing that in the absence of the medication the emergency
36 conditions are likely to recur. The request for an ex parte order
37 shall be supported by an affidavit from the psychiatrist showing
38 specific facts. The inmate and the inmate's appointed counsel shall
39 have two business days to respond to the department's ex parte
40 request to continue interim medication, and may present facts

1 supported by an affidavit in opposition to the department's request.
2 An administrative law judge shall review the ex parte request and
3 shall have three business days to determine the merits of the
4 department's request for an ex parte order. If an order is issued,
5 the psychiatrist may continue the administration of the medication
6 until the hearing described in paragraph (5) of subdivision (c) is
7 held.

8 (1) The Department of Corrections and Rehabilitation shall file
9 with the Office of Administrative Hearings, and serve on the inmate
10 and his or her counsel, the written notice described in paragraph
11 (7) of subdivision (c) within 72 hours of commencing medication
12 pursuant to this subdivision, unless either of the following occurs:

13 (A) The inmate gives informed consent to continue the
14 medication.

15 (B) A psychiatrist determines that the psychiatric medication
16 is not necessary and administration of the medication is
17 discontinued.

18 (2) If medication is being administered pursuant to this
19 subdivision, the hearing described in paragraph (5) of subdivision
20 (c) shall commence within 21 days of the filing and service of the
21 notice, unless counsel for an inmate agrees to a different period
22 of time.

23 (3) With the exception of the timeline provisions specified in
24 paragraphs (1) and (2) for providing notice and commencement
25 of the hearing pursuant to the conditions specified in this
26 subdivision, the inmate shall be entitled to and be given the same
27 due process protections as specified in subdivision (c). The
28 department shall prove the same elements supporting the
29 involuntary administration of psychiatric medication and the
30 administrative law judge shall be required to make the same
31 findings described in subdivision (c).

32 (e) The determination that an inmate may receive involuntary
33 medication shall be valid for one year from the date of the
34 determination, regardless of whether the inmate subsequently gives
35 his or her informed consent.

36 (f) If a determination has been made to involuntarily medicate
37 an inmate pursuant to subdivision (c) or (d), the medication shall
38 be discontinued one year after the date of that determination, unless
39 the inmate gives his or her informed consent to the administration

1 of the medication, or unless a new determination is made pursuant
2 to the procedures set forth in subdivision (g).

3 (g) To renew an existing order allowing involuntary medication,
4 the department shall file with the Office of Administrative
5 Hearings, and shall serve on the inmate and his or her counsel, a
6 written notice indicating the department's intent to renew the
7 existing involuntary medication order.

8 (1) The request to renew the order shall be filed and served no
9 later than 21 days prior to the expiration of the current order
10 authorizing involuntary medication.

11 (2) The inmate shall be entitled to, and shall be given, the same
12 due process protections as specified in subdivision (c).

13 (3) Renewal orders shall be valid for one year from the date of
14 the hearing.

15 (4) An order renewing an existing order shall be granted based
16 on clear and convincing evidence that the inmate has a serious
17 mental disorder that requires treatment with psychiatric medication,
18 and that, but for the medication, the inmate would revert to the
19 behavior that was the basis for the prior order authorizing
20 involuntary medication, coupled with evidence that the inmate
21 lacks insight regarding his or her need for the medication, such
22 that it is unlikely that the inmate would be able to manage his or
23 her own medication and treatment regimen. No new acts need be
24 alleged or proven.

25 (5) If the department wishes to add a basis to an existing order,
26 the department shall give the inmate and the inmate's counsel
27 notice in advance of the hearing via a renewal notice or
28 supplemental petition. Within the renewal notice or supplemental
29 petition, the department shall specify what additional basis is being
30 alleged and what qualifying conduct within the past year supports
31 that additional basis. The department shall prove the additional
32 basis and conduct by clear and convincing evidence at a hearing
33 as specified in subdivision (c).

34 (6) The hearing on any petition to renew an order for involuntary
35 medication shall be conducted prior to the expiration of the current
36 order.

37 (h) Pursuant to Section 5058, the Department of Corrections
38 and Rehabilitation shall adopt regulations to fully implement this
39 section.

1 (i) In the event of a conflict between the provisions of this
2 section and the Administrative Procedure Act (Chapter 4.5
3 (commencing with Section 11400) of Part 1 of Division 3 of the
4 Government Code), this section shall control.

5 SEC. 158. Section 3000.08 of the Penal Code, as amended by
6 Section 35 of Chapter 43 of the Statutes of 2012, is amended to
7 read:

8 3000.08. (a) Persons released from state prison prior to or on
9 or after July 1, 2013, after serving a prison term or, whose sentence
10 has been deemed served pursuant to Section 2900.5, for any of the
11 following crimes shall be subject to parole supervision by the
12 Department of Corrections and Rehabilitation and the jurisdiction
13 of the court in the county where the parolee is released or resides
14 for the purpose of hearing petitions to revoke parole and impose
15 a term of custody:

16 (1) A serious felony as described in subdivision (c) of Section
17 1192.7.

18 (2) A violent felony as described in subdivision (c) of Section
19 667.5.

20 (3) A crime for which the person was sentenced pursuant to
21 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
22 of subdivision (c) of Section 1170.12.

23 (4) Any crime where the person eligible for release from prison
24 is classified as a High Risk Sex Offender.

25 (5) Any crime where the person is required, as a condition of
26 parole, to undergo treatment by the State Department of State
27 Hospitals pursuant to Section 2962.

28 (b) Notwithstanding any other provision of law, all other
29 offenders released from prison shall be placed on postrelease
30 supervision pursuant to Title 2.05 (commencing with Section
31 3450).

32 (c) At any time during the period of parole of a person subject
33 to this section, if any parole agent or peace officer has probable
34 cause to believe that the parolee is violating any term or condition
35 of his or her parole, the agent or officer may, without warrant or
36 other process and at any time until the final disposition of the case,
37 arrest the person and bring him or her before the court, or the court
38 may, in its discretion, issue a warrant for that person's arrest
39 pursuant to Section 1203.2.

1 (d) Upon review of the alleged violation and a finding of good
2 cause that the parolee has committed a violation of law or violated
3 his or her conditions of parole, the supervising parole agency may
4 impose additional and appropriate conditions of supervision,
5 including rehabilitation and treatment services and appropriate
6 incentives for compliance, and impose immediate, structured, and
7 intermediate sanctions for parole violations, including flash
8 incarceration in a county jail. Periods of “flash incarceration,” as
9 defined in subdivision (e), are encouraged as one method of
10 punishment for violations of a parolee’s conditions of parole.
11 Nothing in this section is intended to preclude referrals to a reentry
12 court pursuant to Section 3015.

13 (e) “Flash incarceration” is a period of detention in a county
14 jail due to a violation of a parolee’s conditions of parole. The length
15 of the detention period can range between one and 10 consecutive
16 days. Shorter, but if necessary more frequent, periods of detention
17 for violations of a parolee’s conditions of parole shall appropriately
18 punish a parolee while preventing the disruption in a work or home
19 establishment that typically arises from longer periods of detention.

20 (f) If the supervising parole agency has determined, following
21 application of its assessment processes, that intermediate sanctions
22 up to and including flash incarceration are not appropriate, the
23 supervising parole agency shall, pursuant to Section 1203.2,
24 petition the court in the county in which the parolee is being
25 supervised to revoke parole. At any point during the process
26 initiated pursuant to this section, a parolee may waive, in writing,
27 his or her right to counsel, admit the parole violation, waive a court
28 hearing, and accept the proposed parole modification or revocation.
29 The petition shall include a written report that contains additional
30 information regarding the petition, including the relevant terms
31 and conditions of parole, the circumstances of the alleged
32 underlying violation, the history and background of the parolee,
33 and any recommendations. The Judicial Council shall adopt forms
34 and rules of court to establish uniform statewide procedures to
35 implement this subdivision, including the minimum contents of
36 supervision agency reports. Upon a finding that the person has
37 violated the conditions of parole, the court shall have authority to
38 do any of the following:

1 (1) Return the person to parole supervision with modifications
2 of conditions, if appropriate, including a period of incarceration
3 in a county jail.

4 (2) Revoke parole and order the person to confinement in a
5 county jail.

6 (3) Refer the person to a reentry court pursuant to Section 3015
7 or other evidence-based program in the court's discretion.

8 (g) Confinement pursuant to paragraphs (1) and (2) of
9 subdivision (f) shall not exceed a period of 180 days in a county
10 jail.

11 (h) Notwithstanding any other provision of law, in any case
12 where Section 3000.1 or paragraph (4) of subdivision (b) of Section
13 3000 applies to a person who is on parole and the court determines
14 that the person has committed a violation of law or violated his or
15 her conditions of parole, the person on parole shall be remanded
16 to the custody of the Department of Corrections and Rehabilitation
17 and the jurisdiction of the Board of Parole Hearings for the purpose
18 of future parole consideration.

19 (i) Notwithstanding subdivision (a), any of the following persons
20 released from state prison shall be subject to the jurisdiction of,
21 and parole supervision by, the Department of Corrections and
22 Rehabilitation for a period of parole up to three years or the parole
23 term the person was subject to at the time of the commission of
24 the offense, whichever is greater:

25 (1) The person is required to register as a sex offender pursuant
26 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
27 1, and was subject to a period of parole exceeding three years at
28 the time he or she committed a felony for which he or she was
29 convicted and subsequently sentenced to state prison.

30 (2) The person was subject to parole for life pursuant to Section
31 3000.1 at the time of the commission of the offense that resulted
32 in a conviction and state prison sentence.

33 (j) Parolees subject to this section who have a pending
34 adjudication for a parole violation on July 1, 2013, shall be subject
35 to the jurisdiction of the Board of Parole Hearings. Parole
36 revocation proceedings conducted by the Board of Parole Hearings
37 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be
38 subject to the jurisdiction of the Board of Parole Hearings.

39 (k) Except as described in subdivision (c), any person who is
40 convicted of a felony that requires community supervision and

1 who still has a period of state parole to serve shall discharge from
2 state parole at the time of release to community supervision.

3 (l) This section shall become operative on July 1, 2013.

4 SEC. 159. Section 3060.7 of the Penal Code, as added by
5 Section 48 of Chapter 43 of the Statutes of 2012, is amended to
6 read:

7 3060.7. (a) (1) Notwithstanding any other law, the supervising
8 parole agency shall notify any person released on parole or
9 postrelease community supervision pursuant to Title 2.05
10 (commencing with Section 3450) of Part 3 who has been classified
11 by the Department of Corrections and Rehabilitation as included
12 within the highest control or risk classification that he or she shall
13 be required to report to his or her assigned parole officer or
14 designated local supervising agency within two days of release
15 from the state prison.

16 (2) This section shall not prohibit the supervising parole agency
17 or local supervising agency from requiring any person released on
18 parole or postrelease community supervision to report to his or
19 her assigned parole officer within a time period that is less than
20 two days from the time of release.

21 (b) The supervising parole agency, within 24 hours of a parolee's
22 failure to report as required by this section, shall issue a written
23 order suspending the parole of that parolee, pending a hearing
24 before the Board of Parole Hearings or the court, as applicable,
25 and shall request that a warrant be issued for the parolee's arrest
26 pursuant to subdivision (c) of Section 3000.08.

27 (c) Upon the issuance of an arrest warrant for a parolee who
28 has been classified within the highest control or risk classification,
29 the assigned parole officer shall continue to carry the parolee on
30 his or her regular caseload and shall continue to search for the
31 parolee's whereabouts.

32 (d) With regard to any inmate subject to this section, the
33 Department of Corrections and Rehabilitation shall release an
34 inmate sentenced prior to June 27, 2012, one or two days before
35 his or her scheduled release date if the inmate's release date falls
36 on the day before a holiday or weekend.

37 (e) With regard to any inmate subject to this section, the
38 Department of Corrections and Rehabilitation shall release an
39 inmate one or two days after his or her scheduled release date if
40 the release date falls on the day before a holiday or weekend.

1 (f) This section shall become operative on July 1, 2013.

2 SEC. 160. Section 4024.2 of the Penal Code is amended to
3 read:

4 4024.2. (a) Notwithstanding any other law, the board of
5 supervisors of any county may authorize the sheriff or other official
6 in charge of county correctional facilities to offer a voluntary
7 program under which any person committed to the facility may
8 participate in a work release program pursuant to criteria described
9 in subdivision (b), in which one day of participation will be in lieu
10 of one day of confinement.

11 (b) The criteria for a work release program are the following:

12 (1) The work release program shall consist of any of the
13 following:

14 (A) Manual labor to improve or maintain levees or public
15 facilities, including, but not limited to, streets, parks, and schools.

16 (B) Manual labor in support of nonprofit organizations, as
17 approved by the sheriff or other official in charge of the
18 correctional facilities. As a condition of assigning participants of
19 a work release program to perform manual labor in support of
20 nonprofit organizations pursuant to this section, the board of
21 supervisors shall obtain workers' compensation insurance which
22 shall be adequate to cover work-related injuries incurred by those
23 participants, in accordance with Section 3363.5 of the Labor Code.

24 (C) Performance of graffiti cleanup for local governmental
25 entities, including participation in a graffiti abatement program as
26 defined in subdivision (f) of Section 594, as approved by the sheriff
27 or other official in charge of the correctional facilities.

28 (D) Performance of weed and rubbish abatement on public and
29 private property pursuant to Chapter 13 (commencing with Section
30 39501) of Part 2 of Division 3 of Title 4 of the Government Code,
31 or Part 5 (commencing with Section 14875) or Part 6 (commencing
32 with Section 14930) of Division 12 of the Health and Safety Code,
33 as approved by the sheriff or other official in charge of the
34 correctional facilities.

35 (E) Performance of house repairs or yard services for senior
36 citizens and the performance of repairs to senior centers through
37 contact with local senior service organizations, as approved by the
38 sheriff or other official in charge of the correctional facilities.
39 Where a work release participant has been assigned to this task,
40 the sheriff or other official shall agree upon in advance with the

1 senior service organization about the type of services to be rendered
2 by the participant and the extent of contact permitted between the
3 recipients of these services and the participant.

4 (F) Any person who is not able to perform manual labor as
5 specified in this paragraph because of a medical condition, physical
6 disability, or age, may participate in a work release program
7 involving any other type of public sector work that is designated
8 and approved by the sheriff or other official in charge of county
9 correctional facilities.

10 (2) The sheriff or other official may permit a participant in a
11 work release program to receive work release credit for documented
12 participation in educational programs, vocational programs,
13 substance abuse programs, life skills programs, or parenting
14 programs. Participation in these programs shall be considered in
15 lieu of performing labor in a work release program, with eight
16 work-related hours to equal one day of custody credit.

17 (3) The work release program shall be under the direction of a
18 responsible person appointed by the sheriff or other official in
19 charge.

20 (4) The hours of labor to be performed pursuant to this section
21 shall be uniform for all persons committed to a facility in a county
22 and may be determined by the sheriff or other official in charge
23 of county correctional facilities, and each day shall be a minimum
24 of 8 and a maximum of 10 hours, in accordance with the normal
25 working hours of county employees assigned to supervise the
26 programs. However, reasonable accommodation may be made for
27 participation in a program under paragraph (2).

28 As used in this section, “nonprofit organizations” means
29 organizations established or operated for the benefit of the public
30 or in support of a significant public interest, as set forth in Section
31 501(c)(3) of the Internal Revenue Code. Organizations established
32 or operated for the primary purpose of benefiting their own
33 memberships are excluded.

34 (c) The board of supervisors may prescribe reasonable rules and
35 regulations under which a work release program is operated and
36 may provide that participants wear clothing of a distinctive
37 character while performing the work. As a condition of
38 participating in a work release program, a person shall give his or
39 her promise to appear for work or assigned activity by signing a
40 notice to appear before the sheriff or at the education, vocational,

1 or substance abuse program at a time and place specified in the
2 notice and shall sign an agreement that the sheriff may immediately
3 retake the person into custody to serve the balance of his or her
4 sentence if the person fails to appear for the program at the time
5 and place agreed to, does not perform the work or activity assigned,
6 or for any other reason is no longer a fit subject for release under
7 this section. A copy of the notice shall be delivered to the person
8 and a copy shall be retained by the sheriff. Any person who
9 willfully violates his or her written promise to appear at the time
10 and place specified in the notice is guilty of a misdemeanor.

11 Whenever a peace officer has reasonable cause to believe the
12 person has failed to appear at the time and place specified in the
13 notice or fails to appear or work at the time and place agreed to or
14 has failed to perform the work assigned, the peace officer may,
15 without a warrant, retake the person into custody, or the court may
16 issue an arrest warrant for the retaking of the person into custody,
17 to complete the remainder of the original sentence. A peace officer
18 may not retake a person into custody under this subdivision,
19 without a warrant for arrest, unless the officer has a written order
20 to do so, signed by the sheriff or other person in charge of the
21 program, that describes with particularity the person to be retaken.

22 (d) This section does not require the sheriff or other official in
23 charge to assign a person to a program pursuant to this section if
24 it appears from the record that the person has refused to
25 satisfactorily perform as assigned or has not satisfactorily complied
26 with the reasonable rules and regulations governing the assignment
27 or any other order of the court.

28 A person shall be eligible for work release under this section
29 only if the sheriff or other official in charge concludes that the
30 person is a fit subject therefor.

31 (e) The board of supervisors may prescribe a program
32 administrative fee, not to exceed the pro rata cost of administration,
33 to be paid by each person according to his or her ability to pay.

34 SEC. 161. Section 4115.55 of the Penal Code is amended to
35 read:

36 4115.55. (a) Upon agreement with the sheriff or director of
37 the county department of corrections, a board of supervisors may
38 enter into a contract with other public agencies to provide housing
39 for inmates sentenced to a county jail in community correctional
40 facilities created pursuant to Article 1.5 (commencing with Section

1 2910) of Chapter 7 of Title 1 or Chapter 9.5 (commencing with
2 Section 6250) of Title 7.

3 (b) Facilities operated pursuant to agreements entered into under
4 subdivision (a) shall comply with the minimum standards for local
5 detention facilities as provided by Chapter 1 (commencing with
6 Section 3000) of Division 3 of Title 15 of the California Code of
7 Regulations.

8 SEC. 162. Section 5072 of the Penal Code is amended to read:

9 5072. (a) Notwithstanding any other provision of law, the
10 Department of Corrections and Rehabilitation and the State
11 Department of Health Care Services may develop a process to
12 maximize federal financial participation for the provision of acute
13 inpatient hospital services rendered to individuals who, but for
14 their institutional status as inmates, are otherwise eligible for
15 Medi-Cal pursuant to Chapter 7 (commencing with Section 14000)
16 of Part 3 of Division 9 of the Welfare and Institutions Code or a
17 Low Income Health Program (LIHP) pursuant to Part 3.6
18 (commencing with Section 15909) of Division 9 of the Welfare
19 and Institutions Code.

20 (b) Federal reimbursement for acute inpatient hospital services
21 for inmates enrolled in Medi-Cal shall occur through the State
22 Department of Health Care Services and federal reimbursement
23 for acute inpatient hospital services for inmates not enrolled in
24 Medi-Cal but who are eligible for a LIHP shall occur through a
25 county LIHP.

26 (c) (1) The Secretary of the Department of Corrections and
27 Rehabilitation, in conjunction with the State Department of Health
28 Care Services, shall develop a process to claim federal financial
29 participation and to reimburse the Department of Corrections and
30 Rehabilitation for the federal share of the allowable Medicaid cost
31 provision of acute inpatient hospital services rendered to inmates
32 according to this section and for any administrative costs incurred
33 in support of those services.

34 (2) Public or community hospitals shall invoice the Department
35 of Corrections and Rehabilitation to obtain reimbursement for
36 acute inpatient hospital services in accordance with contracted
37 rates of reimbursement, or if no contract is in place, the rates
38 pursuant to Section 5023.5. The Department of Corrections and
39 Rehabilitation shall reimburse a public or community hospital for
40 the delivery of acute inpatient hospital services rendered to an

1 inmate pursuant to this section. For individuals eligible for
2 Medi-Cal pursuant to this section, the Department of Corrections
3 and Rehabilitation shall submit a quarterly invoice to the State
4 Department of Health Care Services for claiming federal
5 participation at the Medi-Cal rate for acute inpatient hospital
6 services. For enrollees in the LIHP, the Department of Corrections
7 and Rehabilitation shall submit a quarterly invoice to the county
8 of last legal residence pursuant to Section 14053.7 of the Welfare
9 and Institutions Code. The county shall submit the invoice to the
10 State Department of Health Care Services for claiming federal
11 financial participation for acute inpatient hospital services for
12 individuals made eligible pursuant to this section, pursuant to
13 Section 14053.7 of the Welfare and Institutions Code, and pursuant
14 to the process developed in subdivision (b). The State Department
15 of Health Care Services shall claim federal participation for eligible
16 services for LIHP enrolled inmates at the rate paid by the
17 Department of Corrections and Rehabilitation. The State
18 Department of Health Care Services and counties shall remit funds
19 received for federal participation to the Department of Corrections
20 and Rehabilitation for allowable costs incurred as a result of
21 delivering acute inpatient hospital services allowable under this
22 section.

23 (3) The county LIHPs shall not experience any additional net
24 expenditures of county funds due to the provision of services under
25 this section.

26 (4) The Department of Corrections and Rehabilitation shall
27 reimburse the State Department of Health Care Services and
28 counties for administrative costs that are not reimbursed by the
29 federal government.

30 (5) The Department of Corrections and Rehabilitation shall
31 reimburse the State Department of Health Care Services for any
32 disallowance that is required to be returned to the Centers for
33 Medicare and Medicaid Services for any litigation costs incurred
34 due to the implementation of this section.

35 (d) (1) The state shall indemnify and hold harmless participating
36 entities that operate a LIHP, including all counties, and all counties
37 that operate in a consortium that participates as a LIHP, against
38 any and all losses, including, but not limited to, claims, demands,
39 liabilities, court costs, judgments, or obligations, due to the

1 implementation of this section as directed by the secretary and the
2 State Department of Health Care Services.

3 (2) The State Department of Health Care Services may at its
4 discretion require a county, as a condition of participation as a
5 LIHP, to enroll an eligible inmate into its LIHP if the county is
6 the inmate's county of last legal residence.

7 (3) The county LIHPs shall be held harmless by the state for
8 any disallowance or deferral if federal action is taken due to the
9 implementation of this section in accord with the state's policies,
10 directions, and requirements.

11 (e) (1) The Department of Corrections and Rehabilitation, in
12 conjunction with the State Department of Health Care Services,
13 shall develop a process to facilitate eligibility determinations for
14 individuals who may be eligible for Medi-Cal or a LIHP pursuant
15 to this section and Section 14053.7 of the Welfare and Institutions
16 Code.

17 (2) The Department of Corrections and Rehabilitation shall
18 assist inmates in completing either the Medi-Cal or LIHP
19 application as appropriate and shall forward that application to the
20 State Department of Health Care Services for processing.

21 (3) Notwithstanding any other state law, and only to the extent
22 that federal law allows and federal financial participation is
23 available, for the limited purpose of implementing this section,
24 the department or its designee is authorized to act on behalf of an
25 inmate for purposes of applying for or determinations of Medi-Cal
26 or LIHP eligibility.

27 (f) (1) This section does not restrict or limit the eligibility or
28 alter county responsibility for payment of any service delivered
29 to a parolee who has been released from detention or incarceration
30 and now resides in a county that participates in the LIHP. If
31 otherwise eligible for the county's LIHP, the LIHP shall enroll the
32 parolee.

33 (2) Notwithstanding paragraph (1), at the option of the state,
34 for enrolled parolees who have been released from detention or
35 incarceration and now reside in a county that participates in a
36 LIHP, the LIHP shall reimburse providers for the delivery of
37 services which are otherwise the responsibility of the state to
38 provide. Payment for these medical services, including both the
39 state and federal shares of reimbursement, shall be included as

1 part of the reimbursement process described in paragraph (1) of
2 subdivision (c).

3 (3) Enrollment of individuals in a LIHP under this subdivision
4 shall be subject to any enrollment limitations described in
5 subdivision (h) of Section 15910 of the Welfare and Institutions
6 Code.

7 (g) The department shall be responsible to the LIHP for the
8 nonfederal share of any reimbursement made for the provision of
9 acute inpatient hospital services rendered to inmates pursuant to
10 this section.

11 (h) Reimbursement pursuant to this section shall be limited to
12 those acute inpatient hospital services for which federal financial
13 participation pursuant to Title XIX of the federal Social Security
14 Act is allowed.

15 (i) This section shall have no force or effect if there is a final
16 judicial determination made by any state or federal court that is
17 not appealed, or by a court of appellate jurisdiction that is not
18 further appealed, in any action by any party, or a final
19 determination by the administrator of the federal Centers for
20 Medicare and Medicaid Services, that limits or affects the
21 department's authority to select the hospitals used to provide
22 inpatient hospital services to inmates.

23 (j) It is the intent of the Legislature that the implementation of
24 this section will result in state General Fund savings for the funding
25 of acute inpatient hospital services provided to inmates along with
26 any related administrative costs.

27 (k) Any agreements entered into under this section for Medi-Cal
28 or a LIHP to provide for reimbursement of acute inpatient hospital
29 services and administrative expenditures as described in
30 subdivision (c) shall not be subject to Part 2 (commencing with
31 Section 10100) of Division 2 of the Public Contract Code.

32 (l) This section shall be implemented in a manner that is
33 consistent with federal Medicaid law and regulations. The Director
34 of the State Department of Health Care Services shall seek any
35 federal approvals necessary for the implementation of this section.
36 This section shall be implemented only when and to the extent that
37 any necessary federal approval is obtained, and only to the extent
38 that existing levels of federal financial participation are not
39 otherwise jeopardized.

1 (m) To the extent that the Director of the State Department of
2 Health Care Services determines that existing levels of federal
3 financial participation are jeopardized, this section shall no longer
4 be implemented.

5 (n) Notwithstanding Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
7 the State Department of Health Care Services may, without taking
8 any further regulatory action, implement this section by means of
9 all-county letters, provider bulletins, facility letters, or similar
10 instructions.

11 (o) For purposes of this section, the following terms have the
12 following meanings:

13 (1) The term “county of last legal residence” means the county
14 in which the inmate resided at the time of arrest that resulted in
15 conviction and incarceration in a state prison facility.

16 (2) The term “inmate” means an adult who is involuntarily
17 residing in a state prison facility operated, administered, or
18 regulated, directly or indirectly, by the department.

19 (3) During the existence of the receivership established in United
20 States District Court for the Northern District of California, Case
21 No.—~~CO1-1351~~ *CO1-1351* TEH, Plata v. Schwarzenegger,
22 references in this section to the “secretary” shall mean the receiver
23 appointed in that action, who shall implement portions of this
24 section that would otherwise be within the secretary’s
25 responsibility.

26 SEC. 163. Section 6030 of the Penal Code is amended to read:

27 6030. (a) The Board of State and Community Corrections shall
28 establish minimum standards for local correctional facilities. The
29 board shall review those standards biennially and make any
30 appropriate revisions.

31 (b) The standards shall include, but not be limited to, the
32 following areas: health and sanitary conditions, fire and life safety,
33 security, rehabilitation programs, recreation, treatment of persons
34 confined in local correctional facilities, and personnel training.

35 (c) The standards shall require that at least one person on duty
36 at the facility is knowledgeable in the area of fire and life safety
37 procedures.

38 (d) The standards shall also include requirements relating to the
39 acquisition, storage, labeling, packaging, and dispensing of drugs.

1 (e) The standards shall require that inmates who are received
2 by the facility while they are pregnant be notified, orally or in
3 writing, of and provided all of the following:

- 4 (1) A balanced, nutritious diet approved by a doctor.
- 5 (2) Prenatal and post partum information and health care,
6 including, but not limited to, access to necessary vitamins as
7 recommended by a doctor.
- 8 (3) Information pertaining to childbirth education and infant
9 care.
- 10 (4) A dental cleaning while in a state facility.

11 (f) The standards shall provide that a woman known to be
12 pregnant or in recovery after delivery shall not be restrained, except
13 as provided in Section 3407. The board shall develop standards
14 regarding the restraint of pregnant women at the next biennial
15 review of the standards after the enactment of the act amending
16 this subdivision and shall review the individual facility's
17 compliance with the standards.

18 (g) In establishing minimum standards, the board shall seek the
19 advice of the following:

- 20 (1) For health and sanitary conditions:
21 The State Department of Public Health, physicians, psychiatrists,
22 local public health officials, and other interested persons.
- 23 (2) For fire and life safety:
24 The State Fire Marshal, local fire officials, and other interested
25 persons.
- 26 (3) For security, rehabilitation programs, recreation, and
27 treatment of persons confined in correctional facilities:
28 The Department of Corrections and Rehabilitation, state and
29 local juvenile justice commissions, state and local correctional
30 officials, experts in criminology and penology, and other interested
31 persons.
- 32 (4) For personnel training:
33 The Commission on Peace Officer Standards and Training,
34 psychiatrists, experts in criminology and penology, the Department
35 of Corrections and Rehabilitation, state and local correctional
36 officials, and other interested persons.
- 37 (5) For female inmates and pregnant inmates in local adult and
38 juvenile facilities:
39 The California State Sheriffs' Association and Chief Probation
40 Officers' Association of California, and other interested persons.

1 SEC. 164. Section 11165.7 of the Penal Code is amended to
2 read:

3 11165.7. (a) As used in this article, “mandated reporter” is
4 defined as any of the following:

5 (1) A teacher.

6 (2) An instructional aide.

7 (3) A teacher’s aide or teacher’s assistant employed by a public
8 or private school.

9 (4) A classified employee of a public school.

10 (5) An administrative officer or supervisor of child welfare and
11 attendance, or a certificated pupil personnel employee of a public
12 or private school.

13 (6) An administrator of a public or private day camp.

14 (7) An administrator or employee of a public or private youth
15 center, youth recreation program, or youth organization.

16 (8) An administrator or employee of a public or private
17 organization whose duties require direct contact and supervision
18 of children.

19 (9) An employee of a county office of education or the State
20 Department of Education whose duties bring the employee into
21 contact with children on a regular basis.

22 (10) A licensee, an administrator, or an employee of a licensed
23 community care or child day care facility.

24 (11) A Head Start program teacher.

25 (12) A licensing worker or licensing evaluator employed by a
26 licensing agency, as defined in Section 11165.11.

27 (13) A public assistance worker.

28 (14) An employee of a child care institution, including, but not
29 limited to, foster parents, group home personnel, and personnel of
30 residential care facilities.

31 (15) A social worker, probation officer, or parole officer.

32 (16) An employee of a school district police or security
33 department.

34 (17) A person who is an administrator or presenter of, or a
35 counselor in, a child abuse prevention program in a public or
36 private school.

37 (18) A district attorney investigator, inspector, or local child
38 support agency caseworker, unless the investigator, inspector, or
39 caseworker is working with an attorney appointed pursuant to

1 Section 317 of the Welfare and Institutions Code to represent a
2 minor.

3 (19) A peace officer, as defined in Chapter 4.5 (commencing
4 with Section 830) of Title 3 of Part 2, who is not otherwise
5 described in this section.

6 (20) A firefighter, except for volunteer firefighters.

7 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
8 resident, intern, podiatrist, chiropractor, licensed nurse, dental
9 hygienist, optometrist, marriage and family therapist, clinical social
10 worker, professional clinical counselor, or any other person who
11 is currently licensed under Division 2 (commencing with Section
12 500) of the Business and Professions Code.

13 (22) An emergency medical technician I or II, paramedic, or
14 other person certified pursuant to Division 2.5 (commencing with
15 Section 1797) of the Health and Safety Code.

16 (23) A psychological assistant registered pursuant to Section
17 2913 of the Business and Professions Code.

18 (24) A marriage and family therapist trainee, as defined in
19 subdivision (c) of Section 4980.03 of the Business and Professions
20 Code.

21 (25) An unlicensed marriage and family therapist intern
22 registered under Section 4980.44 of the Business and Professions
23 Code.

24 (26) A state or county public health employee who treats a minor
25 for venereal disease or any other condition.

26 (27) A coroner.

27 (28) A medical examiner or other person who performs
28 autopsies.

29 (29) A commercial film and photographic print or image
30 processor as specified in subdivision (e) of Section 11166. As used
31 in this article, “commercial film and photographic print or image
32 processor” means a person who develops exposed photographic
33 film into negatives, slides, or prints, or who makes prints from
34 negatives or slides, or who prepares, publishes, produces, develops,
35 duplicates, or prints any representation of information, data, or an
36 image, including, but not limited to, any film, filmstrip, photograph,
37 negative, slide, photocopy, videotape, video laser disc, computer
38 hardware, computer software, computer floppy disk, data storage
39 medium, CD-ROM, computer-generated equipment, or
40 computer-generated image, for compensation. The term includes

1 any employee of that person; it does not include a person who
 2 develops film or makes prints or images for a public agency.

3 (30) A child visitation monitor. As used in this article, “child
 4 visitation monitor” means a person who, for financial
 5 compensation, acts as a monitor of a visit between a child and
 6 another person when the monitoring of that visit has been ordered
 7 by a court of law.

8 (31) An animal control officer or humane society officer. For
 9 the purposes of this article, the following terms have the following
 10 meanings:

11 (A) “Animal control officer” means a person employed by a
 12 city, county, or city and county for the purpose of enforcing animal
 13 control laws or regulations.

14 (B) “Humane society officer” means a person appointed or
 15 employed by a public or private entity as a humane officer who is
 16 qualified pursuant to Section 14502 or 14503 of the Corporations
 17 Code.

18 (32) A clergy member, as specified in subdivision (d) of Section
 19 11166. As used in this article, “clergy member” means a priest,
 20 minister, rabbi, religious practitioner, or similar functionary of a
 21 church, temple, or recognized denomination or organization.

22 (33) Any custodian of records of a clergy member, as specified
 23 in this section and subdivision (d) of Section 11166.

24 (34) An employee of any police department, county sheriff’s
 25 department, county probation department, or county welfare
 26 department.

27 (35) An employee or volunteer of a Court Appointed Special
 28 Advocate program, as defined in Rule 5.655 of the California Rules
 29 of Court.

30 (36) A custodial officer, as defined in Section 831.5.

31 (37) A person providing services to a minor child under Section
 32 12300 or 12300.1 of the Welfare and Institutions Code.

33 (38) An alcohol and drug counselor. As used in this article, an
 34 “alcohol and drug counselor” is a person providing counseling,
 35 therapy, or other clinical services for a state licensed or certified
 36 drug, alcohol, or drug and alcohol treatment program. However,
 37 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
 38 and of itself, a sufficient basis for reporting child abuse or neglect.

39 (39) A clinical counselor trainee, as defined in subdivision (g)
 40 of Section 4999.12 of the Business and Professions Code.

1 (40) A clinical counselor intern registered under Section 4999.42
2 of the Business and Professions Code.

3 (41) An employee or administrator of a public or private
4 postsecondary institution, whose duties bring the administrator or
5 employee into contact with children on a regular basis, or who
6 supervises those whose duties bring the administrator or employee
7 into contact with children on a regular basis, as to child abuse or
8 neglect occurring on that institution's premises or at an official
9 activity of, or program conducted by, the institution. Nothing in
10 this paragraph shall be construed as altering the lawyer-client
11 privilege as set forth in Article 3 (commencing with Section 950)
12 of Chapter 4 of Division 8 of the Evidence Code.

13 (42) An athletic coach, athletic administrator, or athletic director
14 employed by any public or private school that provides any
15 combination of instruction for kindergarten, or grades 1 to 12,
16 inclusive.

17 (43) (A) A commercial computer technician as specified in
18 subdivision (e) of Section 11166. As used in this article,
19 "commercial computer technician" means a person who works for
20 a company that is in the business of repairing, installing, or
21 otherwise servicing a computer or computer component, including,
22 but not limited to, a computer part, device, memory storage or
23 recording mechanism, auxiliary storage recording or memory
24 capacity, or any other material relating to the operation and
25 maintenance of a computer or computer network system, for a fee.
26 An employer who provides an electronic communications service
27 or a remote computing service to the public shall be deemed to
28 comply with this article if that employer complies with Section
29 2258A of Title 18 of the United States Code.

30 (B) An employer of a commercial computer technician may
31 implement internal procedures for facilitating reporting consistent
32 with this article. These procedures may direct employees who are
33 mandated reporters under this paragraph to report materials
34 described in subdivision (e) of Section 11166 to an employee who
35 is designated by the employer to receive the reports. An employee
36 who is designated to receive reports under this subparagraph shall
37 be a commercial computer technician for purposes of this article.
38 A commercial computer technician who makes a report to the
39 designated employee pursuant to this subparagraph shall be deemed
40 to have complied with the requirements of this article and shall be

1 subject to the protections afforded to mandated reporters, including,
2 but not limited to, those protections afforded by Section 11172.

3 (44) Any athletic coach, including, but not limited to, an
4 assistant coach or a graduate assistant involved in coaching, at
5 public or private postsecondary institutions.

6 (b) Except as provided in paragraph (35) of subdivision (a),
7 volunteers of public or private organizations whose duties require
8 direct contact with and supervision of children are not mandated
9 reporters but are encouraged to obtain training in the identification
10 and reporting of child abuse and neglect and are further encouraged
11 to report known or suspected instances of child abuse or neglect
12 to an agency specified in Section 11165.9.

13 (c) Employers are strongly encouraged to provide their
14 employees who are mandated reporters with training in the duties
15 imposed by this article. This training shall include training in child
16 abuse and neglect identification and training in child abuse and
17 neglect reporting. Whether or not employers provide their
18 employees with training in child abuse and neglect identification
19 and reporting, the employers shall provide their employees who
20 are mandated reporters with the statement required pursuant to
21 subdivision (a) of Section 11166.5.

22 (d) School districts that do not train their employees specified
23 in subdivision (a) in the duties of mandated reporters under the
24 child abuse reporting laws shall report to the State Department of
25 Education the reasons why this training is not provided.

26 (e) Unless otherwise specifically provided, the absence of
27 training shall not excuse a mandated reporter from the duties
28 imposed by this article.

29 (f) Public and private organizations are encouraged to provide
30 their volunteers whose duties require direct contact with and
31 supervision of children with training in the identification and
32 reporting of child abuse and neglect.

33 SEC. 165. Section 11166 of the Penal Code is amended to read:
34 11166. (a) Except as provided in subdivision (d), and in
35 Section 11166.05, a mandated reporter shall make a report to an
36 agency specified in Section 11165.9 whenever the mandated
37 reporter, in his or her professional capacity or within the scope of
38 his or her employment, has knowledge of or observes a child whom
39 the mandated reporter knows or reasonably suspects has been the
40 victim of child abuse or neglect. The mandated reporter shall make

1 an initial report by telephone to the agency immediately or as soon
2 as is practicably possible, and shall prepare and send, fax, or
3 electronically transmit a written followup report within 36 hours
4 of receiving the information concerning the incident. The mandated
5 reporter may include with the report any nonprivileged
6 documentary evidence the mandated reporter possesses relating
7 to the incident.

8 (1) For purposes of this article, “reasonable suspicion” means
9 that it is objectively reasonable for a person to entertain a suspicion,
10 based upon facts that could cause a reasonable person in a like
11 position, drawing, when appropriate, on his or her training and
12 experience, to suspect child abuse or neglect. “Reasonable
13 suspicion” does not require certainty that child abuse or neglect
14 has occurred nor does it require a specific medical indication of
15 child abuse or neglect; any “reasonable suspicion” is sufficient.
16 For purposes of this article, the pregnancy of a minor does not, in
17 and of itself, constitute a basis for a reasonable suspicion of sexual
18 abuse.

19 (2) The agency shall be notified and a report shall be prepared
20 and sent, faxed, or electronically transmitted even if the child has
21 expired, regardless of whether or not the possible abuse was a
22 factor contributing to the death, and even if suspected child abuse
23 was discovered during an autopsy.

24 (3) A report made by a mandated reporter pursuant to this
25 section shall be known as a mandated report.

26 (b) If, after reasonable efforts, a mandated reporter is unable to
27 submit an initial report by telephone, he or she shall immediately
28 or as soon as is practicably possible, by fax or electronic
29 transmission, make a one-time automated written report on the
30 form prescribed by the Department of Justice, and shall also be
31 available to respond to a telephone followup call by the agency
32 with which he or she filed the report. A mandated reporter who
33 files a one-time automated written report because he or she was
34 unable to submit an initial report by telephone is not required to
35 submit a written followup report.

36 (1) The one-time automated written report form prescribed by
37 the Department of Justice shall be clearly identifiable so that it is
38 not mistaken for a standard written followup report. In addition,
39 the automated one-time report shall contain a section that allows
40 the mandated reporter to state the reason the initial telephone call

1 was not able to be completed. The reason for the submission of
2 the one-time automated written report in lieu of the procedure
3 prescribed in subdivision (a) shall be captured in the Child Welfare
4 Services/Case Management System (CWS/CMS). The department
5 shall work with stakeholders to modify reporting forms and the
6 CWS/CMS as is necessary to accommodate the changes enacted
7 by these provisions.

8 (2) This subdivision shall not become operative until the
9 CWS/CMS is updated to capture the information prescribed in this
10 subdivision.

11 (3) This subdivision shall become inoperative three years after
12 this subdivision becomes operative or on January 1, 2009,
13 whichever occurs first.

14 (4) On the inoperative date of these provisions, a report shall
15 be submitted to the counties and the Legislature by the State
16 Department of Social Services that reflects the data collected from
17 automated one-time reports indicating the reasons stated as to why
18 the automated one-time report was filed in lieu of the initial
19 telephone report.

20 (5) Nothing in this section shall supersede the requirement that
21 a mandated reporter first attempt to make a report via telephone,
22 or that agencies specified in Section 11165.9 accept reports from
23 mandated reporters and other persons as required.

24 (c) A mandated reporter who fails to report an incident of known
25 or reasonably suspected child abuse or neglect as required by this
26 section is guilty of a misdemeanor punishable by up to six months
27 confinement in a county jail or by a fine of one thousand dollars
28 (\$1,000) or by both that imprisonment and fine. If a mandated
29 reporter intentionally conceals his or her failure to report an
30 incident known by the mandated reporter to be abuse or severe
31 neglect under this section, the failure to report is a continuing
32 offense until an agency specified in Section 11165.9 discovers the
33 offense.

34 (d) (1) A clergy member who acquires knowledge or a
35 reasonable suspicion of child abuse or neglect during a penitential
36 communication is not subject to subdivision (a). For the purposes
37 of this subdivision, "penitential communication" means a
38 communication, intended to be in confidence, including, but not
39 limited to, a sacramental confession, made to a clergy member
40 who, in the course of the discipline or practice of his or her church,

1 denomination, or organization, is authorized or accustomed to hear
2 those communications, and under the discipline, tenets, customs,
3 or practices of his or her church, denomination, or organization,
4 has a duty to keep those communications secret.

5 (2) Nothing in this subdivision shall be construed to modify or
6 limit a clergy member's duty to report known or suspected child
7 abuse or neglect when the clergy member is acting in some other
8 capacity that would otherwise make the clergy member a mandated
9 reporter.

10 (3) (A) On or before January 1, 2004, a clergy member or any
11 custodian of records for the clergy member may report to an agency
12 specified in Section 11165.9 that the clergy member or any
13 custodian of records for the clergy member, prior to January 1,
14 1997, in his or her professional capacity or within the scope of his
15 or her employment, other than during a penitential communication,
16 acquired knowledge or had a reasonable suspicion that a child had
17 been the victim of sexual abuse *and* that the clergy member or any
18 custodian of records for the clergy member did not previously
19 report the abuse to an agency specified in Section 11165.9. The
20 provisions of Section 11172 shall apply to all reports made pursuant
21 to this paragraph.

22 (B) This paragraph shall apply even if the victim of the known
23 or suspected abuse has reached the age of majority by the time the
24 required report is made.

25 (C) The local law enforcement agency shall have jurisdiction
26 to investigate any report of child abuse made pursuant to this
27 paragraph even if the report is made after the victim has reached
28 the age of majority.

29 (e) (1) A commercial film, photographic print, or image
30 processor who has knowledge of or observes, within the scope of
31 his or her professional capacity or employment, any film,
32 photograph, videotape, negative, slide, or any representation of
33 information, data, or an image, including, but not limited to, any
34 film, filmstrip, photograph, negative, slide, photocopy, videotape,
35 video laser disc, computer hardware, computer software, computer
36 floppy disk, data storage medium, CD-ROM, computer-generated
37 equipment, or computer-generated image depicting a child under
38 16 years of age engaged in an act of sexual conduct, shall,
39 immediately or as soon as practicably possible, telephonically
40 report the instance of suspected abuse to the law enforcement

1 agency located in the county in which the images are seen. Within
2 36 hours of receiving the information concerning the incident, the
3 reporter shall prepare and send, fax, or electronically transmit a
4 written followup report of the incident with a copy of the image
5 or material attached.

6 (2) A commercial computer technician who has knowledge of
7 or observes, within the scope of his or her professional capacity
8 or employment, any representation of information, data, or an
9 image, including, but not limited to, any computer hardware,
10 computer software, computer file, computer floppy disk, data
11 storage medium, CD-ROM, computer-generated equipment, or
12 computer-generated image that is retrievable in perceivable form
13 and that is intentionally saved, transmitted, or organized on an
14 electronic medium, depicting a child under 16 years of age engaged
15 in an act of sexual conduct, shall immediately, or as soon as
16 practicably possible, telephonically report the instance of suspected
17 abuse to the law enforcement agency located in the county in which
18 the images or material are seen. As soon as practicably possible
19 after receiving the information concerning the incident, the reporter
20 shall prepare and send, fax, or electronically transmit a written
21 followup report of the incident with a brief description of the
22 images or materials.

23 (3) For purposes of this article, “commercial computer
24 technician” includes an employee designated by an employer to
25 receive reports pursuant to an established reporting process
26 authorized by subparagraph (B) of paragraph (43) of subdivision
27 (a) of Section 11165.7.

28 (4) As used in this subdivision, “electronic medium” includes,
29 but is not limited to, a recording, CD-ROM, magnetic disk memory,
30 magnetic tape memory, CD, DVD, thumbdrive, or any other
31 computer hardware or media.

32 (5) As used in this subdivision, “sexual conduct” means any of
33 the following:

34 (A) Sexual intercourse, including genital-genital, oral-genital,
35 anal-genital, or oral-anal, whether between persons of the same or
36 opposite sex or between humans and animals.

37 (B) Penetration of the vagina or rectum by any object.

38 (C) Masturbation for the purpose of sexual stimulation of the
39 viewer.

1 (D) Sadoomasochistic abuse for the purpose of sexual stimulation
2 of the viewer.

3 (E) Exhibition of the genitals, pubic, or rectal areas of a person
4 for the purpose of sexual stimulation of the viewer.

5 (f) Any mandated reporter who knows or reasonably suspects
6 that the home or institution in which a child resides is unsuitable
7 for the child because of abuse or neglect of the child shall bring
8 the condition to the attention of the agency to which, and at the
9 same time as, he or she makes a report of the abuse or neglect
10 pursuant to subdivision (a).

11 (g) A other person who has knowledge of or observes a child
12 whom he or she knows or reasonably suspects has been a victim
13 of child abuse or neglect may report the known or suspected
14 instance of child abuse or neglect to an agency specified in Section
15 11165.9. For purposes of this section, "any other person" includes
16 a mandated reporter who acts in his or her private capacity and
17 not in his or her professional capacity or within the scope of his
18 or her employment.

19 (h) When two or more persons, who are required to report,
20 jointly have knowledge of a known or suspected instance of child
21 abuse or neglect, and when there is agreement among them, the
22 telephone report may be made by a member of the team selected
23 by mutual agreement and a single report may be made and signed
24 by the selected member of the reporting team. Any member who
25 has knowledge that the member designated to report has failed to
26 do so shall thereafter make the report.

27 (i) (1) The reporting duties under this section are individual,
28 and no supervisor or administrator may impede or inhibit the
29 reporting duties, and no person making a report shall be subject
30 to any sanction for making the report. However, internal procedures
31 to facilitate reporting and apprise supervisors and administrators
32 of reports may be established provided that they are not inconsistent
33 with this article.

34 (2) The internal procedures shall not require any employee
35 required to make reports pursuant to this article to disclose his or
36 her identity to the employer.

37 (3) Reporting the information regarding a case of possible child
38 abuse or neglect to an employer, supervisor, school principal,
39 school counselor, coworker, or other person shall not be a substitute

1 for making a mandated report to an agency specified in Section
2 11165.9.

3 (j) A county probation or welfare department shall immediately,
4 or as soon as practicably possible, report by telephone, fax, or
5 electronic transmission to the law enforcement agency having
6 jurisdiction over the case, to the agency given the responsibility
7 for investigation of cases under Section 300 of the Welfare and
8 Institutions Code, and to the district attorney's office every known
9 or suspected instance of child abuse or neglect, as defined in
10 Section 11165.6, except acts or omissions coming within
11 subdivision (b) of Section 11165.2, or reports made pursuant to
12 Section 11165.13 based on risk to a child which relates solely to
13 the inability of the parent to provide the child with regular care
14 due to the parent's substance abuse, which shall be reported only
15 to the county welfare or probation department. A county probation
16 or welfare department also shall send, fax, or electronically transmit
17 a written report thereof within 36 hours of receiving the information
18 concerning the incident to any agency to which it makes a
19 telephone report under this subdivision.

20 (k) A law enforcement agency shall immediately, or as soon as
21 practicably possible, report by telephone, fax, or electronic
22 transmission to the agency given responsibility for investigation
23 of cases under Section 300 of the Welfare and Institutions Code
24 and to the district attorney's office every known or suspected
25 instance of child abuse or neglect reported to it, except acts or
26 omissions coming within subdivision (b) of Section 11165.2, which
27 shall be reported only to the county welfare or probation
28 department. A law enforcement agency shall report to the county
29 welfare or probation department every known or suspected instance
30 of child abuse or neglect reported to it which is alleged to have
31 occurred as a result of the action of a person responsible for the
32 child's welfare, or as the result of the failure of a person responsible
33 for the child's welfare to adequately protect the minor from abuse
34 when the person responsible for the child's welfare knew or
35 reasonably should have known that the minor was in danger of
36 abuse. A law enforcement agency also shall send, fax, or
37 electronically transmit a written report thereof within 36 hours of
38 receiving the information concerning the incident to any agency
39 to which it makes a telephone report under this subdivision.

40 SEC. 166. Section 12022 of the Penal Code is amended to read:

1 12022. (a) (1) Except as provided in subdivisions (c) and (d),
2 a person who is armed with a firearm in the commission of a felony
3 or attempted felony shall be punished by an additional and
4 consecutive term of imprisonment pursuant to subdivision (h) of
5 Section 1170 for one year, unless the arming is an element of that
6 offense. This additional term shall apply to a person who is a
7 principal in the commission of a felony or attempted felony if one
8 or more of the principals is armed with a firearm, whether or not
9 the person is personally armed with a firearm.

10 (2) Except as provided in subdivision (c), and notwithstanding
11 subdivision (d), if the firearm is an assault weapon, as defined in
12 Section 30510 or ~~Section~~ 30515, or a machinegun, as defined in
13 Section 16880, or a .50 BMG rifle, as defined in Section 30530,
14 the additional and consecutive term described in this subdivision
15 shall be three years imprisonment pursuant to subdivision (h) of
16 Section 1170 whether or not the arming is an element of the offense
17 of which the person was convicted. The additional term provided
18 in this paragraph shall apply to any person who is a principal in
19 the commission of a felony or attempted felony if one or more of
20 the principals is armed with an assault weapon, machinegun, or a
21 .50 BMG rifle, whether or not the person is personally armed with
22 an assault weapon, machinegun, or a .50 BMG rifle.

23 (b) (1) A person who personally uses a deadly or dangerous
24 weapon in the commission of a felony or attempted felony shall
25 be punished by an additional and consecutive term of imprisonment
26 in the state prison for one year, unless use of a deadly or dangerous
27 weapon is an element of that offense.

28 (2) If the person described in paragraph (1) has been convicted
29 of carjacking or attempted carjacking, the additional term shall be
30 in the state prison for one, two, or three years.

31 (3) When a person is found to have personally used a deadly or
32 dangerous weapon in the commission of a felony or attempted
33 felony as provided in this subdivision and the weapon is owned
34 by that person, the court shall order that the weapon be deemed a
35 nuisance and disposed of in the manner provided in Sections 18000
36 and 18005.

37 (c) Notwithstanding the enhancement set forth in subdivision
38 (a), a person who is personally armed with a firearm in the
39 commission of a violation or attempted violation of Section 11351,
40 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,

1 11379.5, or 11379.6 of the Health and Safety Code shall be
2 punished by an additional and consecutive term of imprisonment
3 pursuant to subdivision (h) of Section 1170 for three, four, or five
4 years.

5 (d) Notwithstanding the enhancement set forth in subdivision
6 (a), a person who is not personally armed with a firearm who,
7 knowing that another principal is personally armed with a firearm,
8 is a principal in the commission of an offense or attempted offense
9 specified in subdivision (c), shall be punished by an additional and
10 consecutive term of imprisonment pursuant to subdivision (h) of
11 Section 1170 for one, two, or three years.

12 (e) For purposes of imposing an enhancement under Section
13 1170.1, the enhancements under this section shall count as a single
14 enhancement.

15 (f) Notwithstanding any other provision of law, the court may
16 strike the additional punishment for the enhancements provided
17 in subdivision (c) or (d) in an unusual case where the interests of
18 justice would best be served, if the court specifies on the record
19 and enters into the minutes the circumstances indicating that the
20 interests of justice would best be served by that disposition.

21 SEC. 167. Section 12022.1 of the Penal Code is amended to
22 read:

23 12022.1. (a) For the purposes of this section only:

24 (1) "Primary offense" means a felony offense for which a person
25 has been released from custody on bail or on his or her own
26 recognizance prior to the judgment becoming final, including the
27 disposition of any appeal, or for which release on bail or his or her
28 own recognizance has been revoked. In cases where the court has
29 granted a stay of execution of a county jail commitment or state
30 prison commitment, "primary offense" also means a felony offense
31 for which a person is out of custody during the period of time
32 between the pronouncement of judgment and the time the person
33 actually surrenders into custody or is otherwise returned to custody.

34 (2) "Secondary offense" means a felony offense alleged to have
35 been committed while the person is released from custody for a
36 primary offense.

37 (b) Any person arrested for a secondary offense that was alleged
38 to have been committed while that person was released from
39 custody on a primary offense shall be subject to a penalty

1 enhancement of an additional two years, which shall be served
2 consecutive to any other term imposed by the court.

3 (c) The enhancement allegation provided in subdivision (b)
4 shall be pleaded in the information or indictment which alleges
5 the secondary offense, or in the information or indictment of the
6 primary offense if a conviction has already occurred in the
7 secondary offense, and shall be proved as provided by law. The
8 enhancement allegation may be pleaded in a complaint but need
9 not be proved at the preliminary hearing or grand jury hearing.

10 (d) Whenever there is a conviction for the secondary offense
11 and the enhancement is proved, and the person is sentenced on the
12 secondary offense prior to the conviction of the primary offense,
13 the imposition of the enhancement shall be stayed pending
14 imposition of the sentence for the primary offense. The stay shall
15 be lifted by the court hearing the primary offense at the time of
16 sentencing for that offense and shall be recorded in the abstract of
17 judgment. If the person is acquitted of the primary offense the stay
18 shall be permanent.

19 (e) If the person is convicted of a felony for the primary offense,
20 is sentenced to state prison for the primary offense, and is convicted
21 of a felony for the secondary offense, any sentence for the
22 secondary offense shall be consecutive to the primary sentence
23 and the aggregate term shall be served in the state prison, even if
24 the term for the secondary offense specifies imprisonment in county
25 jail pursuant to subdivision (h) of Section 1170.

26 (f) If the person is convicted of a felony for the primary offense,
27 is granted probation for the primary offense, and is convicted of
28 a felony for the secondary offense, any sentence for the secondary
29 offense shall be enhanced as provided in subdivision (b).

30 (g) If the primary offense conviction is reversed on appeal, the
31 enhancement shall be suspended pending retrial of that felony.
32 Upon retrial and reconviction, the enhancement shall be reimposed.
33 If the person is no longer in custody for the secondary offense
34 upon reconviction of the primary offense, the court may, at its
35 discretion, reimpose the enhancement and order him or her
36 recommitted to custody.

37 SEC. 168. Section 10295.6 of the Public Contract Code is
38 amended to read:

39 10295.6. Sections 10295 and 10297 do not apply to any contract
40 entered into by the Department of Water Resources under Part 3

1 (commencing with Section 11100) of Division 6 or Chapter 8
2 (commencing with Section 12930) of Part 6 of Division 6 of the
3 Water Code for the acquisition, sale, or transmission of power, or
4 for services to facilitate those activities.

5 SEC. 169. Section 20651.7 of the Public Contract Code is
6 amended to read:

7 20651.7. (a) For the purposes of bid evaluation and selection
8 pursuant to subdivision (a) of Section 20651, when a community
9 college district determines that it can expect long-term savings
10 through the use of life-cycle cost methodology, the use of more
11 sustainable goods and materials, and reduced administrative costs,
12 the community college district may provide for the selection of
13 the lowest responsible bidder on the basis of best value pursuant
14 to policies and procedures adopted by the governing board in
15 accordance with this section.

16 (b) For purposes of this section, “best value” means the most
17 advantageous balance of price, quality, service, performance, and
18 other elements, as defined by the governing board, achieved
19 through methods in accordance with this section and determined
20 by objective performance criteria that may include price, features,
21 long-term functionality, life-cycle costs, overall sustainability, and
22 required services.

23 (c) A community college district shall consider all of the
24 following when adopting best value policies pursuant to subdivision
25 (a):

26 (1) Price and service level proposals that reduce the district’s
27 overall operating costs, including end-of-life expenditures and
28 impact.

29 (2) Equipment, services, supplies, and materials standards that
30 support the community college district’s strategic acquisition and
31 management program direction.

32 (3) A procedure for protest and resolution.

33 (d) A community college district may consider any of the
34 following factors if adopting policies and procedures pursuant to
35 subdivision (c):

36 (1) The total cost to the community college district of its
37 purchase, use, and consumption of equipment, supplies, and
38 materials.

39 (2) The operational cost or benefit incurred by the community
40 college district as a result of a contract award.

- 1 (3) The added value to the community college district, as defined
2 in the request for proposal, of vendor-added services.
- 3 (4) The quality and effectiveness of equipment, supplies,
4 materials, and services.
- 5 (5) The reliability of delivery and installation schedules.
- 6 (6) The terms and conditions of product warranties and vendor
7 guarantees.
- 8 (7) The financial stability of the vendor.
- 9 (8) The vendor's quality assurance program.
- 10 (9) The vendor's experience with the provisions of equipment,
11 supplies, materials, and services within the institutional
12 marketplace.
- 13 (10) The consistency of the vendor's proposed equipment,
14 supplies, materials, and services with the district's overall supplies
15 and materials procurement program.
- 16 (11) The economic benefits to the local community, including,
17 but not limited to, job creation and retention.
- 18 (12) The environmental benefits to the local community.
- 19 (e) A community college district awarding a contract under this
20 section shall award a contract to the lowest responsible bidder
21 whose proposal is determined, in writing by the community college
22 district, to be the best value to the community college district based
23 solely on the criteria set forth in the request for proposal.
- 24 (f) The governing board of a community college district shall
25 issue a written notice of intent to award supporting its contract
26 award and stating in detail the basis of the award. The notice of
27 the intent to award and the contract file must be sufficient to satisfy
28 an external audit.
- 29 (g) The governing board of a community college district shall
30 publicly announce its award, identifying the bidder to which the
31 award is made, the price proposal of the contractor awarded the
32 contract, and the overall combined rating on the request for
33 proposal evaluation factors. The announcement shall also include
34 the ranking of the contractor awarded the contract in relation to
35 all other responsive bidders and their respective price proposals
36 and summary of the rationale for the contract award.
- 37 (h) The community college district shall ensure that all
38 businesses have a fair and equitable opportunity to compete for,
39 and participate in, district contracts and shall also ensure that
40 discrimination, as described in subdivision (e) of Section 12751.3

1 of the Public Utilities Code, in the award and performance of
2 contracts does not occur.

3 (i) (1) If a community college district elects to purchase
4 equipment, materials, supplies, and services by contract, let in
5 accordance with this section, the community college district shall
6 submit the following information to the Chancellor of the
7 California Community Colleges on or before January 1, 2016:

8 (A) The community college district's policies adopted pursuant
9 to subdivision (a).

10 (B) An annual list of district procurements for contracts with a
11 brief description of the contract, the winning bid, the cost, and if
12 the contract was done under best value acquisition policies.

13 (C) For a contract awarded under the best value acquisition
14 policies, the bid announcement announcing the bidder to which
15 the award was made, including that bidder's scoring rating
16 compared to other bidders, the winning contractor's price proposal,
17 the overall combined rating on the request for proposal evaluation
18 factors, a description of the products, commodities, or services
19 sought, and a summary of the rationale for the contract award.

20 (D) For each contract awarded using the best value acquisition
21 policies at least one bid award announcement for a comparably
22 priced contract using the traditional lowest responsible bidder
23 process that specifies the bidder to which the contract was awarded,
24 the amount of the award, and the request for bid for that contract
25 that includes a description of the products, commodities, or services
26 sought for at least one comparably sized contract, to the best value
27 contract being let, awarded pursuant to the traditional lowest
28 responsible bidder process including contracts awarded by the
29 district in the three years prior to the adoption of best value
30 acquisition policies by the district.

31 (E) For contracts awarded using best value, a summary of any
32 additional economic benefit other than the price of the contract
33 obtained, including an explanation of whether these benefits were
34 realized as expected.

35 (F) The total number of bid protests or protests concerning an
36 aspect of the solicitation, bid, or award of the agreement since the
37 district adopted policies pursuant to subdivision (a) and the number
38 of those protests that occurred under best value.

39 (G) A description of any written bid protest or protests
40 concerning an aspect of the solicitation, bid, or award of the

1 agreement including the resolution of the protest for any contract
2 submitted pursuant to this section.

3 (2) The Legislative Analyst shall request the chancellor to
4 provide the information specified in paragraph (1) to the Legislative
5 Analyst on or before July 1, 2016. On or before February 1, 2017,
6 the Legislative Analyst shall report to the Legislature on the use
7 of competitive means for obtaining best value procurement by
8 community college districts. The Legislative Analyst shall use the
9 information provided by the chancellor to report all of the
10 following:

11 (A) A summary of the overall benefits of best value acquisition.

12 (B) A comparison of the overall cost of contracts let under best
13 value acquisition pursuant to this section to similar contracts let
14 under traditional low bid procurement practices.

15 (C) An assessment of any benefits or disadvantages of best value
16 procurement practices as compared to bids awarded to the lowest
17 responsible bidder.

18 (D) An assessment of whether the use of best value procurement
19 has led to a difference in the number of disputes as compared to
20 contracts awarded using the traditional lowest responsible bidder
21 method.

22 (E) An assessment of the policies adopted by the community
23 college districts pursuant to subdivision (a) as well as an assessment
24 of the overall performance criteria used to evaluate the bids and
25 the effectiveness of the methodology.

26 (F) Recommendations as to whether the best value at lowest
27 cost acquisition procurement authority should be continued.

28 (j) This section shall remain in effect only until January 1, 2018,
29 and as of that date is repealed.

30 SEC. 170. Section 4629.5 of the Public Resources Code is
31 amended to read:

32 4629.5. (a) (1) On and after January 1, 2013, there is hereby
33 imposed an assessment on a person who purchases a lumber
34 product or an engineered wood product for the storage, use, or
35 other consumption in this state, at the rate of 1 percent of the sales
36 price.

37 (2) A retailer shall charge the person the amount of the
38 assessment as a charge that is separate from, and not included in,
39 any other fee, charge, or other amount paid by the purchaser.

1 (3) The retailer shall collect the assessment from the person at
2 the time of sale, and may retain an amount equal to the amount of
3 reimbursement, as determined by the State Board of Equalization
4 pursuant to regulations, for any costs associated with the collection
5 of the assessment, to be taken on the first return or next consecutive
6 returns until the entire reimbursement amount is retained. For
7 purposes of this paragraph, the State Board of Equalization may
8 adopt emergency regulations pursuant to Section 11346.1 of the
9 Government Code. The adoption of any regulation pursuant to this
10 paragraph shall be deemed to be an emergency and necessary for
11 the immediate preservation of the public peace, health, and safety,
12 and general welfare.

13 (b) The retailer shall separately state the amount of the
14 assessment imposed under this section on the sales receipt given
15 by the retailer to the person at the time of sale.

16 (c) The State Board of Equalization shall administer and collect
17 the assessment imposed by this section pursuant to the Fee
18 Collection Procedures Law (Part 30 (commencing with Section
19 55001) of Division 2 of the Revenue and Taxation Code) with
20 those changes as may be necessary to conform to the provisions
21 of this article. For purposes of this section, the references in the
22 Fee Collection Procedures Law to “fee” shall include the
23 assessment imposed by this section.

24 (d) (1) The assessment is required to be collected by a retailer
25 and any amount unreturned to the person who paid an amount in
26 excess of the assessment, but was collected from the person under
27 the representation by the retailer that it was owed as an assessment,
28 constitutes debts owed by the retailer to this state.

29 (2) Every person who purchases a lumber product or an
30 engineered wood product for storage, use, or other consumption
31 in this state is liable for the assessment until it has been paid to
32 this state, except that payment to a retailer relieves the person from
33 further liability for the assessment. Any assessment collected from
34 a person that has not been remitted to the State Board of
35 Equalization shall be a debt owed to the state by the retailer
36 required to collect and remit the assessment. Nothing in this part
37 shall impose any obligation upon a retailer to take any legal action
38 to enforce the collection of the assessment imposed by this section.

39 (e) Except as provided in paragraph (3) of subdivision (a), the
40 State Board of Equalization may prescribe, adopt, and enforce

1 regulations relating to the administration and enforcement of this
2 section, including, but not limited to, collections, reporting, refunds,
3 and appeals.

4 (f) (1) The assessment imposed by this section is due and
5 payable to the State Board of Equalization quarterly on or before
6 the last day of the month next succeeding each quarterly period.

7 (2) On or before the last day of the month following each
8 quarterly period, a return for the preceding quarterly period shall
9 be filed with the State Board of Equalization using electronic
10 media, in the form prescribed by the State Board of Equalization.
11 Returns shall be authenticated in a form or pursuant to methods,
12 as prescribed by the State Board of Equalization.

13 (g) For purposes of this section, all of the following shall apply:

14 (1) “Purchase” has the same meaning as that term is defined in
15 Section 6010 of the Revenue and Taxation Code.

16 (2) “Retailer” has the same meaning as that term is defined in
17 Section 6015 of the Revenue and Taxation Code.

18 (3) “Sales price” has the same meaning as that term is defined
19 in Section 6011 of the Revenue and Taxation Code.

20 (4) “Storage” has the same meaning as that term is defined in
21 Section 6008 of the Revenue and Taxation Code.

22 (5) “Use” has the same meaning as that term is defined in
23 Section 6009 of the Revenue and Taxation Code.

24 (h) (1) Every person required to pay the assessment imposed
25 under this article shall register with the State Board of Equalization.
26 Every application for registration shall be made in a form
27 prescribed by the State Board of Equalization and shall set forth
28 the name under which the applicant transacts or intends to transact
29 business, the location of his or her place or places of business, and
30 such other information as the State Board of Equalization may
31 require. An application for registration shall be authenticated in a
32 form or pursuant to methods as may be prescribed by the State
33 Board of Equalization.

34 (2) An application for registration filed pursuant to this section
35 may be filed using electronic media as prescribed by the State
36 Board of Equalization.

37 (3) Electronic media includes, but is not limited to, computer
38 modem, magnetic media, optical disc, facsimile machine, or
39 telephone.

1 SEC. 171. Section 4629.9 of the Public Resources Code is
 2 amended to read:
 3 4629.9. (a) On or before January 10, 2013, and on each January
 4 10 thereafter in conjunction with the 2014–15 Governor’s Budget
 5 and each Governor’s Budget thereafter, the Secretary of the Natural
 6 Resources Agency, in consultation with the Secretary for
 7 Environmental Protection, shall submit to the Joint Legislative
 8 Budget Committee a report on the activities of all state
 9 departments, agencies, and boards relating to forest and timberland
 10 regulation. This report shall include, at a minimum, all of the
 11 following:
 12 (1) A listing, by organization, of the proposed total costs
 13 associated with the review, approval, and inspection of timber
 14 harvest plans and associated permits.
 15 (2) The number of timber harvest plans, and acreage covered
 16 by the plans, reviewed in the 2011–12 fiscal year, or the most
 17 recent fiscal year.
 18 (3) To the extent feasible, a listing of activities, personnel, and
 19 funding, by department, for the forest practice program for
 20 2012–13, or the most recent fiscal year, and the preceding 10 fiscal
 21 years.
 22 (4) The number of staff in each organization dedicated fully or
 23 partially to (A) review of timber harvest plans, and (B) other
 24 forestry-related activities, by geographical location in the state.
 25 (5) The costs of other forestry-related activities undertaken.
 26 (6) A summary of any process improvements identified by the
 27 administration as part of ongoing review of the timber harvest
 28 process, including data and technology improvement needs.
 29 (7) Workload analysis for the forest practice program in each
 30 organization.
 31 (8) In order to assess efficiencies in the program and the
 32 effectiveness of spending, a set of measures for, and a plan for
 33 collection of data on, the program, including, but not limited to:
 34 (A) The number of timber harvest plans reviewed.
 35 (B) Average time for plan review.
 36 (C) Number of field inspections per inspector.
 37 (D) Number of acres under active plans.
 38 (E) Number of violations.
 39 (F) Evaluating ecological performance.

1 (b) A report required to be submitted pursuant to subdivision
2 (a) shall be submitted in compliance with Section 9795 of the
3 Government Code.

4 SEC. 172. Section 6224.5 of the Public Resources Code is
5 amended to read:

6 6224.5. (a) If, as of January 1, 2013, a person is in violation
7 of subdivision (a) of Section 6224.3, that person shall not be subject
8 to a penalty pursuant to that section, if the person, on or before
9 July 1, 2013, remedies the violation or submits to the commission
10 a completed lease application, including the payment of all fees
11 and costs. The remedy may include, but is not limited to, entering
12 into an appropriate lease with the commission or adequately
13 removing the structure or facility.

14 (b) A person shall not be subject to a penalty or order pursuant
15 to Section 6224.3, if the person submits a notice to the commission
16 that a structure or facility owned by that person is potentially in
17 violation of subdivision (a) of Section 6224.3 and the person,
18 within six months from the date the notice is received by the
19 commission, remedies the violation or submits to the commission
20 a completed lease application, including the payment of all fees
21 and costs. This subdivision shall apply only if the potential violator
22 submits a notice to the commission before the commission
23 otherwise receives notice or information regarding the potential
24 violation, or takes action against the violator.

25 (c) If any pole, conduit, cable, wire, pipeline, or associated
26 appurtenance that is owned by an electrical corporation, as defined
27 in Section 218 of the Public Utilities Code, or a gas corporation,
28 as defined in Section 222 of the Public Utilities Code, violates
29 subdivision (a) of Section 6224.3, and the electrical or gas
30 corporation can demonstrate that it has not received actual notice
31 that it does not have adequate existing land rights for its structure
32 or facility located on land under the commission's jurisdiction, the
33 electrical or gas corporation shall not be subject to a penalty or
34 order pursuant to Section 6224.3 if the electrical or gas corporation
35 remedies the violation or submits to the commission a completed
36 lease application, including the payment of all fees and costs, or
37 files with a court of competent jurisdiction a motion to perfect a
38 prescriptive easement within six months from the date the violation
39 is reported or the mistake is discovered.

1 (d) The commission may adopt regulations necessary or useful
2 to carry out this section and Sections 6224.3 and 6224.4.

3 SEC. 173. Section 21080.37 of the Public Resources Code is
4 amended to read:

5 21080.37. (a) This division does not apply to a project or an
6 activity to repair, maintain, or make minor alterations to an existing
7 roadway if all of the following conditions are met:

8 (1) The project is carried out by a city or county with a
9 population of less than 100,000 persons to improve public safety.

10 (2) (A) The project does not cross a waterway.

11 (B) For purposes of ~~the~~ *this* paragraph, “waterway” means a
12 bay, estuary, lake, pond, river, slough, or a perennial, intermittent,
13 or ephemeral stream, lake, or estuarine-marine shoreline.

14 (3) The project involves negligible or no expansion of an
15 existing use beyond that existing at the time of the lead agency’s
16 determination.

17 (4) The roadway is not a state roadway.

18 (5) (A) The site of the project does not contain wetlands or
19 riparian areas and does not have significant value as a wildlife
20 habitat, and the project does not harm any species protected by the
21 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
22 seq.), the Native Plant Protection Act (Chapter 10 (commencing
23 with Section 1900) of Division 2 of the Fish and Game Code), or
24 the California Endangered Species Act (Chapter 1.5 (commencing
25 with Section 2050) of Division 3 of the Fish and Game Code), and
26 the project does not cause the destruction or removal of any species
27 protected by a local ordinance.

28 (B) For the purposes of this paragraph:

29 (i) “Riparian areas” mean those areas transitional between
30 terrestrial and aquatic ecosystems and that are distinguished by
31 gradients in biophysical conditions, ecological processes, and biota.
32 A riparian area is an area through which surface and subsurface
33 hydrology connect waterbodies with their adjacent uplands. A
34 riparian area includes those portions of terrestrial ecosystems that
35 significantly influence exchanges of energy and matter with aquatic
36 ecosystems. A riparian area is adjacent to perennial, intermittent,
37 and ephemeral streams, lakes, and estuarine-marine shorelines.

38 (ii) “Significant value as a wildlife habitat” includes wildlife
39 habitat of national, statewide, regional, or local importance; habitat
40 for species protected by the federal Endangered Species Act of

1 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered
2 Species Act (Chapter 1.5 (commencing with Section 2050) of
3 Division 3 of the Fish and Game Code), or the Native Plant
4 Protection Act (Chapter 10 (commencing with Section 1900) of
5 Division 2 of the Fish and Game Code); habitat identified as
6 candidate, fully protected, sensitive, or species of special status
7 by local, state, or federal agencies; or habitat essential to the
8 movement of resident or migratory wildlife.

9 (iii) “Wetlands” has the same meaning as in the United States
10 Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

11 (iv) “Wildlife habitat” means the ecological communities upon
12 which wild animals, birds, plants, fish, amphibians, and
13 invertebrates depend for their conservation and protection.

14 (6) The project does not impact cultural resources.

15 (7) The roadway does not affect scenic resources, as provided
16 pursuant to subdivision (c) of Section 21084.

17 (b) Prior to determining that a project is exempt pursuant to this
18 section, the lead agency shall do both of the following:

19 (1) Include measures in the project to mitigate potential
20 vehicular traffic and safety impacts and bicycle and pedestrian
21 safety impacts.

22 (2) Hold a noticed public hearing on the project to hear and
23 respond to public comments. The hearing on the project may be
24 conducted with another noticed lead agency public hearing.
25 Publication of the notice shall be no fewer times than required by
26 Section 6061 of the Government Code, by the public agency in a
27 newspaper of general circulation in the area.

28 (c) For purposes of this section, “roadway” means a roadway
29 as defined pursuant to Section 530 of the Vehicle Code and the
30 previously graded and maintained shoulder that is within a roadway
31 right-of-way of no more than five feet from the edge of the
32 roadway.

33 (d) Whenever a local agency determines that a project is not
34 subject to this division pursuant to this section, and it approves or
35 determines to carry out that project, the local agency shall file a
36 notice with the Office of Planning and Research, and with the
37 county clerk in the county in which the project will be located in
38 the manner specified in subdivisions (b) and (c) of Section 21152.

1 (e) This section shall remain in effect only until January 1, 2016,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2016, deletes or extends that date.

4 SEC. 174. Section 21080.5 of the Public Resources Code is
5 amended to read:

6 21080.5. (a) Except as provided in Section 21158.1, when the
7 regulatory program of a state agency requires a plan or other written
8 documentation containing environmental information and
9 complying with paragraph (3) of subdivision (d) to be submitted
10 in support of an activity listed in subdivision (b), the plan or other
11 written documentation may be submitted in lieu of the
12 environmental impact report required by this division if the
13 Secretary of the Resources Agency has certified the regulatory
14 program pursuant to this section.

15 (b) This section applies only to regulatory programs or portions
16 thereof that involve either of the following:

17 (1) The issuance to a person of a lease, permit, license,
18 certificate, or other entitlement for use.

19 (2) The adoption or approval of standards, rules, regulations,
20 or plans for use in the regulatory program.

21 (c) A regulatory program certified pursuant to this section is
22 exempt from Chapter 3 (commencing with Section 21100), Chapter
23 4 (commencing with Section 21150), and Section 21167, except
24 as provided in Article 2 (commencing with Section 21157) of
25 Chapter 4.5.

26 (d) To qualify for certification pursuant to this section, a
27 regulatory program shall require the utilization of an
28 interdisciplinary approach that will ensure the integrated use of
29 the natural and social sciences in decisionmaking and that shall
30 meet all of the following criteria:

31 (1) The enabling legislation of the regulatory program does both
32 of the following:

33 (A) Includes protection of the environment among its principal
34 purposes.

35 (B) Contains authority for the administering agency to adopt
36 rules and regulations for the protection of the environment, guided
37 by standards set forth in the enabling legislation.

38 (2) The rules and regulations adopted by the administering
39 agency for the regulatory program do all of the following:

1 (A) Require that an activity will not be approved or adopted as
2 proposed if there are feasible alternatives or feasible mitigation
3 measures available that would substantially lessen a significant
4 adverse effect that the activity may have on the environment.

5 (B) Include guidelines for the orderly evaluation of proposed
6 activities and the preparation of the plan or other written
7 documentation in a manner consistent with the environmental
8 protection purposes of the regulatory program.

9 (C) Require the administering agency to consult with all public
10 agencies that have jurisdiction, by law, with respect to the proposed
11 activity.

12 (D) Require that final action on the proposed activity include
13 the written responses of the issuing authority to significant
14 environmental points raised during the evaluation process.

15 (E) Require the filing of a notice of the decision by the
16 administering agency on the proposed activity with the Secretary
17 of the Resources Agency. Those notices shall be available for
18 public inspection, and a list of the notices shall be posted on a
19 weekly basis in the Office of the Resources Agency. Each list shall
20 remain posted for a period of 30 days.

21 (F) Require notice of the filing of the plan or other written
22 documentation to be made to the public and to a person who
23 requests, in writing, notification. The notification shall be made
24 in a manner that will provide the public or a person requesting
25 notification with sufficient time to review and comment on the
26 filing.

27 (3) The plan or other written documentation required by the
28 regulatory program does both of the following:

29 (A) Includes a description of the proposed activity with
30 alternatives to the activity, and mitigation measures to minimize
31 any significant adverse effect on the environment of the activity.

32 (B) Is available for a reasonable time for review and comment
33 by other public agencies and the general public.

34 (e) (1) The Secretary of the Resources Agency shall certify a
35 regulatory program that the secretary determines meets all the
36 qualifications for certification set forth in this section, and withdraw
37 certification on determination that the regulatory program has been
38 altered so that it no longer meets those qualifications. Certification
39 and withdrawal of certification shall occur only after compliance

1 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
2 Division 3 of Title 2 of the Government Code.

3 (2) In determining whether or not a regulatory program meets
4 the qualifications for certification set forth in this section, the
5 inquiry of the secretary shall extend only to the question of whether
6 the regulatory program meets the generic requirements of
7 subdivision (d). The inquiry may not extend to individual decisions
8 to be reached under the regulatory program, including the nature
9 of specific alternatives or mitigation measures that might be
10 proposed to lessen any significant adverse effect on the
11 environment of the activity.

12 (3) If the secretary determines that the regulatory program
13 submitted for certification does not meet the qualifications for
14 certification set forth in this section, the secretary shall adopt
15 findings setting forth the reasons for the determination.

16 (f) After a regulatory program has been certified pursuant to
17 this section, a proposed change in the program that could affect
18 compliance with the qualifications for certification specified in
19 subdivision (d) may be submitted to the Secretary of the Resources
20 Agency for review and comment. The scope of the secretary's
21 review shall extend only to the question of whether the regulatory
22 program meets the generic requirements of subdivision (d). The
23 review may not extend to individual decisions to be reached under
24 the regulatory program, including specific alternatives or mitigation
25 measures that might be proposed to lessen any significant adverse
26 effect on the environment of the activity. The secretary shall have
27 30 days from the date of receipt of the proposed change to notify
28 the state agency whether the proposed change will alter the
29 regulatory program so that it no longer meets the qualification for
30 certification established in this section and will result in a
31 withdrawal of certification as provided in this section.

32 (g) An action or proceeding to attack, review, set aside, void,
33 or annul a determination or decision of a state agency approving
34 or adopting a proposed activity under a regulatory program that
35 has been certified pursuant to this section on the basis that the plan
36 or other written documentation prepared pursuant to paragraph (3)
37 of subdivision (d) does not comply with this section shall be
38 commenced not later than 30 days from the date of the filing of
39 notice of the approval or adoption of the activity.

1 (h) (1) An action or proceeding to attack, review, set aside,
2 void, or annul a determination of the Secretary of the Resources
3 Agency to certify a regulatory program pursuant to this section on
4 the basis that the regulatory program does not comply with this
5 section shall be commenced within 30 days from the date of
6 certification by the secretary.

7 (2) In an action brought pursuant to paragraph (1), the inquiry
8 shall extend only to whether there was a prejudicial abuse of
9 discretion by the secretary. Abuse of discretion is established if
10 the secretary has not proceeded in a manner required by law or if
11 the determination is not supported by substantial evidence.

12 (i) For purposes of this section, a county agricultural
13 commissioner is a state agency.

14 (j) For purposes of this section, an air quality management
15 district or air pollution control district is a state agency, except
16 that the approval, if any, by a district of a nonattainment area plan
17 is subject to this section only if, and to the extent that, the approval
18 adopts or amends rules or regulations.

19 (k) (1) The secretary, by July 1, 2004, shall develop a protocol
20 for reviewing the prospective application of certified regulatory
21 programs to evaluate the consistency of those programs with the
22 requirements of this division. Following the completion of the
23 development of the protocol, the secretary shall provide a report
24 to the Senate Committee on Environmental Quality and the
25 Assembly Committee on Natural Resources regarding the need
26 for a grant of additional statutory authority authorizing the secretary
27 to undertake a review of the certified regulatory programs.

28 (2) The secretary may update the protocol, and may update the
29 report provided to the legislative committees pursuant to paragraph
30 (1) and provide, in compliance with Section 9795 of the
31 Government Code, the updated report to those committees if
32 additional statutory authority is needed.

33 (3) The secretary shall provide a significant opportunity for
34 public participation in developing or updating the protocol
35 described in paragraph (1) or (2), including, but not limited to, at
36 least two public meetings with interested parties. A notice of each
37 meeting shall be provided at least 10 days prior to the meeting to
38 a person who files a written request for a notice with the agency
39 and to the Senate Committee on Environmental Quality and the
40 Assembly Committee on Natural Resources.

1 SEC. 175. Section 21084 of the Public Resources Code is
2 amended to read:

3 21084. (a) The guidelines prepared and adopted pursuant to
4 Section 21083 shall include a list of classes of projects that have
5 been determined not to have a significant effect on the environment
6 and that shall be exempt from this division. In adopting the
7 guidelines, the Secretary of the Natural Resources Agency shall
8 make a finding that the listed classes of projects referred to in this
9 section do not have a significant effect on the environment.

10 (b) A project's greenhouse gas emissions shall not, in and of
11 themselves, be deemed to cause an exemption adopted pursuant
12 to subdivision (a) to be inapplicable if the project complies with
13 all applicable regulations or requirements adopted to implement
14 statewide, regional, or local plans consistent with Section 15183.5
15 of Title 14 of the California Code of Regulations.

16 (c) A project that may result in damage to scenic resources,
17 including, but not limited to, trees, historic buildings, rock
18 outcroppings, or similar resources, within a highway designated
19 as an official state scenic highway, pursuant to Article 2.5
20 (commencing with Section 260) of Chapter 2 of Division 1 of the
21 Streets and Highways Code, shall not be exempted from this
22 division pursuant to subdivision (a). This subdivision does not
23 apply to improvements as mitigation for a project for which a
24 negative declaration has been approved or an environmental impact
25 report has been certified.

26 (d) A project located on a site that is included on any list
27 compiled pursuant to Section 65962.5 of the Government Code
28 shall not be exempted from this division pursuant to subdivision
29 (a).

30 (e) A project that may cause a substantial adverse change in the
31 significance of a historical resource, as specified in Section
32 21084.1, shall not be exempted from this division pursuant to
33 subdivision (a).

34 SEC. 176. Section 72410 of the Public Resources Code is
35 amended to read:

36 72410. (a) Unless the context otherwise requires, the
37 definitions set forth in this section govern this division.

38 (b) "Board" means the State Water Resources Control Board.

39 (c) "Commission" means the State Lands Commission.

1 (d) “Graywater” means drainage from dishwasher, shower,
2 laundry, bath, and washbasin drains, but does not include drainage
3 from toilets, urinals, hospitals, or cargo spaces.

4 (e) “Hazardous waste” has the meaning set forth in Section
5 25117 of the Health and Safety Code, but does not include sewage.

6 (f) “Large passenger vessel” or “vessel” means a vessel of 300
7 gross registered tons or greater that is engaged in the carrying of
8 passengers for hire, excluding all of the following vessels:

9 (1) Vessels without berths or overnight accommodations for
10 passengers.

11 (2) Noncommercial vessels, warships, vessels operated by
12 nonprofit entities as determined by the Internal Revenue Service,
13 and vessels operated by the state, the United States, or a foreign
14 government.

15 (3) Oceangoing ships, as defined in subdivision (j).

16 (g) “Marine waters of the state” means waters within the area
17 bounded by the mean high tide line to the three-mile state waters
18 limit, from the Oregon border to the Mexican border.

19 (h) “Marine sanctuary” means marine waters of the state in the
20 Channel Islands National Marine Sanctuary, Cordell Bank National
21 Marine Sanctuary, Gulf of the Farallones National Marine
22 Sanctuary, or Monterey Bay National Marine Sanctuary.

23 (i) “Medical waste” means medical waste subject to regulation
24 pursuant to Part 14 (commencing with Section 117600) of Division
25 104 of the Health and Safety Code.

26 (j) “Oceangoing ship” means a private, commercial, government,
27 or military vessel of 300 gross registered tons or more calling on
28 California ports or places.

29 (k) “Oil” has the meaning set forth in Section 8750.

30 (l) “Oily bilgewater” includes bilgewater that contains used
31 lubrication oils, oil sludge and slops, fuel and oil sludge, used oil,
32 used fuel and fuel filters, and oily waste.

33 (m) “Operator” has the meaning set forth in Section 651 of the
34 Harbors and Navigation Code.

35 (n) “Other waste” means photography laboratory chemicals,
36 dry cleaning chemicals, or medical waste.

37 (o) “Owner” has the meaning set forth in Section 651 of the
38 Harbors and Navigation Code.

39 (p) “Release” means discharging or disposing of wastes into
40 the environment.

1 (q) “Sewage” has the meaning set forth in Section 775.5 of the
2 Harbors and Navigation Code, including material that has been
3 collected or treated through a marine sanitation device as that term
4 is used in Section 312 of the federal Clean Water Act (33 U.S.C.
5 Sec. 1322) or material that is a byproduct of sewage treatment.

6 (r) “Sewage sludge” has the meaning set forth in Section 122.2
7 of Title 40 of the Code of Federal Regulations.

8 (s) “Sufficient holding tank capacity” means a holding tank of
9 sufficient capacity to contain sewage and graywater while the
10 oceangoing ship is within the marine waters of the state.

11 (t) “Waste” means hazardous waste and other waste.

12 SEC. 177. Section 2827.10 of the Public Utilities Code is
13 amended to read:

14 2827.10. (a) As used in this section, the following terms have
15 the following meanings:

16 (1) “Electrical corporation” means an electrical corporation, as
17 defined in Section 218.

18 (2) “Eligible fuel cell electrical generating facility” means a
19 facility that includes the following:

20 (A) Integrated powerplant systems containing a stack, tubular
21 array, or other functionally similar configuration used to
22 electrochemically convert fuel to electric energy.

23 (B) An inverter and fuel processing system where necessary.

24 (C) Other plant equipment, including heat recovery equipment,
25 necessary to support the plant’s operation or its energy conversion.

26 (3) (A) “Eligible fuel cell customer-generator” means a
27 customer of an electrical corporation that meets all the following
28 criteria:

29 (i) Uses a fuel cell electrical generating facility with a capacity
30 of not more than one megawatt that is located on or adjacent to
31 the customer’s owned, leased, or rented premises, is interconnected
32 and operates in parallel with the electrical grid while the grid is
33 operational or in a grid independent mode when the grid is
34 nonoperational, and is sized to offset part or all of the eligible fuel
35 cell customer-generator’s own electrical requirements.

36 (ii) Is the recipient of local, state, or federal funds, or who
37 self-finances projects designed to encourage the development of
38 eligible fuel cell electrical generating facilities.

39 (iii) Uses technology the commission has determined will
40 achieve reductions in emissions of greenhouse gases pursuant to

1 subdivision (b), and meets the emission requirements for eligibility
2 for funding set forth in subdivision (c), of Section 379.6.

3 (B) For purposes of this paragraph, a person or entity is a
4 customer of the electrical corporation if the customer is physically
5 located within the service territory of the electrical corporation
6 and receives bundled service, distribution service, or transmission
7 service from the electrical corporation.

8 (4) “Net energy metering” means measuring the difference
9 between the electricity supplied through the electrical grid and the
10 difference between the electricity generated by an eligible fuel cell
11 electrical generating facility and fed back to the electrical grid over
12 a 12-month period as described in subdivision (e). Net energy
13 metering shall be accomplished using a time-of-use meter capable
14 of registering the flow of electricity in two directions. If the existing
15 electrical meter of an eligible fuel cell customer-generator is not
16 capable of measuring the flow of electricity in two directions, the
17 eligible fuel cell customer-generator shall be responsible for all
18 expenses involved in purchasing and installing a meter that is able
19 to measure electricity flow in two directions. If an additional meter
20 or meters are installed, the net energy metering calculation shall
21 yield a result identical to that of a time-of-use meter.

22 (b) (1) Every electrical corporation, not later than March 1,
23 2004, shall file with the commission a standard tariff providing
24 for net energy metering for eligible fuel cell customer-generators,
25 consistent with this section. Subject to the limitation in subdivision
26 (f), every electrical corporation shall make this tariff available to
27 eligible fuel cell customer-generators upon request, on a
28 first-come-first-served basis, until the total cumulative rated
29 generating capacity of the eligible fuel cell electrical generating
30 facilities receiving service pursuant to the tariff reaches a level
31 equal to its proportionate share of a statewide limitation of 500
32 megawatts cumulative rated generation capacity served under this
33 section. The proportionate share shall be calculated based on the
34 ratio of the electrical corporation’s peak demand compared to the
35 total statewide peak demand.

36 (2) To continue the growth of the market for onsite electrical
37 generation using fuel cells, the commission may review and
38 incrementally raise the limitation established in paragraph (1) on
39 the total cumulative rated generating capacity of the eligible fuel

1 cell electrical generating facilities receiving service pursuant to
2 the tariff in paragraph (1).

3 (c) In determining the eligibility for the cumulative rated
4 generating capacity within an electrical corporation's service
5 territory, preference shall be given to facilities that, at the time of
6 installation, are located in a community with significant exposure
7 to air contaminants or localized air contaminants, or both,
8 including, but not limited to, communities of minority populations
9 or low-income populations, or both, based on the ambient air
10 quality standards established pursuant to Section 39607 of the
11 Health and Safety Code.

12 (d) (1) Each net energy metering contract or tariff shall be
13 identical, with respect to rate structure, all retail rate components,
14 and any monthly charges, to the contract or tariff to which the
15 customer would be assigned if the customer was not an eligible
16 fuel cell customer-generator. Any new or additional demand
17 charge, standby charge, customer charge, minimum monthly
18 charge, interconnection charge, or other charge that would increase
19 an eligible fuel cell customer-generator's costs beyond those of
20 other customers in the rate class to which the eligible fuel cell
21 customer-generator would otherwise be assigned are contrary to
22 the intent of the Legislature in enacting this section, and may not
23 form a part of net energy metering tariffs.

24 (2) The commission shall authorize an electrical corporation to
25 charge a fuel cell customer-generator a fee based on the cost to
26 the utility associated with providing interconnection inspection
27 services for that fuel cell customer-generator.

28 (e) The net metering calculation shall be made by measuring
29 the difference between the electricity supplied to the eligible fuel
30 cell customer-generator and the electricity generated by the eligible
31 fuel cell customer-generator and fed back to the electrical grid
32 over a 12-month period. The following rules shall apply to the
33 annualized metering calculation:

34 (1) The eligible fuel cell customer-generator shall, at the end
35 of each 12-month period following the date of final interconnection
36 of the eligible fuel cell electrical generating facility with an
37 electrical corporation, and at each anniversary date thereafter, be
38 billed for electricity used during that period. The electrical
39 corporation shall determine if the eligible fuel cell
40 customer-generator was a net consumer or a net producer of

1 electricity during that period. For purposes of determining if the
2 eligible fuel cell customer-generator was a net consumer or a net
3 producer of electricity during that period, the electrical corporation
4 shall aggregate the electrical load of the meters located on the
5 property where the eligible fuel cell electrical generating facility
6 is located and on all property adjacent or contiguous to the property
7 on which the facility is located, if those properties are solely
8 owned, leased, or rented by the eligible fuel cell
9 customer-generator. Each aggregated account shall be billed and
10 measured according to a time-of-use rate schedule.

11 (2) At the end of each 12-month period, where the electricity
12 supplied during the period by the electrical corporation exceeds
13 the electricity generated by the eligible fuel cell customer-generator
14 during that same period, the eligible fuel cell customer-generator
15 is a net electricity consumer and the electrical corporation shall
16 be owed compensation for the eligible fuel cell
17 customer-generator's net kilowatthour consumption over that same
18 period. The compensation owed for the eligible fuel cell
19 customer-generator's consumption shall be calculated as follows:

20 (A) The generation charges for any net monthly consumption
21 of electricity shall be calculated according to the terms of the tariff
22 to which the same customer would be assigned to or be eligible
23 for if the customer was not an eligible fuel cell customer-generator.
24 When the eligible fuel cell customer-generator is a net generator
25 during any discrete time-of-use period, the net kilowatthours
26 produced shall be valued at the same price per kilowatthour as the
27 electrical corporation would charge for retail kilowatthour sales
28 for generation, exclusive of any surcharges, during that same
29 time-of-use period. If the eligible fuel cell customer-generator's
30 time-of-use electrical meter is unable to measure the flow of
31 electricity in two directions, paragraph (4) of subdivision (a) shall
32 apply. All other charges, other than generation charges, shall be
33 calculated in accordance with the eligible fuel cell
34 customer-generator's applicable tariff and based on the total
35 kilowatthours delivered by the electrical corporation to the eligible
36 fuel cell customer-generator. To the extent that charges for
37 transmission and distribution services are recovered through
38 demand charges in any particular month, no standby reservation
39 charges shall apply in that monthly billing cycle.

1 (B) The net balance of moneys owed shall be paid in accordance
2 with the electrical corporation's normal billing cycle.

3 (3) At the end of each 12-month period, where the electricity
4 generated by the eligible fuel cell customer-generator during the
5 12-month period exceeds the electricity supplied by the electrical
6 corporation during that same period, the eligible fuel cell
7 customer-generator is a net electricity producer and the electrical
8 corporation shall retain any excess kilowatthours generated during
9 the prior 12-month period. The eligible fuel cell customer-generator
10 shall not be owed any compensation for those excess kilowatthours.

11 (4) If an eligible fuel cell customer-generator terminates service
12 with the electrical corporation, the electrical corporation shall
13 reconcile the eligible fuel cell customer-generator's consumption
14 and production of electricity during any 12-month period.

15 (f) No fuel cell electrical generating facility shall be eligible for
16 the tariff unless it commences operation prior to January 1, 2015,
17 unless a later enacted statute, that is chaptered before January 1,
18 2015, extends this eligibility commencement date. The tariff shall
19 remain in effect for an eligible fuel cell electrical generating facility
20 that commences operation pursuant to the tariff prior to January
21 1, 2015. A fuel cell customer-generator shall be eligible for the
22 tariff established pursuant to this section only for the operating
23 life of the eligible fuel cell electrical generating facility.

24 SEC. 178. Section 2862 of the Public Utilities Code is amended
25 to read:

26 2862. The Legislature finds and declares all of the following:

27 (a) California is heavily dependent on natural gas, importing
28 more than 80 percent of the natural gas it consumes.

29 (b) Rising worldwide demand for natural gas and a shrinking
30 supply create rising and unstable prices that can harm California
31 consumers and the economy.

32 (c) Natural gas is a fossil fuel and a major source of global
33 warming pollution and the pollutants that cause air pollution,
34 including smog.

35 (d) California's growing population and economy will put a
36 strain on energy supplies and threaten the ability of the state to
37 meet its global warming goals unless specific steps are taken to
38 reduce demand and generate energy cleanly and efficiently.

1 (e) Water heating for domestic and industrial use relies almost
2 entirely on natural gas and accounts for a significant percentage
3 of the state's natural gas consumption.

4 (f) Solar water heating systems represent the largest untapped
5 natural gas saving potential remaining in California.

6 (g) In addition to financial and energy savings, solar water
7 heating systems can help protect against future gas and electricity
8 shortages and reduce our dependence on foreign sources of energy.

9 (h) Solar water heating systems can also help preserve the
10 environment and protect public health by reducing air pollution,
11 including carbon dioxide, a leading global warming gas, and
12 nitrogen oxide, a precursor to smog.

13 (i) Growing demand for these technologies will create jobs in
14 California as well as promote greater energy independence, protect
15 consumers from rising energy costs, and result in cleaner air.

16 (j) It is in the interest of the State of California to promote solar
17 water heating systems and other technologies that directly reduce
18 demand for natural gas in homes and businesses.

19 (k) It is the intent of the Legislature to build a mainstream
20 market for solar water heating systems that directly reduces demand
21 for natural gas in homes, businesses, schools, nonprofit, and
22 government buildings. Toward that end, it is the goal of this article
23 to install at least 200,000 solar water heating systems on homes,
24 businesses, and other buildings or facilities of eligible customer
25 classes throughout the state by 2017, thereby lowering prices and
26 creating a self-sufficient market that will sustain itself beyond the
27 life of this program.

28 (l) It is the intent of the Legislature that the solar water heating
29 system incentives created by this article should be a cost-effective
30 investment by gas customers. Gas customers will recoup the cost
31 of their investment through lower prices as a result of avoiding
32 purchases of natural gas.

33 (m) It is the intent of the Legislature that this article will
34 encourage the cost-effective deployment of solar heating systems
35 in both residential and commercial markets and in each end-use
36 application sector in a balanced manner. It is the intent of the
37 Legislature that the commission monitor and adjust incentives
38 created by this article so that they are cost-effective investments
39 sufficient to significantly increase markets and promote market
40 transformation. It is the intent of the Legislature that the

1 commission ensure that increased, uniform growth in each market
2 sector is achieved through program incentives or structure
3 adjustments that prevent overutilization of program resources by
4 any single sector.

5 SEC. 179. Section 5142 of the Public Utilities Code is amended
6 to read:

7 5142. (a) Except as provided in Section 5133, a household
8 goods carrier in compliance with this chapter has a lien on used
9 household goods and personal effects to secure payment of the
10 amount specified in subdivision (b) for transportation and
11 additional services ordered by the consignor. A lien does not attach
12 to food, medicine, or medical devices, items used to treat or assist
13 an individual with a disability, or items used for the care of a minor
14 child.

15 (b) (1) The amount secured by the lien is the maximum total
16 dollar amount for the transportation of the household goods and
17 personal effects and any additional services (including any bona
18 fide change order permitted under the commission's tariffs) that
19 is set forth clearly and conspicuously in writing adjacent to the
20 space reserved for the signature of the consignor and that is agreed
21 to by the consignor before any goods or personal effects are moved
22 from their location or any additional services are performed.

23 (2) The dollar amount for the transportation of household goods
24 and personal effects and additional services may not be preprinted
25 on any form, shall be just and reasonable, and shall be established
26 in good faith by the household goods carrier based on the specific
27 circumstances of the services to be performed.

28 (c) Upon tender to the household goods carrier of the amount
29 specified in subdivision (b), the lien is extinguished, and the
30 household goods carrier shall release all household goods and
31 personal effects to the consignee.

32 (d) A household goods carrier may enforce the lien on household
33 goods and personal effects provided in this section except as to
34 any goods that the carrier voluntarily delivers or unjustifiably
35 refuses to deliver. The lien shall be enforced in the manner
36 provided in this section and Chapter 6 (commencing with Section
37 9601) of Division 9 of the Commercial Code for the enforcement
38 of a security interest in consumer goods in a consumer transaction.
39 To the extent of any conflict between this section and that Chapter
40 6, this section shall prevail. Every act required in connection with

1 enforcing the lien shall be performed in good faith and in a
2 commercially reasonable manner.

3 (e) The household goods carrier shall provide a notification of
4 disposition at least 30 days prior to any disposition to each
5 consignor and consignee by personal delivery, or in the alternative,
6 by first-class and certified mail, postage prepaid and return receipt
7 requested, at the address last known by the carrier and at the
8 destination address, and by electronic mail if an electronic mail
9 address is known to the carrier. If any of the required recipients
10 of notice are married to each other, and according to the carrier's
11 records, reside at the same address, one notice addressed to both
12 shall be sufficient. Within 14 days after a disposition, the carrier
13 shall provide to the consignors any surplus funds from the
14 disposition and an accounting, without charge, of the proceeds of
15 the disposition.

16 (f) Any person having possession or control of household goods
17 or personal effects, who knows, or through the exercise of
18 reasonable care should know, that the household goods carrier has
19 been tendered the amount specified in subdivision (b), shall release
20 the household goods and personal effects to the consignor or
21 consignee, upon the request of the consignor or consignee. If the
22 person fails to release the household goods and personal effects
23 to the consignor or consignee, any peace officer, as defined in
24 subdivision (c) of Section 5133, may take custody of the household
25 goods and personal effects and release them to the consignor or
26 consignee.

27 (g) This section shall not affect any rights, if any, of a household
28 goods carrier to claim additional amounts, on an unsecured basis,
29 or of a consignor or consignee to make or contest any claim, and
30 tender of payment of the amount specified in subdivision (b) is
31 not a waiver of claims by the consignor or consignee.

32 (h) Any person injured by a violation of this section may bring
33 an action for the recovery of the greater of one thousand dollars
34 (\$1,000) or actual damages, injunctive or other equitable relief,
35 reasonable attorney's fees and costs, and exemplary damages of
36 not less than three times the amount of actual damages for a willful
37 violation.

38 (i) Any waiver of this section shall be void and unenforceable.

39 (j) Notwithstanding any other law, this section exclusively
40 establishes and provides for a household goods carrier's lien on

1 used household goods and personal effects to secure payment for
2 transportation and additional services ordered by the consignor.

3 (k) For purposes of this section, the following terms have the
4 following meanings:

5 (1) “Consignor” means the person named in the bill of lading
6 as the person from whom the household goods and personal effects
7 have been received for shipment and that person’s agent.

8 (2) “Consignee” means the person named in the bill of lading
9 to whom or to whose order the household goods carrier is required
10 to make delivery as provided in the bill of lading and that person’s
11 agent.

12 (l) Any document required by this section may be in an
13 electronic form, if agreed upon by the carrier and the customer.

14 SEC. 180. Section 5143 of the Public Utilities Code is amended
15 to read:

16 5143. (a) For purposes of this section, the following terms
17 have the following meanings:

18 (1) “Consignor” means the person named in the bill of lading
19 as the person from whom the household goods and personal effects
20 have been received for shipment and that person’s agent.

21 (2) “Consignee” means the person named in the bill of lading
22 to whom or to whose order the household goods carrier is required
23 to make delivery as provided in the bill of lading and that person’s
24 agent.

25 (b) Any household goods carrier engaged in the business of
26 transportation of used household goods and personal effects by
27 motor vehicle over any public highway in this state shall provide
28 each consignor with a completed copy of the notice set forth in
29 this section. The notice shall be printed in at least 12-point type,
30 except the title and first two paragraphs which shall be printed in
31 boldface type, and provided to each consignor at least three days
32 prior to the date scheduled for the transportation of household
33 goods or personal effects. If the consignor requests services on a
34 date that is less than three days before the scheduled date for
35 transportation of the household goods or personal effects, the
36 carrier shall provide the notice as soon as practicable, but in no
37 event may the carrier commence any services until the consignor
38 has signed and received a signed copy of the notice. The carrier
39 shall obtain sufficient information from the consignor to fill out
40 the form and shall include the correct maximum amount and a

1 sufficient description of services that will be performed. The carrier
 2 shall retain a copy of the notice, signed by the ~~esignor~~ *consignor*,
 3 for at least three years from the date the notice was signed by the
 4 ~~esignor~~ *consignor*.

5 (c) Any waiver of the requirements of this section is void and
 6 unenforceable.

7 (d) The “Not To Exceed” amount set forth in the notice and the
 8 agreement between the household goods carrier and the consignor
 9 shall be the maximum total dollar amount for which the consignor
 10 may be liable for the transportation of household goods and
 11 personal effects and any additional services ordered by the
 12 consignor (including any bona fide change order permitted under
 13 the commission’s rules and tariffs) and agreed to by the consignor
 14 before any goods or personal effects are moved from their location
 15 or any other services are performed.

16 (e) A household goods carrier may provide the notice set forth
 17 in this section either as a separate document or by including it as
 18 the centerfold of the informational booklet that the household
 19 goods carrier is required to provide the consignor under the
 20 commission’s tariffs. If the household goods carrier provides the
 21 notice as part of the informational booklet, the booklet shall contain
 22 a tab that extends beyond the edge of the booklet at the place where
 23 the notice is included. The statement “Important Notice” shall be
 24 printed on the tab in at least 12-point boldface type. In addition,
 25 the statement “Customer Must Read And Sign The Important
 26 Notice In The Middle Of This Booklet Before A Move Can Begin”
 27 shall be set forth in 14-point boldface type on the front cover of
 28 the booklet.

29 (f) The notice provided the consignor shall be in the following
 30 form:

31
 32 “IMPORTANT NOTICE ABOUT YOUR MOVE
 33
 34 “IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A
 35 “NOT TO EXCEED” AMOUNT THAT YOU THINK IS A
 36 PROPER AND REASONABLE FEE FOR THE SERVICES YOU
 37 ARE REQUESTING. THE “NOT TO EXCEED” AMOUNT THIS
 38 MOVER IS REQUESTING IS \$ _____ to
 39 perform the following services:
 40 _____

1 _____
 2 _____
 3

4 “IF YOU DO NOT AGREE TO THE “NOT TO EXCEED”
 5 AMOUNT LISTED OR THE DESCRIPTION OF SERVICES,
 6 YOU HAVE THE RIGHT TO REFUSE THE MOVER’S
 7 SERVICE AT NO CHARGE TO YOU.

8 “If you request additional or different services at the time of the
 9 move, you may be asked to complete a Change Order which will
 10 set forth your agreement to pay for additional fees for those newly
 11 requested services. If you agree to the additional charges on that
 12 Change Order, those charges may be added to the “NOT TO
 13 EXCEED” amount set forth above. If you do not agree to the
 14 amounts listed in the Change Order, you should not sign it and
 15 may refuse the mover’s services.

16 “A mover cannot refuse to release your goods once you have paid
 17 the “NOT TO EXCEED” amount for the transportation of your
 18 goods and personal effects and any additional services that you
 19 have agreed to in writing. The “NOT TO EXCEED” amount must
 20 be reasonable.

21 “A mover cannot, under any circumstances, withhold food,
 22 medicine, medical devices, items to treat or assist a disabled person,
 23 or items used for care of a minor child. An unlicensed mover has
 24 no right to withhold your goods for any reason including claims
 25 that you have not adequately paid for services rendered.

26 “For additional information or to confirm whether a mover is
 27 licensed by the California Public Utilities Commission, please call
 28 the Public Utilities Commission toll free at:

29
 30
 31
 32 _____
 33 insert toll-free number

34
 35 “I have completed this form and provided the consumer (shipper) with a copy
 36 of this notice.

37 “Signed _____ Dated _____

38 “I have been provided with a copy of this form.

39 “Signed _____ Dated _____”

40

1 (g) Any document required by this section may be in an
2 electronic form, if agreed upon by the carrier and the customer.

3 SEC. 181. Section 9506 of the Public Utilities Code is amended
4 to read:

5 9506. (a) A local publicly owned electric utility shall report
6 to the Energy Commission regarding the energy storage system
7 procurement targets and policies adopted by the governing board
8 pursuant to paragraph (2) of, and report any modifications made
9 to those targets as a result of a reevaluation undertaken pursuant
10 to paragraph (3) of subdivision (b) of Section 2836.

11 (b) By January 1, 2017, a local publicly owned electric utility
12 shall submit a report to the Energy Commission demonstrating
13 that it has complied with the energy storage system procurement
14 targets and policies adopted by the governing board pursuant to
15 subdivision (b) of Section 2836.

16 (c) By January 1, 2021, a local publicly owned electric utility
17 shall submit a report to the Energy Commission demonstrating
18 that it has complied with the energy storage system procurement
19 targets and policies adopted by the governing board pursuant to
20 subdivision (b) of Section 2836.

21 (d) The Energy Commission shall ensure that a copy of each
22 report or plan required by subdivisions (b) and (c), with any
23 confidential information redacted, is available on the Energy
24 Commission's Internet Web site, or on an Internet Web site
25 maintained by the local publicly owned electric utility that can be
26 accessed from the Energy Commission's Internet Web site.

27 (e) A summary of the reports required by this section shall be
28 included as part of each integrated energy policy report required
29 pursuant to Section 25302 of the Public Resources Code.

30 SEC. 182. Section 185035 of the Public Utilities Code is
31 amended to read:

32 185035. (a) The authority shall establish an independent peer
33 review group for the purpose of reviewing the planning,
34 engineering, financing, and other elements of the authority's plans
35 and issuing an analysis of *the* appropriateness and accuracy of the
36 authority's assumptions and an analysis of the viability of the
37 authority's financing plan, including the funding plan for each
38 corridor required pursuant to subdivision (c) of Section 2704.08
39 of the Streets and Highways Code.

40 (b) The peer review group shall include all of the following:

1 (1) Two individuals with experience in the construction or
2 operation of high-speed trains in Europe, Asia, or both, designated
3 by the Treasurer.

4 (2) Two individuals, one with experience in engineering and
5 construction of high-speed trains and one with experience in project
6 finance, designated by the Controller.

7 (3) One representative from a financial services or financial
8 consulting firm who shall not have been a contractor or
9 subcontractor of the authority for the previous three years,
10 designated by the Director of Finance.

11 (4) One representative with experience in environmental
12 planning, designated by the Secretary of Business, Transportation
13 and Housing.

14 (5) Two expert representatives from agencies providing intercity
15 or commuter passenger train services in California, designated by
16 the Secretary of Business, Transportation and Housing.

17 (c) The peer review group shall evaluate the authority’s funding
18 plans and prepare its independent judgment as to the feasibility
19 and reasonableness of the plans, appropriateness of assumptions,
20 analyses, and estimates, and any other observations or evaluations
21 it deems necessary.

22 (d) The authority shall provide the peer review group any and
23 all information that the peer review group may request to carry
24 out its responsibilities.

25 (e) The peer review group shall report its findings and
26 conclusions to the Legislature no later than 60 days after receiving
27 the plans.

28 SEC. 183. Section 2188.6 of the Revenue and Taxation Code,
29 as amended by Section 79 of Chapter 181 of the Statutes of 2012,
30 is amended to read:

31 2188.6. (a) Unless a request for exemption has been recorded
32 pursuant to subdivision (d), prior to the creation of a condominium
33 as defined in Section 783 of the Civil Code, the county assessor
34 may separately assess each individual unit which is shown on the
35 condominium plan of a proposed condominium project when all
36 of the following documents have been recorded as required by
37 law:

38 (1) A subdivision final map or parcel map, as described in
39 Sections 66434 and 66445, respectively, of the Government Code.

1 (2) A condominium plan, as defined in Section 4120 of the Civil
2 Code.

3 (3) A declaration, as defined in Section 4135 of the Civil Code.

4 (b) The tax due on each individual unit shall constitute a lien
5 solely on that unit.

6 (c) The lien created pursuant to this section shall be a lien on
7 an undivided interest in a portion of real property coupled with a
8 separate interest in space called a unit as described in Section 4125
9 of the Civil Code.

10 (d) The record owner of the real property may record with the
11 condominium plan a request that the real property be exempt from
12 separate assessment pursuant to this section. If a request for
13 exemption is recorded, separate assessment of a condominium unit
14 shall be made only in accordance with Section 2188.3.

15 (e) This section shall become operative on January 1, 1990, and
16 shall apply to condominium projects for which a condominium
17 plan is recorded after that date.

18 SEC. 184. Section 7285.3 of the Revenue and Taxation Code
19 is amended to read:

20 7285.3. The combined rate of all taxes imposed in any county
21 pursuant to this chapter and pursuant to Part 1.6 (commencing
22 with Section 7251) shall not exceed the rate specified in Section
23 7251.1.

24 SEC. 185. Section 17276.20 of the Revenue and Taxation Code
25 is amended to read:

26 17276.20. Except as provided in Sections 17276.1, 17276.2,
27 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
28 by Section 172 of the Internal Revenue Code, relating to net
29 operating loss deduction, shall be modified as follows:

30 (a) (1) Net operating losses attributable to taxable years
31 beginning before January 1, 1987, shall not be allowed.

32 (2) A net operating loss shall not be carried forward to any
33 taxable year beginning before January 1, 1987.

34 (b) (1) Except as provided in paragraphs (2) and (3), the
35 provisions of Section 172(b)(2) of the Internal Revenue Code,
36 relating to amount of carrybacks and carryovers, shall be modified
37 so that the applicable percentage of the entire amount of the net
38 operating loss for any taxable year shall be eligible for carryover
39 to any subsequent taxable year. For purposes of this subdivision,
40 the applicable percentage shall be:

1 (A) Fifty percent for any taxable year beginning before January
2 1, 2000.

3 (B) Fifty-five percent for any taxable year beginning on or after
4 January 1, 2000, and before January 1, 2002.

5 (C) Sixty percent for any taxable year beginning on or after
6 January 1, 2002, and before January 1, 2004.

7 (D) One hundred percent for any taxable year beginning on or
8 after January 1, 2004.

9 (2) In the case of a taxpayer who has a net operating loss in any
10 taxable year beginning on or after January 1, 1994, and who
11 operates a new business during that taxable year, each of the
12 following shall apply to each loss incurred during the first three
13 taxable years of operating the new business:

14 (A) If the net operating loss is equal to or less than the net loss
15 from the new business, 100 percent of the net operating loss shall
16 be carried forward as provided in subdivision (d).

17 (B) If the net operating loss is greater than the net loss from the
18 new business, the net operating loss shall be carried over as
19 follows:

20 (i) With respect to an amount equal to the net loss from the new
21 business, 100 percent of that amount shall be carried forward as
22 provided in subdivision (d).

23 (ii) With respect to the portion of the net operating loss that
24 exceeds the net loss from the new business, the applicable
25 percentage of that amount shall be carried forward as provided in
26 subdivision (d).

27 (C) For purposes of Section 172(b)(2) of the Internal Revenue
28 Code, the amount described in clause (ii) of subparagraph (B) shall
29 be absorbed before the amount described in clause (i) of
30 subparagraph (B).

31 (3) In the case of a taxpayer who has a net operating loss in any
32 taxable year beginning on or after January 1, 1994, and who
33 operates an eligible small business during that taxable year, each
34 of the following shall apply:

35 (A) If the net operating loss is equal to or less than the net loss
36 from the eligible small business, 100 percent of the net operating
37 loss shall be carried forward to the taxable years specified in
38 subdivision (d).

1 (B) If the net operating loss is greater than the net loss from the
2 eligible small business, the net operating loss shall be carried over
3 as follows:

4 (i) With respect to an amount equal to the net loss from the
5 eligible small business, 100 percent of that amount shall be carried
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that
8 exceeds the net loss from the eligible small business, the applicable
9 percentage of that amount shall be carried forward as provided in
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue
12 Code, the amount described in clause (ii) of subparagraph (B) shall
13 be absorbed before the amount described in clause (i) of
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a
16 taxable year beginning on or after January 1, 1994, and who
17 operates a business that qualifies as both a new business and an
18 eligible small business under this section, that business shall be
19 treated as a new business for the first three taxable years of the
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a
22 taxable year beginning on or after January 1, 1994, and who
23 operates more than one business, and more than one of those
24 businesses qualifies as either a new business or an eligible small
25 business under this section, paragraph (2) shall be applied first,
26 except that if there is any remaining portion of the net operating
27 loss after application of clause (i) of subparagraph (B) of that
28 paragraph, paragraph (3) shall be applied to the remaining portion
29 of the net operating loss as though that remaining portion of the
30 net operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the
32 amount of net loss after application of Sections 465 and 469 of the
33 Internal Revenue Code.

34 (c) Section 172(b)(1) of the Internal Revenue Code, relating to
35 years to which the loss may be carried, is modified as follows:

36 (1) Net operating loss carrybacks shall not be allowed for any
37 net operating losses attributable to taxable years beginning before
38 January 1, 2013.

39 (2) A net operating loss attributable to taxable years beginning
40 on or after January 1, 2013, shall be a net operating loss carryback

1 to each of the two taxable years preceding the taxable year of the
2 loss in lieu of the number of years provided therein.

3 (A) For a net operating loss attributable to a taxable year
4 beginning on or after January 1, 2013, and before January 1, 2014,
5 the amount of carryback to any taxable year shall not exceed 50
6 percent of the net operating loss.

7 (B) For a net operating loss attributable to a taxable year
8 beginning on or after January 1, 2014, and before January 1, 2015,
9 the amount of carryback to any taxable year shall not exceed 75
10 percent of the net operating loss.

11 (C) For a net operating loss attributable to a taxable year
12 beginning on or after January 1, 2015, the amount of carryback to
13 any taxable year shall not exceed 100 percent of the net operating
14 loss.

15 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
16 Internal Revenue Code, relating to special rules for REITs, and
17 Section 172(b)(1)(E) of the Internal Revenue Code, relating to
18 excess interest loss, and Section 172(h) of the Internal Revenue
19 Code, relating to corporate equity reduction interest losses, shall
20 apply as provided.

21 (4) A net operating loss carryback shall not be carried back to
22 any taxable year beginning before January 1, 2011.

23 (d) (1) (A) For a net operating loss for any taxable year
24 beginning on or after January 1, 1987, and before January 1, 2000,
25 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
26 to substitute “five taxable years” in lieu of “20 taxable years”
27 except as otherwise provided in paragraphs (2) and (3).

28 (B) For a net operating loss for any taxable year beginning on
29 or after January 1, 2000, and before January 1, 2008, Section
30 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
31 substitute “10 taxable years” in lieu of “20 taxable years.”

32 (2) For any taxable year beginning before January 1, 2000, in
33 the case of a “new business,” the “five taxable years” in paragraph
34 (1) shall be modified to read as follows:

35 (A) “Eight taxable years” for a net operating loss attributable
36 to the first taxable year of that new business.

37 (B) “Seven taxable years” for a net operating loss attributable
38 to the second taxable year of that new business.

39 (C) “Six taxable years” for a net operating loss attributable to
40 the third taxable year of that new business.

1 (3) For any carryover of a net operating loss for which a
2 deduction is denied by Section 17276.3, the carryover period
3 specified in this subdivision shall be extended as follows:

4 (A) By one year for a net operating loss attributable to taxable
5 years beginning in 1991.

6 (B) By two years for a net operating loss attributable to taxable
7 years beginning prior to January 1, 1991.

8 (4) The net operating loss attributable to taxable years beginning
9 on or after January 1, 1987, and before January 1, 1994, shall be
10 a net operating loss carryover to each of the 10 taxable years
11 following the year of the loss if it is incurred by a taxpayer that is
12 under the jurisdiction of the court in a Title 11 or similar case at
13 any time during the income year. The loss carryover provided in
14 the preceding sentence shall not apply to any loss incurred after
15 the date the taxpayer is no longer under the jurisdiction of the court
16 in a Title 11 or similar case.

17 (e) For purposes of this section:

18 (1) “Eligible small business” means any trade or business that
19 has gross receipts, less returns and allowances, of less than one
20 million dollars (\$1,000,000) during the taxable year.

21 (2) Except as provided in subdivision (f), “new business” means
22 any trade or business activity that is first commenced in this state
23 on or after January 1, 1994.

24 (3) “Title 11 or similar case” shall have the same meaning as
25 in Section 368(a)(3) of the Internal Revenue Code.

26 (4) In the case of any trade or business activity conducted by a
27 partnership or “S” corporation paragraphs (1) and (2) shall be
28 applied to the partnership or “S” corporation.

29 (f) For purposes of this section, in determining whether a trade
30 or business activity qualifies as a new business under paragraph
31 (2) of subdivision (e), the following rules shall apply:

32 (1) In any case where a taxpayer purchases or otherwise acquires
33 all or any portion of the assets of an existing trade or business
34 (irrespective of the form of entity) that is doing business in this
35 state (within the meaning of Section 23101), the trade or business
36 thereafter conducted by the taxpayer (or any related person) shall
37 not be treated as a new business if the aggregate fair market value
38 of the acquired assets (including real, personal, tangible, and
39 intangible property) used by the taxpayer (or any related person)
40 in the conduct of its trade or business exceeds 20 percent of the

1 aggregate fair market value of the total assets of the trade or
2 business being conducted by the taxpayer (or any related person).
3 For purposes of this paragraph only, the following rules shall apply:

4 (A) The determination of the relative fair market values of the
5 acquired assets and the total assets shall be made as of the last day
6 of the first taxable year in which the taxpayer (or any related
7 person) first uses any of the acquired trade or business assets in
8 its business activity.

9 (B) Any acquired assets that constituted property described in
10 Section 1221(1) of the Internal Revenue Code in the hands of the
11 transferor shall not be treated as assets acquired from an existing
12 trade or business, unless those assets also constitute property
13 described in Section 1221(1) of the Internal Revenue Code in the
14 hands of the acquiring taxpayer (or related person).

15 (2) In any case where a taxpayer (or any related person) is
16 engaged in one or more trade or business activities in this state, or
17 has been engaged in one or more trade or business activities in this
18 state within the preceding 36 months (“prior trade or business
19 activity”), and thereafter commences an additional trade or business
20 activity in this state, the additional trade or business activity shall
21 only be treated as a new business if the additional trade or business
22 activity is classified under a different division of the Standard
23 Industrial Classification (SIC) Manual published by the United
24 States Office of Management and Budget, 1987 edition, than are
25 any of the taxpayer’s (or any related person’s) current or prior
26 trade or business activities.

27 (3) In any case where a taxpayer, including all related persons,
28 is engaged in trade or business activities wholly outside of this
29 state and the taxpayer first commences doing business in this state
30 (within the meaning of Section 23101) after December 31, 1993
31 (other than by purchase or other acquisition described in paragraph
32 (1)), the trade or business activity shall be treated as a new business
33 under paragraph (2) of subdivision (e).

34 (4) In any case where the legal form under which a trade or
35 business activity is being conducted is changed, the change in form
36 shall be disregarded and the determination of whether the trade or
37 business activity is a new business shall be made by treating the
38 taxpayer as having purchased or otherwise acquired all or any
39 portion of the assets of an existing trade or business under the rules
40 of paragraph (1).

1 (5) “Related person” shall mean any person that is related to
2 the taxpayer under either Section 267 or 318 of the Internal
3 Revenue Code.

4 (6) “Acquire” shall include any gift, inheritance, transfer incident
5 to divorce, or any other transfer, whether or not for consideration.

6 (7) (A) For taxable years beginning on or after January 1, 1997,
7 the term “new business” shall include any taxpayer that is engaged
8 in biopharmaceutical activities or other biotechnology activities
9 that are described in Codes 2833 to 2836, inclusive, of the Standard
10 Industrial Classification (SIC) Manual published by the United
11 States Office of Management and Budget, 1987 edition, and as
12 further amended, and that has not received regulatory approval for
13 any product from the Food and Drug Administration.

14 (B) For purposes of this paragraph:

15 (i) “Biopharmaceutical activities” means those activities that
16 use organisms or materials derived from organisms, and their
17 cellular, subcellular, or molecular components, in order to provide
18 pharmaceutical products for human or animal therapeutics and
19 diagnostics. Biopharmaceutical activities make use of living
20 organisms to make commercial products, as opposed to
21 pharmaceutical activities that make use of chemical compounds
22 to produce commercial products.

23 (ii) “Other biotechnology activities” means activities consisting
24 of the application of recombinant DNA technology to produce
25 commercial products, as well as activities regarding pharmaceutical
26 delivery systems designed to provide a measure of control over
27 the rate, duration, and site of pharmaceutical delivery.

28 (g) In computing the modifications under Section 172(d)(2) of
29 the Internal Revenue Code, relating to capital gains and losses of
30 taxpayers other than corporations, the exclusion provided by
31 Section 18152.5 shall not be allowed.

32 (h) Notwithstanding any provisions of this section to the
33 contrary, a deduction shall be allowed to a “qualified taxpayer” as
34 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
35 and 17276.7.

36 (i) The Franchise Tax Board may prescribe appropriate
37 regulations to carry out the purposes of this section, including any
38 regulations necessary to prevent the avoidance of the purposes of
39 this section through splitups, shell corporations, partnerships, tiered
40 ownership structures, or otherwise.

1 (j) The Franchise Tax Board may reclassify any net operating
2 loss carryover determined under either paragraph (2) or (3) of
3 subdivision (b) as a net operating loss carryover under paragraph
4 (1) of subdivision (b) upon a showing that the reclassification is
5 necessary to prevent evasion of the purposes of this section.

6 (k) Except as otherwise provided, the amendments made by
7 Chapter 107 of the Statutes of 2000 shall apply to net operating
8 losses for taxable years beginning on or after January 1, 2000.

9 SEC. 186. Section 18152.5 of the Revenue and Taxation Code
10 is amended to read:

11 18152.5. (a) For purposes of this part, gross income shall not
12 include 50 percent of any gain from the sale or exchange of
13 qualified small business stock held for more than five years.

14 (b) (1) If the taxpayer has eligible gain for the taxable year
15 from one or more dispositions of stock issued by any corporation,
16 the aggregate amount of the gain from dispositions of stock issued
17 by the corporation which may be taken into account under
18 subdivision (a) for the taxable year shall not exceed the greater of
19 either of the following:

20 (A) Ten million dollars (\$10,000,000) reduced by the aggregate
21 amount of eligible gain taken into account by the taxpayer under
22 subdivision (a) for prior taxable years and attributable to
23 dispositions of stock issued by the corporation.

24 (B) Ten times the aggregate adjusted bases of qualified small
25 business stock issued by the corporation and disposed of by the
26 taxpayer during the taxable year. For purposes of this subparagraph,
27 the adjusted basis of any stock shall be determined without regard
28 to any addition to *the* basis after the date on which the stock was
29 originally issued.

30 (2) For purposes of this subdivision, the term “eligible gain”
31 means any gain from the sale or exchange of qualified small
32 business stock held for more than five years.

33 (3) (A) In the case of a married individual filing a separate
34 return, subparagraph (A) of paragraph (1) shall be applied by
35 substituting five million dollars (\$5,000,000) for ten million dollars
36 (\$10,000,000).

37 (B) In the case of a married taxpayer filing a joint return, the
38 amount of gain taken into account under subdivision (a) shall be
39 allocated equally between the spouses for purposes of applying
40 this subdivision to subsequent taxable years.

1 (C) For purposes of this subdivision, marital status shall be
2 determined under Section 7703 of the Internal Revenue Code.

3 (c) For purposes of this section:

4 (1) Except as otherwise provided in this section, the term
5 “qualified small business stock” means any stock in a C corporation
6 which is originally issued after August 10, 1993, if both of the
7 following apply:

8 (A) As of the date of issuance, the corporation is a qualified
9 small business.

10 (B) Except as provided in subdivisions (f) and (h), the stock is
11 acquired by the taxpayer at its original issue (directly or through
12 an underwriter) in either of the following manners:

13 (i) In exchange for money or other property (not including
14 stock).

15 (ii) As compensation for services provided to the corporation
16 (other than services performed as an underwriter of the stock).

17 (2) (A) Stock in a corporation shall not be treated as qualified
18 small business stock unless, during substantially all of the
19 taxpayer’s holding period for the stock, the corporation meets the
20 active business requirements of subdivision (e) and the corporation
21 is a C corporation.

22 (B) (i) Notwithstanding subdivision (e), a corporation shall be
23 treated as meeting the active business requirements of subdivision
24 (e) for any period during which the corporation qualifies as a
25 specialized small business investment company.

26 (ii) For purposes of clause (i), the term “specialized small
27 business investment company” means any eligible corporation (as
28 defined in paragraph (4) of subdivision (e)) that is licensed to
29 operate under former Section 301(d) of the federal Small Business
30 Investment Act of 1958 (as in effect on May 13, 1993).

31 (3) (A) Stock acquired by the taxpayer shall not be treated as
32 qualified small business stock if, at any time during the four-year
33 period beginning on the date two years before the issuance of the
34 stock, the corporation issuing the stock purchased (directly or
35 indirectly) any of its stock from the taxpayer or from a related
36 person (within the meaning of Section 267(b) or 707(b)) to the
37 taxpayer.

38 (B) Stock issued by a corporation shall not be treated as qualified
39 small business stock if, during the two-year period beginning on
40 the date one year before the issuance of the stock, the corporation

1 made one or more purchases of its stock with an aggregate value
2 (as of the time of the respective purchases) exceeding 5 percent
3 of the aggregate value of all of its stock as of the beginning of the
4 two-year period.

5 (C) If any transaction is treated under Section 304(a) of the
6 Internal Revenue Code as a distribution in redemption of the stock
7 of any corporation, for purposes of subparagraphs (A) and (B), the
8 corporation shall be treated as purchasing an amount of its stock
9 equal to the amount treated as a distribution in redemption of the
10 stock of the corporation under Section 304(a) of the Internal
11 Revenue Code.

12 (d) For purposes of this section:

13 (1) The term “qualified small business” means any domestic
14 corporation (as defined in Section 7701(a)(4) of the Internal
15 Revenue Code) which is a C corporation if all of the following
16 apply:

17 (A) The aggregate gross assets of the corporation (or any
18 predecessor thereof) at all times on or after July 1, 1993, and before
19 the issuance did not exceed fifty million dollars (\$50,000,000).

20 (B) The aggregate gross assets of the corporation immediately
21 after the issuance (determined by taking into account amounts
22 received in the issuance) do not exceed fifty million dollars
23 (\$50,000,000).

24 (C) At least 80 percent of the corporation’s payroll, as measured
25 by total dollar value, is attributable to employment located within
26 California.

27 (D) The corporation agrees to submit those reports to the
28 Franchise Tax Board and to shareholders as the Franchise Tax
29 Board may require to carry out the purposes of this section.

30 (2) (A) For purposes of paragraph (1), the term “aggregate
31 gross assets” means the amount of cash and the aggregate adjusted
32 basis of other property held by the corporation.

33 (B) For purposes of subparagraph (A), the adjusted basis of any
34 property contributed to the corporation (or other property with a
35 basis determined in whole or in part by reference to the adjusted
36 basis of property so contributed) shall be determined as if the basis
37 of the property contributed to the corporation immediately after
38 the contribution was equal to its fair market value as of the time
39 of the contribution.

1 (3) (A) All corporations which are members of the same
2 parent-subsidiary controlled group shall be treated as one
3 corporation for purposes of this subdivision.

4 (B) For purposes of subparagraph (A), the term
5 “parent-subsidiary controlled group” means any controlled group
6 of corporations as defined in Section 1563(a)(1) of the Internal
7 Revenue Code, except that both of the following shall apply:

8 (i) “More than 50 percent” shall be substituted for “at least 80
9 percent” each place it appears in Section 1563(a)(1) of the Internal
10 Revenue Code.

11 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not
12 apply.

13 (e) (1) For purposes of paragraph (2) of subdivision (c), the
14 requirements of this subdivision are met by a corporation for any
15 period if during that period both of the following apply:

16 (A) At least 80 percent (by value) of the assets of the corporation
17 are used by the corporation in the active conduct of one or more
18 qualified trades or businesses in California.

19 (B) The corporation is an eligible corporation.

20 (2) For purposes of paragraph (1), if, in connection with any
21 future qualified trade or business, a corporation is engaged in:

22 (A) Startup activities described in Section 195(c)(1)(A) of the
23 Internal Revenue Code,

24 (B) Activities resulting in the payment or incurring of
25 expenditures which may be treated as research and experimental
26 expenditures under Section 174 of the Internal Revenue Code, or

27 (C) Activities with respect to in-house research expenses
28 described in Section 41(b)(2) of the Internal Revenue Code, then
29 assets used in those activities shall be treated as used in the active
30 conduct of a qualified trade or business. Any determination under
31 this paragraph shall be made without regard to whether a
32 corporation has any gross income from those activities at the time
33 of the determination.

34 (3) For purposes of this subdivision, the term “qualified trade
35 or business” means any trade or business other than any of the
36 following:

37 (A) Any trade or business involving the performance of services
38 in the fields of health, law, engineering, architecture, accounting,
39 actuarial science, performing arts, consulting, athletics, financial
40 services, brokerage services, or any trade or business where the

1 principal asset of the trade or business is the reputation or skill of
2 one or more of its employees.

3 (B) Any banking, insurance, financing, leasing, investing, or
4 similar business.

5 (C) Any farming business (including the business of raising or
6 harvesting trees).

7 (D) Any business involving the production or extraction of
8 products of a character with respect to which a deduction is
9 allowable under Section 613 or 613A of the Internal Revenue
10 Code.

11 (E) Any business of operating a hotel, motel, restaurant, or
12 similar business.

13 (4) For purposes of this subdivision, the term “eligible
14 corporation” means any domestic corporation, except that the term
15 shall not include any of the following:

16 (A) A DISC or former DISC.

17 (B) A corporation with respect to which an election under
18 Section 936 of the Internal Revenue Code is in effect or which has
19 a direct or indirect subsidiary with respect to which the election
20 is in effect.

21 (C) A regulated investment company, real estate investment
22 trust (REIT), or real estate mortgage investment conduit (REMIC).

23 (D) A cooperative.

24 (5) (A) For purposes of this subdivision, stock and debt in any
25 subsidiary corporation shall be disregarded and the parent
26 corporation shall be deemed to own its ratable share of the
27 subsidiary’s assets, and to conduct its ratable share of the
28 subsidiary’s activities.

29 (B) A corporation shall be treated as failing to meet the
30 requirements of paragraph (1) for any period during which more
31 than 10 percent of the value of its assets (in excess of liabilities)
32 consists of stock or securities in other corporations which are not
33 subsidiaries of the corporation (other than assets described in
34 paragraph (6)).

35 (C) For purposes of this paragraph, a corporation shall be
36 considered a subsidiary if the parent owns more than 50 percent
37 of the combined voting power of all classes of stock entitled to
38 vote, or more than 50 percent in value of all outstanding stock, of
39 the corporation.

1 (6) For purposes of subparagraph (A) of paragraph (1), the
2 following assets shall be treated as used in the active conduct of
3 a qualified trade or business:

4 (A) Assets that are held as a part of the reasonably required
5 working capital needs of a qualified trade or business of the
6 corporation.

7 (B) Assets that are held for investment and are reasonably
8 expected to be used within two years to finance research and
9 experimentation in a qualified trade or business or increases in
10 working capital needs of a qualified trade or business. For periods
11 after the corporation has been in existence for at least two years,
12 in no event may more than 50 percent of the assets of the
13 corporation qualify as used in the active conduct of a qualified
14 trade or business by reason of this paragraph.

15 (7) A corporation shall not be treated as meeting the
16 requirements of paragraph (1) for any period during which more
17 than 10 percent of the total value of its assets consists of real
18 property that is not used in the active conduct of a qualified trade
19 or business. For purposes of the preceding sentence, the ownership
20 of, dealing in, or renting of, real property shall not be treated as
21 the active conduct of a qualified trade or business.

22 (8) For purposes of paragraph (1), rights to computer software
23 that produces active business computer software royalties (within
24 the meaning of Section 543(d)(1) of the Internal Revenue Code)
25 shall be treated as an asset used in the active conduct of a trade or
26 business.

27 (9) A corporation shall not be treated as meeting the
28 requirements of paragraph (1) for any period during which more
29 than 20 percent of the corporation's total payroll expense is
30 attributable to employment located outside of California.

31 (f) If any stock in a corporation is acquired solely through the
32 conversion of other stock in the corporation that is qualified small
33 business stock in the hands of the taxpayer, both of the following
34 shall apply:

35 (1) The stock so acquired shall be treated as qualified small
36 business stock in the hands of the taxpayer.

37 (2) The stock so acquired shall be treated as having been held
38 during the period during which the converted stock was held.

1 (g) (1) If any amount included in gross income by reason of
2 holding an interest in a pass-thru entity meets the requirements of
3 paragraph (2), then both of the following shall apply:

4 (A) The amount shall be treated as gain described in subdivision
5 (a).

6 (B) For purposes of applying subdivision (b), the amount shall
7 be treated as gain from a disposition of stock in the corporation
8 issuing the stock disposed of by the pass-thru entity and the
9 taxpayer's proportionate share of the adjusted basis of the pass-thru
10 entity in the stock shall be taken into account.

11 (2) An amount meets the requirements of this paragraph if both
12 of the following apply:

13 (A) The amount is attributable to gain on the sale or exchange
14 by the pass-thru entity of stock that is qualified small business
15 stock in the hands of the entity (determined by treating the entity
16 as an individual) and that was held by that entity for more than
17 five years.

18 (B) The amount is includable in the gross income of the taxpayer
19 by reason of the holding of an interest in the entity that was held
20 by the taxpayer on the date on which the pass-thru entity acquired
21 the stock and at all times thereafter before the disposition of the
22 stock by the pass-thru entity.

23 (3) Paragraph (1) shall not apply to any amount to the extent
24 the amount exceeds the amount to which paragraph (1) would have
25 applied if the amount was determined by reference to the interest
26 the taxpayer held in the pass-thru entity on the date the qualified
27 small business stock was acquired.

28 (4) For purposes of this subdivision, the term "pass-through
29 entity" means any of the following:

30 (A) Any partnership.

31 (B) Any S corporation.

32 (C) Any regulated investment company.

33 (D) Any common trust fund.

34 (h) For purposes of this section:

35 (1) In the case of a transfer described in paragraph (2), the
36 transferee shall be treated as meeting both of the following:

37 (A) Having acquired the stock in the same manner as the
38 transferor.

1 (B) Having held the stock during any continuous period
2 immediately preceding the transfer during which it was held (or
3 treated as held under this subdivision) by the transferor.

4 (2) A transfer is described in this subdivision if the transfer is
5 any of the following:

6 (A) By gift.

7 (B) At death.

8 (C) From a partnership to a partner of stock with respect to
9 which requirements similar to the requirements of subdivision (g)
10 are met at the time of the transfer (without regard to the five-year
11 holding period requirement).

12 (3) Rules similar to the rules of Section 1244(d)(2) of the
13 Internal Revenue Code shall apply for purposes of this section.

14 (4) (A) In the case of a transaction described in Section 351 of
15 the Internal Revenue Code or a reorganization described in Section
16 368 of the Internal Revenue Code, if qualified small business stock
17 is exchanged for other stock that would not qualify as qualified
18 small business stock but for this subparagraph, the other stock
19 shall be treated as qualified small business stock acquired on the
20 date on which the exchanged stock was acquired.

21 (B) This section shall apply to gain from the sale or exchange
22 of stock treated as qualified small business stock by reason of
23 subparagraph (A) only to the extent of the gain that would have
24 been recognized at the time of the transfer described in
25 subparagraph (A) if Section 351 or 368 of the Internal Revenue
26 Code had not applied at that time. The preceding sentence shall
27 not apply if the stock that is treated as qualified small business
28 stock by reason of subparagraph (A) is issued by a corporation
29 that (as of the time of the transfer described in subparagraph (A))
30 is a qualified small business.

31 (C) For purposes of this paragraph, stock treated as qualified
32 small business stock under subparagraph (A) shall be so treated
33 for subsequent transactions or reorganizations, except that the
34 limitation of subparagraph (B) shall be applied as of the time of
35 the first transfer to which the limitation applied (determined after
36 the application of the second sentence of subparagraph (B)).

37 (D) In the case of a transaction described in Section 351 of the
38 Internal Revenue Code, this paragraph shall apply only if
39 immediately after the transaction the corporation issuing the stock
40 owns directly or indirectly stock representing control (within the

1 meaning of Section 368(c) of the Internal Revenue Code) of the
2 corporation whose stock was exchanged.

3 (i) For purposes of this section:

4 (1) In the case where the taxpayer transfers property (other than
5 money or stock) to a corporation in exchange for stock in the
6 corporation, both of the following shall apply:

7 (A) The stock shall be treated as having been acquired by the
8 taxpayer on the date of the exchange.

9 (B) The basis of the stock in the hands of the taxpayer shall in
10 no event be less than the fair market value of the property
11 exchanged.

12 (2) If the adjusted basis of any qualified small business stock
13 is adjusted by reason of any contribution to capital after the date
14 on which the stock was originally issued, in determining the
15 amount of the adjustment by reason of the contribution, the basis
16 of the contributed property shall in no event be treated as less than
17 its fair market value on the date of the contribution.

18 (j) (1) If the taxpayer has an offsetting short position with
19 respect to any qualified small business stock, subdivision (a) shall
20 not apply to any gain from the sale or exchange of the stock unless
21 both of the following apply:

22 (A) The stock was held by the taxpayer for more than five years
23 as of the first day on which there was such a short position.

24 (B) The taxpayer elects to recognize gain as if the stock was
25 sold on that first day for its fair market value.

26 (2) For purposes of paragraph (1), the taxpayer shall be treated
27 as having an offsetting short position with respect to any qualified
28 small business stock if any of the following apply:

29 (A) The taxpayer has made a short sale of substantially identical
30 property.

31 (B) The taxpayer has acquired an option to sell substantially
32 identical property at a fixed price.

33 (C) To the extent provided in regulations, the taxpayer has
34 entered into any other transaction that substantially reduces the
35 risk of loss from holding the qualified small business stock. For
36 purposes of the preceding sentence, any reference to the taxpayer
37 shall be treated as including a reference to any person who is
38 related (within the meaning of Section 267(b) or 707(b) of the
39 Internal Revenue Code) to the taxpayer.

1 (k) The Franchise Tax Board may prescribe those regulations
2 as may be appropriate to carry out the purposes of this section,
3 including regulations to prevent the avoidance of the purposes of
4 this section through splitups, shell corporations, partnerships, or
5 otherwise.

6 (l) It is the intent of the Legislature that, in construing this
7 section, any regulations that may be promulgated by the Secretary
8 of the Treasury under Section 1202(k) of the Internal Revenue
9 Code shall apply to the extent that those regulations do not conflict
10 with this section or with any regulations that may be promulgated
11 by the Franchise Tax Board.

12 SEC. 187. Section 18738 of the Revenue and Taxation Code,
13 as added by Section 1 of Chapter 228 of the Statutes of 2012, is
14 amended to read:

15 18738. (a) All moneys transferred to the California YMCA
16 Youth and Government Fund pursuant to Section 18736, upon
17 appropriation by the Legislature, shall be allocated as follows:

18 (1) To the Franchise Tax Board, the Controller, and the State
19 Department of Education for reimbursement of all costs incurred
20 by the Franchise Tax Board, the Controller, and the State
21 Department of Education in connection with their duties under
22 this article.

23 (2) The balance to the State Department of Education for
24 distribution as follows:

25 (A) If the California YMCA Youth and Government Fund
26 collects contributions of less than three hundred thousand dollars
27 (\$300,000), all funds shall be distributed to the California YMCA
28 Youth and Government Program.

29 (B) If the California YMCA Youth and Government Fund
30 collects contributions in excess of three hundred thousand dollars
31 (\$300,000), the balance of the fund shall be distributed as follows:

32 (i) To provide an annual grant of ten thousand dollars (\$10,000)
33 to each of the following nonprofit civic youth organizations in
34 order to operate civic education and mock legislative programs:

35 (I) African American Leaders for Tomorrow Program.

36 (II) Asian Pacific Youth Leadership Project.

37 (III) Chicano Latino Youth Leadership Project.

38 (ii) (I) All remaining funds shall be distributed to the California
39 YMCA Youth and Government Program.

1 (II) The California YMCA Youth and Government Board of
2 Directors may award additional nonprofit civic youth organizations
3 a grant of up to ten thousand dollars (\$10,000) each in order to
4 operate civic education and mock legislative programs. Grants
5 shall be administered by the California YMCA Youth and
6 Government Board of Directors, who shall be responsible for
7 developing criteria, evaluating applications, and awarding grants
8 to eligible organizations.

9 (b) All moneys allocated pursuant to subdivision (a) may be
10 carried over from the year in which they were received.

11 (c) Funds distributed to the California YMCA Youth and
12 Government Program, the African American Leaders for Tomorrow
13 Program, the Asian Pacific Youth Leadership Project, the Chicano
14 Latino Youth Leadership Project, and any other nonprofit civic
15 youth organizations awarded a grant pursuant to clause (i) of
16 subparagraph (B) of paragraph (2) of subdivision (a) shall be used
17 to support program participation by underserved students and for
18 direct program-related expenses.

19 (d) The funds distributed to the California YMCA Youth and
20 Government Program by the State Department of Education shall
21 be used exclusively for program-related expenses.

22 SEC. 188. Section 23685 of the Revenue and Taxation Code
23 is amended to read:

24 23685. (a) (1) For taxable years beginning on or after January
25 1, 2011, there shall be allowed to a qualified taxpayer a credit
26 against the "tax," as defined in Section 23036, in an amount equal
27 to the applicable percentage, as specified in paragraph (4), of the
28 qualified expenditures for the production of a qualified motion
29 picture in California.

30 (2) The credit shall be allowed for the taxable year in which the
31 California Film Commission issues the credit certificate pursuant
32 to subdivision (g) for the qualified motion picture, and shall be for
33 the applicable percentage of all qualified expenditures paid or
34 incurred by the qualified taxpayer in all taxable years for that
35 qualified motion picture.

36 (3) The amount of the credit allowed to a qualified taxpayer
37 shall be limited to the amount specified in the credit certificate
38 issued to the qualified taxpayer by the California Film Commission
39 pursuant to subdivision (g).

1 (4) For purposes of paragraphs (1) and (2), the applicable
2 percentage shall be:

3 (A) Twenty percent of the qualified expenditures attributable
4 to the production of a qualified motion picture in California.

5 (B) Twenty-five percent of the qualified expenditures
6 attributable to the production of a qualified motion picture in
7 California where the qualified motion picture is a television series
8 that relocated to California or an independent film.

9 (b) For purposes of this section:

10 (1) “Ancillary product” means any article for sale to the public
11 that contains a portion of, or any element of, the qualified motion
12 picture.

13 (2) “Budget” means an estimate of all expenses paid or incurred
14 during the production period of a qualified motion picture. It shall
15 be the same budget used by the qualified taxpayer and production
16 company for all qualified motion picture purposes.

17 (3) “Clip use” means a use of any portion of a motion picture,
18 other than the qualified motion picture, used in the qualified motion
19 picture.

20 (4) “Credit certificate” means the certificate issued by the
21 California Film Commission pursuant to subparagraph (C) of
22 paragraph (2) of subdivision (g).

23 (5) (A) “Employee fringe benefits” means the amount allowable
24 as a deduction under this part to the qualified taxpayer involved
25 in the production of the qualified motion picture, exclusive of any
26 amounts contributed by employees, for any year during the
27 production period with respect to any of the following:

28 (i) Employer contributions under any pension, profit-sharing,
29 annuity, or similar plan.

30 (ii) Employer-provided coverage under any accident or health
31 plan for employees.

32 (iii) The employer’s cost of life or disability insurance provided
33 to employees.

34 (B) Any amount treated as wages under clause (i) of
35 subparagraph (A) of paragraph (18) shall not be taken into account
36 under this paragraph.

37 (6) “Independent film” means a motion picture with a minimum
38 budget of one million dollars (\$1,000,000) and a maximum budget
39 of ten million dollars (\$10,000,000) that is produced by a company
40 that is not publicly traded and publicly traded companies do not

1 own, directly or indirectly, more than 25 percent of the producing
2 company.

3 (7) “Licensing” means any grant of rights to distribute the
4 qualified motion picture, in whole or in part.

5 (8) “New use” means any use of a motion picture in a medium
6 other than the medium for which it was initially created.

7 (9) (A) “Postproduction” means the final activities in a qualified
8 motion picture’s production, including editing, foley recording,
9 automatic dialogue replacement, sound editing, scoring and music
10 editing, beginning and end credits, negative cutting, negative
11 processing and duplication, the addition of sound and visual effects,
12 soundmixing, film-to-tape transfers, encoding, and color correction.

13 (B) “Postproduction” does not include the manufacture or
14 shipping of release prints.

15 (10) “Preproduction” means the process of preparation for actual
16 physical production which begins after a qualified motion picture
17 has received a firm agreement of financial commitment, or is
18 greenlit, with, for example, the establishment of a dedicated
19 production office, the hiring of key crew members, and includes,
20 but is not limited to, activities that include location scouting and
21 execution of contracts with vendors of equipment and stage space.

22 (11) “Principal photography” means the phase of production
23 during which the motion picture is actually shot, as distinguished
24 from preproduction and postproduction.

25 (12) “Production period” means the period beginning with
26 preproduction and ending upon completion of postproduction.

27 (13) “Qualified entity” means a personal service corporation as
28 defined in Section 269A(b)(1) of the Internal Revenue Code, a
29 payroll services corporation, or any entity receiving qualified wages
30 with respect to services performed by a qualified individual.

31 (14) (A) “Qualified individual” means any individual who
32 performs services during the production period in an activity related
33 to the production of a qualified motion picture.

34 (B) “Qualified individual” shall not include either of the
35 following:

36 (i) Any individual related to the qualified taxpayer as described
37 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
38 Revenue Code.

39 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
40 the Internal Revenue Code, of the qualified taxpayer.

1 (15) (A) “Qualified motion picture” means a motion picture
2 that is produced for distribution to the general public, regardless
3 of medium, that is one of the following:

4 (i) A feature with a minimum production budget of one million
5 dollars (\$1,000,000) and a maximum production budget of
6 seventy-five million dollars (\$75,000,000).

7 (ii) A movie of the week or miniseries with a minimum
8 production budget of five hundred thousand dollars (\$500,000).

9 (iii) A new television series produced in California with a
10 minimum production budget of one million dollars (\$1,000,000)
11 licensed for original distribution on basic cable.

12 (iv) An independent film.

13 (v) A television series that relocated to California.

14 (B) To qualify as a “qualified motion picture,” all of the
15 following conditions shall be satisfied:

16 (i) At least 75 percent of the production days occur wholly in
17 California or 75 percent of the production budget is incurred for
18 payment for services performed within the state and the purchase
19 or rental of property used within the state.

20 (ii) Production of the qualified motion picture is completed
21 within 30 months from the date on which the qualified taxpayer’s
22 application is approved by the California Film Commission. For
23 purposes of this section, a qualified motion picture is “completed”
24 when the process of postproduction has been finished.

25 (iii) The copyright for the motion picture is registered with the
26 United States Copyright Office pursuant to Title 17 of the United
27 States Code.

28 (iv) Principal photography of the qualified motion picture
29 commences after the date on which the application is approved by
30 the California Film Commission, but no later than 180 days after
31 the date of that approval.

32 (C) For the purposes of subparagraph (A), in computing the
33 total wages paid or incurred for the production of a qualified
34 motion picture, all amounts paid or incurred by all persons or
35 entities that share in the costs of the qualified motion picture shall
36 be aggregated.

37 (D) “Qualified motion picture” shall not include commercial
38 advertising, music videos, a motion picture produced for private
39 noncommercial use, such as weddings, graduations, or as part of
40 an educational course and made by students, a news program,

1 current events or public events program, talk show, game show,
2 sporting event or activity, awards show, telethon or other
3 production that solicits funds, reality television program, clip-based
4 programming if more than 50 percent of the content is comprised
5 of licensed footage, documentaries, variety programs, daytime
6 dramas, strip shows, one-half hour (air time) episodic television
7 shows, or any production that falls within the recordkeeping
8 requirements of Section 2257 of Title 18 of the United States Code.

9 (16) “Qualified expenditures” means amounts paid or incurred
10 to purchase or lease tangible personal property used within this
11 state in the production of a qualified motion picture and payments,
12 including qualified wages, for services performed within this state
13 in the production of a qualified motion picture.

14 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
15 or incurred qualified expenditures and has been issued a credit
16 certificate by the California Film Commission pursuant to
17 subdivision (g).

18 (B) (i) In the case of any pass-thru entity, the determination of
19 whether a taxpayer is a qualified taxpayer under this section shall
20 be made at the entity level and any credit under this section is not
21 allowed to the pass-thru entity, but shall be passed through to the
22 partners or shareholders in accordance with applicable provisions
23 of Part 10 (commencing with Section 17001) or Part 11
24 (commencing with Section 23001). For purposes of this paragraph,
25 “pass-thru entity” means any entity taxed as a partnership or “S”
26 corporation.

27 (ii) In the case of an “S” corporation, the credit allowed under
28 this section shall not be used by an “S” corporation as a credit
29 against a tax imposed under Chapter 4.5 (commencing with Section
30 23800) of Part 11 of Division 2.

31 (18) (A) “Qualified wages” means all of the following:

32 (i) Any wages subject to withholding under Division 6
33 (commencing with Section 13000) of the Unemployment Insurance
34 Code that were paid or incurred by any taxpayer involved in the
35 production of a qualified motion picture with respect to a qualified
36 individual for services performed on the qualified motion picture
37 production within this state.

38 (ii) The portion of any employee fringe benefits paid or incurred
39 by any taxpayer involved in the production of the qualified motion

1 picture that are properly allocable to qualified wage amounts
2 described in clause (i).

3 (iii) Any payments made to a qualified entity for services
4 performed in this state by qualified individuals within the meaning
5 of paragraph (14).

6 (iv) Remuneration paid to an independent contractor who is a
7 qualified individual for services performed within this state by that
8 qualified individual.

9 (B) “Qualified wages” shall not include any of the following:

10 (i) Expenses, including wages, related to new use, reuse, clip
11 use, licensing, secondary markets, or residual compensation, or
12 the creation of any ancillary product, including, but not limited to,
13 a soundtrack album, toy, game, trailer, or teaser.

14 (ii) Expenses, including wages, paid or incurred with respect to
15 acquisition, development, turnaround, or any rights thereto.

16 (iii) Expenses, including wages, related to financing, overhead,
17 marketing, promotion, or distribution of a qualified motion picture.

18 (iv) Expenses, including wages, paid per person per qualified
19 motion picture for writers, directors, music directors, music
20 composers, music supervisors, producers, and performers, other
21 than background actors with no scripted lines.

22 (19) “Residual compensation” means supplemental
23 compensation paid at the time that a motion picture is exhibited
24 through new use, reuse, clip use, or in secondary markets, as
25 distinguished from payments made during production.

26 (20) “Reuse” means any use of a qualified motion picture in the
27 same medium for which it was created, following the initial use
28 in that medium.

29 (21) “Secondary markets” means media in which a qualified
30 motion picture is exhibited following the initial media in which it
31 is exhibited.

32 (22) “Television series that relocated to California” means a
33 television series, without regard to episode length or initial media
34 exhibition, that filmed all of its prior season or seasons outside of
35 California and for which the taxpayer certifies that the credit
36 provided pursuant to this section is the primary reason for
37 relocating to California.

38 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
39 the case where the credit allowed by this section exceeds the
40 taxpayer’s tax liability computed under this part, a qualified

1 taxpayer may elect to assign any portion of the credit allowed
2 under this section to one or more affiliated corporations for each
3 taxable year in which the credit is allowed. For purposes of this
4 subdivision, “affiliated corporation” has the meaning provided in
5 subdivision (b) of Section 25110, as that section was amended by
6 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
7 year in which the credit is allowed, except that “100 percent” is
8 substituted for “more than 50 percent” wherever it appears in the
9 section, and “voting common stock” is substituted for “voting
10 stock” wherever it appears in the section.

11 (2) The election provided in paragraph (1):

12 (A) May be based on any method selected by the qualified
13 taxpayer that originally receives the credit.

14 (B) Shall be irrevocable for the taxable year the credit is allowed,
15 once made.

16 (C) May be changed for any subsequent taxable year if the
17 election to make the assignment is expressly shown on each of the
18 returns of the qualified taxpayer and the qualified taxpayer’s
19 affiliated corporations that assign and receive the credits.

20 (D) Shall be reported to the Franchise Tax Board, in the form
21 and manner specified by the Franchise Tax Board, along with all
22 required information regarding the assignment of the credit,
23 including the corporation number, the federal employer
24 identification number, or other taxpayer identification number of
25 the assignee, and the amount of the credit assigned.

26 (3) (A) Notwithstanding any other law, a qualified taxpayer
27 may sell any credit allowed under this section that is attributable
28 to an independent film, as defined in paragraph (6) of subdivision
29 (b), to an unrelated party.

30 (B) The qualified taxpayer shall report to the Franchise Tax
31 Board prior to the sale of the credit, in the form and manner
32 specified by the Franchise Tax Board, all required information
33 regarding the purchase and sale of the credit, including the social
34 security or other taxpayer identification number of the unrelated
35 party to whom the credit has been sold, the face amount of the
36 credit sold, and the amount of consideration received by the
37 qualified taxpayer for the sale of the credit.

38 (4) In the case where the credit allowed under this section
39 exceeds the “tax,” the excess credit may be carried over to reduce

1 the “tax” in the following taxable year, and succeeding five taxable
2 years, if necessary, until the credit has been exhausted.

3 (5) A credit shall not be sold pursuant to this subdivision to
4 more than one taxpayer, nor may the credit be resold by the
5 unrelated party to another taxpayer or other party.

6 (6) A party that has been assigned or acquired tax credits under
7 this paragraph shall be subject to the requirements of this section.

8 (7) In no event may a qualified taxpayer assign or sell any tax
9 credit to the extent the tax credit allowed by this section is claimed
10 on any tax return of the qualified taxpayer.

11 (8) In the event that both the taxpayer originally allocated a
12 credit under this section by the California Film Commission and
13 a taxpayer to whom the credit has been sold both claim the same
14 amount of credit on their tax returns, the Franchise Tax Board may
15 disallow the credit of either taxpayer, so long as the statute of
16 limitations upon assessment remains open.

17 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code does not apply to
19 any standard, criterion, procedure, determination, rule, notice, or
20 guideline established or issued by the Franchise Tax Board
21 pursuant to this subdivision.

22 (10) Subdivision (i) of Section 23036 shall not apply to any
23 credit sold pursuant to this subdivision.

24 (11) For purposes of this subdivision:

25 (A) An affiliated corporation or corporations that are assigned
26 a credit pursuant to paragraph (1) shall be treated as a qualified
27 taxpayer pursuant to paragraph (1) of subdivision (a).

28 (B) The unrelated party or parties that purchase a credit pursuant
29 to paragraph (3) shall be treated as a qualified taxpayer pursuant
30 to paragraph (1) of subdivision (a).

31 (d) No credit shall be allowed pursuant to this section unless
32 the qualified taxpayer provides the following to the California
33 Film Commission:

34 (1) Identification of each qualified individual.

35 (2) The specific start and end dates of production.

36 (3) The total wages paid.

37 (4) The amount of qualified wages paid to each qualified
38 individual.

39 (5) The copyright registration number, as reflected on the
40 certificate of registration issued under the authority of Section 410

1 of Title 17 of the United States Code, relating to registration of
 2 claim and issuance of certificate. The registration number shall be
 3 provided on the return claiming the credit.

4 (6) The total amounts paid or incurred to purchase or lease
 5 tangible personal property used in the production of a qualified
 6 motion picture.

7 (7) Information to substantiate its qualified expenditures.

8 (8) Information required by the California Film Commission
 9 under regulations promulgated pursuant to subdivision (g)
 10 necessary to verify the amount of credit claimed.

11 (e) The California Film Commission may prescribe rules and
 12 regulations to carry out the purposes of this section including any
 13 rules and regulations necessary to establish procedures, processes,
 14 requirements, and rules identified in or required to implement this
 15 section. The regulations shall include provisions to set aside a
 16 percentage of annual credit allocations for independent films.

17 (f) If the qualified taxpayer fails to provide the copyright
 18 registration number as required in paragraph (5) of subdivision
 19 (d), the credit shall be disallowed and assessed and collected under
 20 Section 19051 until the procedures are satisfied.

21 (g) For purposes of this section, the California Film Commission
 22 shall do the following:

23 (1) On or after July 1, 2009, and before July 1, 2017, allocate
 24 tax credits to applicants.

25 (A) Establish a procedure for applicants to file with the
 26 California Film Commission a written application, on a form jointly
 27 prescribed by the California Film Commission and the Franchise
 28 Tax Board for the allocation of the tax credit. The application shall
 29 include, but not be limited to, the following information:

30 (i) The budget for the motion picture production.

31 (ii) The number of production days.

32 (iii) A financing plan for the production.

33 (iv) The diversity of the workforce employed by the applicant,
 34 including, but not limited to, the ethnic and racial makeup of the
 35 individuals employed by the applicant during the production of
 36 the qualified motion picture, to the extent possible.

37 (v) All members of a combined reporting group, if known at
 38 the time of the application.

39 (vi) Financial information, if available, including, but not limited
 40 to, the most recently produced balance sheets, annual statements

1 of profits and losses, audited or unaudited financial statements,
2 summary budget projections or results, or the functional equivalent
3 of these documents of a partnership or owner of a single member
4 limited liability company that is disregarded pursuant to Section
5 23038. The information provided pursuant to this clause shall be
6 confidential and shall not be subject to public disclosure.

7 (vii) The names of all partners in a partnership not publicly
8 traded or the names of all members of a limited liability company
9 classified as a partnership not publicly traded for California income
10 tax purposes that have a financial interest in the applicant's
11 qualified motion picture. The information provided pursuant to
12 this clause shall be confidential and shall not be subject to public
13 disclosure.

14 (viii) Detailed narratives, for use only by the Legislative
15 Analyst's Office in conducting a study of the effectiveness of this
16 credit, that describe the extent to which the credit is expected to
17 influence or affect filming and other business location decisions,
18 hiring decisions, salary decisions, and any other financial matters
19 of the applicant.

20 (ix) Any other information deemed relevant by the California
21 Film Commission or the Franchise Tax Board.

22 (B) Establish criteria, consistent with the requirements of this
23 section, for allocating tax credits.

24 (C) Determine and designate applicants who meet the
25 requirements of this section.

26 (D) Process and approve, or reject, all applications on a
27 first-come-first-served basis.

28 (E) Subject to the annual cap established as provided in
29 subdivision (i), allocate an aggregate amount of credits under this
30 section and Section 17053.85, and allocate any carryover of
31 unallocated credits from prior years.

32 (2) Certify tax credits allocated to qualified taxpayers.

33 (A) Establish a verification procedure for the amount of qualified
34 expenditures paid or incurred by the applicant, including, but not
35 limited to, updates to the information in subparagraph (A) of
36 paragraph (1) of subdivision (g).

37 (B) Establish audit requirements that must be satisfied before
38 a credit certificate may be issued by the California Film
39 Commission.

1 (C) (i) Establish a procedure for a qualified taxpayer to report
2 to the California Film Commission, prior to the issuance of a credit
3 certificate, the following information:

4 (I) If readily available, a list of the states, provinces, or other
5 jurisdictions in which any member of the applicant's combined
6 reporting group in the same business unit as the qualified taxpayer
7 that, in the preceding calendar year, has produced a qualified
8 motion picture intended for release in the United States market.
9 For purposes of this clause, "qualified motion picture" shall not
10 include any episodes of a television series that were complete or
11 in production prior to July 1, 2009.

12 (II) Whether a qualified motion picture described in subclause
13 (I) was awarded any financial incentive by the state, province, or
14 other jurisdiction that was predicated on the performance of
15 primary principal photography or postproduction in that location.

16 (ii) The California Film Commission may provide that the report
17 required by this subparagraph be filed in a single report provided
18 on a calendar year basis for those qualified taxpayers that receive
19 multiple credit certificates in a calendar year.

20 (D) Issue a credit certificate to a qualified taxpayer upon
21 completion of the qualified motion picture reflecting the credit
22 amount allocated after qualified expenditures have been verified
23 under this section. The amount of credit shown in the credit
24 certificate shall not exceed the amount of credit allocated to that
25 qualified taxpayer pursuant to this section.

26 (3) Obtain, when possible, the following information from
27 applicants that do not receive an allocation of credit:

28 (A) Whether the qualified motion picture that was the subject
29 of the application was completed.

30 (B) If completed, in which state or foreign jurisdiction was the
31 primary principal photography completed.

32 (C) Whether the applicant received any financial incentives
33 from the state or foreign jurisdiction to make the qualified motion
34 picture in that location.

35 (4) Provide the Legislative Analyst's Office, upon request, any
36 or all application materials or any other materials received from,
37 or submitted by, the applicants, in electronic format when available,
38 including, but not limited to, information provided pursuant to
39 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

1 (5) The information provided to the California Film Commission
2 pursuant to this section shall constitute confidential tax information
3 for purposes of Article 2 (commencing with Section 19542) of
4 Chapter 7 of Part 10.2.

5 (h) (1) The California Film Commission shall annually provide
6 the Legislative Analyst’s Office, the Franchise Tax Board, and the
7 board with a list of qualified taxpayers and the tax credit amounts
8 allocated to each qualified taxpayer by the California Film
9 Commission. The list shall include the names and taxpayer
10 identification numbers, including taxpayer identification numbers
11 of each partner or shareholder, as applicable, of the qualified
12 taxpayer.

13 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
14 California Film Commission shall annually post on its Internet
15 Web site and make available for public release the following:

16 (i) A table which includes all of the following information: a
17 list of qualified taxpayers and the tax credit amounts allocated to
18 each qualified taxpayer by the California Film Commission, the
19 number of production days in California the qualified taxpayer
20 represented in its application would occur, the number of California
21 jobs that the qualified taxpayer represented in its application would
22 be directly created by the production, and the total amount of
23 qualified expenditures expected to be spent by the production.

24 (ii) A narrative staff summary describing the production of the
25 qualified taxpayer as well as background information regarding
26 the qualified taxpayer contained in the qualified taxpayer’s
27 application for the credit.

28 (B) Nothing in this subdivision shall be construed to make the
29 information submitted by an applicant for a tax credit under this
30 section a public record.

31 (i) (1) The aggregate amount of credits that may be allocated
32 in any fiscal year pursuant to this section and Section 17053.85
33 shall be an amount equal to the sum of all of the following:

34 (A) One hundred million dollars (\$100,000,000) in credits for
35 the 2009–10 fiscal year and each fiscal year thereafter, through
36 and including the 2016–17 fiscal year.

37 (B) The unused allocation credit amount, if any, for the
38 preceding fiscal year.

39 (C) The amount of previously allocated credits not certified.

1 (2) If the amount of credits applied for in any particular fiscal
2 year exceeds the aggregate amount of tax credits authorized to be
3 allocated under this section, such excess shall be treated as having
4 been applied for on the first day of the subsequent fiscal year.
5 However, credits may not be allocated from a fiscal year other
6 than the fiscal year in which the credit was originally applied for
7 or the immediately succeeding fiscal year.

8 (3) Notwithstanding the foregoing, the California Film
9 Commission shall set aside up to ten million dollars (\$10,000,000)
10 of tax credits each fiscal year for independent films allocated in
11 accordance with rules and regulations developed pursuant to
12 subdivision (e).

13 (4) Any act that reduces the amount that may be allocated
14 pursuant to paragraph (1) constitutes a change in state taxes for
15 the purpose of increasing revenues within the meaning of Section
16 3 of Article XIII A of the California Constitution and may be passed
17 by not less than two-thirds of all Members elected to each of the
18 two houses of the Legislature.

19 (j) The California Film Commission shall have the authority to
20 allocate tax credits in accordance with this section and in
21 accordance with any regulations prescribed pursuant to subdivision
22 (e) upon adoption.

23 SEC. 189. Section 24416.20 of the Revenue and Taxation Code
24 is amended to read:

25 24416.20. Except as provided in Sections 24416.1, 24416.2,
26 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
27 deduction shall be allowed in computing net income under Section
28 24341 and shall be determined in accordance with Section 172 of
29 the Internal Revenue Code, except as otherwise provided.

30 (a) (1) Net operating losses attributable to taxable years
31 beginning before January 1, 1987, shall not be allowed.

32 (2) A net operating loss shall not be carried forward to any
33 taxable year beginning before January 1, 1987.

34 (b) (1) Except as provided in paragraphs (2) and (3), the
35 provisions of Section 172(b)(2) of the Internal Revenue Code,
36 relating to amount of carrybacks and carryovers, shall be modified
37 so that the applicable percentage of the entire amount of the net
38 operating loss for any taxable year shall be eligible for carryover
39 to any subsequent taxable year. For purposes of this subdivision,
40 the applicable percentage shall be:

1 (A) Fifty percent for any taxable year beginning before January
2 1, 2000.

3 (B) Fifty-five percent for any taxable year beginning on or after
4 January 1, 2000, and before January 1, 2002.

5 (C) Sixty percent for any taxable year beginning on or after
6 January 1, 2002, and before January 1, 2004.

7 (D) One hundred percent for any taxable year beginning on or
8 after January 1, 2004.

9 (2) In the case of a taxpayer who has a net operating loss in any
10 taxable year beginning on or after January 1, 1994, and who
11 operates a new business during that taxable year, each of the
12 following shall apply to each loss incurred during the first three
13 taxable years of operating the new business:

14 (A) If the net operating loss is equal to or less than the net loss
15 from the new business, 100 percent of the net operating loss shall
16 be carried forward as provided in subdivision (e).

17 (B) If the net operating loss is greater than the net loss from the
18 new business, the net operating loss shall be carried over as
19 follows:

20 (i) With respect to an amount equal to the net loss from the new
21 business, 100 percent of that amount shall be carried forward as
22 provided in subdivision (e).

23 (ii) With respect to the portion of the net operating loss that
24 exceeds the net loss from the new business, the applicable
25 percentage of that amount shall be carried forward as provided in
26 subdivision (d).

27 (C) For purposes of Section 172(b)(2) of the Internal Revenue
28 Code, the amount described in clause (ii) of subparagraph (B) shall
29 be absorbed before the amount described in clause (i) of
30 subparagraph (B).

31 (3) In the case of a taxpayer who has a net operating loss in any
32 taxable year beginning on or after January 1, 1994, and who
33 operates an eligible small business during that taxable year, each
34 of the following shall apply:

35 (A) If the net operating loss is equal to or less than the net loss
36 from the eligible small business, 100 percent of the net operating
37 loss shall be carried forward to the taxable years specified in
38 paragraph (1) of subdivision (e).

1 (B) If the net operating loss is greater than the net loss from the
2 eligible small business, the net operating loss shall be carried over
3 as follows:

4 (i) With respect to an amount equal to the net loss from the
5 eligible small business, 100 percent of that amount shall be carried
6 forward as provided in subdivision (e).

7 (ii) With respect to that portion of the net operating loss that
8 exceeds the net loss from the eligible small business, the applicable
9 percentage of that amount shall be carried forward as provided in
10 subdivision (e).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue
12 Code, the amount described in clause (ii) of subparagraph (B) shall
13 be absorbed before the amount described in clause (i) of
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a
16 taxable year beginning on or after January 1, 1994, and who
17 operates a business that qualifies as both a new business and an
18 eligible small business under this section, that business shall be
19 treated as a new business for the first three taxable years of the
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a
22 taxable year beginning on or after January 1, 1994, and who
23 operates more than one business, and more than one of those
24 businesses qualifies as either a new business or an eligible small
25 business under this section, paragraph (2) shall be applied first,
26 except that if there is any remaining portion of the net operating
27 loss after application of clause (i) of subparagraph (B) of paragraph
28 (2), paragraph (3) shall be applied to the remaining portion of the
29 net operating loss as though that remaining portion of the net
30 operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, “net loss” means the amount
32 of net loss after application of Sections 465 and 469 of the Internal
33 Revenue Code.

34 (c) For any taxable year in which the taxpayer has in effect a
35 water’s-edge election under Section 25110, the deduction of a net
36 operating loss carryover shall be denied to the extent that the net
37 operating loss carryover was determined by taking into account
38 the income and factors of an affiliated corporation in a combined
39 report whose income and apportionment factors would not have
40 been taken into account if a water’s-edge election under Section

1 25110 had been in effect for the taxable year in which the loss was
2 incurred.

3 (d) Section 172(b)(1) of the Internal Revenue Code, relating to
4 years to which the loss may be carried, is modified as follows:

5 (1) Net operating loss carrybacks shall not be allowed for any
6 net operating losses attributable to taxable years beginning before
7 January 1, 2013.

8 (2) A net operating loss attributable to taxable years beginning
9 on or after January 1, 2013, shall be a net operating loss carryback
10 to each of the two taxable years preceding the taxable year of the
11 loss in lieu of the number of years provided therein.

12 (A) For a net operating loss attributable to a taxable year
13 beginning on or after January 1, 2013, and before January 1, 2014,
14 the amount of carryback to any taxable year shall not exceed 50
15 percent of the net operating loss.

16 (B) For a net operating loss attributable to a taxable year
17 beginning on or after January 1, 2014, and before January 1, 2015,
18 the amount of carryback to any taxable year shall not exceed 75
19 percent of the net operating loss.

20 (C) For a net operating loss attributable to a taxable year
21 beginning on or after January 1, 2015, the amount of carryback to
22 any taxable year shall not exceed 100 percent of the net operating
23 loss.

24 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
25 Internal Revenue Code, relating to special rules for REITs, and
26 Section 172(b)(1)(E) of the Internal Revenue Code, relating to
27 excess interest loss, and Section 172(h) of the Internal Revenue
28 Code, relating to corporate equity reduction interest losses, shall
29 apply as provided.

30 (4) A net operating loss carryback shall not be carried back to
31 any taxable year beginning before January 1, 2011.

32 (e) (1) (A) For a net operating loss for any taxable year
33 beginning on or after January 1, 1987, and before January 1, 2000,
34 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
35 to substitute “five taxable years” in lieu of “20 years” except as
36 otherwise provided in paragraphs (2), (3), and (4).

37 (B) For a net operating loss for any income year beginning on
38 or after January 1, 2000, and before January 1, 2008, Section
39 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
40 substitute “10 taxable years” in lieu of “20 taxable years.”

1 (2) For any income year beginning before January 1, 2000, in
2 the case of a “new business,” the “five taxable years” referred to
3 in paragraph (1) shall be modified to read as follows:

4 (A) “Eight taxable years” for a net operating loss attributable
5 to the first taxable year of that new business.

6 (B) “Seven taxable years” for a net operating loss attributable
7 to the second taxable year of that new business.

8 (C) “Six taxable years” for a net operating loss attributable to
9 the third taxable year of that new business.

10 (3) For any carryover of a net operating loss for which a
11 deduction is denied by Section 24416.3, the carryover period
12 specified in this subdivision shall be extended as follows:

13 (A) By one year for a net operating loss attributable to taxable
14 years beginning in 1991.

15 (B) By two years for a net operating loss attributable to taxable
16 years beginning prior to January 1, 1991.

17 (4) The net operating loss attributable to taxable years beginning
18 on or after January 1, 1987, and before January 1, 1994, shall be
19 a net operating loss carryover to each of the 10 taxable years
20 following the year of the loss if it is incurred by a corporation that
21 was either of the following:

22 (A) Under the jurisdiction of the court in a Title 11 or similar
23 case at any time prior to January 1, 1994. The loss carryover
24 provided in the preceding sentence shall not apply to any loss
25 incurred in an income year after the taxable year during which the
26 corporation is no longer under the jurisdiction of the court in a
27 Title 11 or similar case.

28 (B) In receipt of assets acquired in a transaction that qualifies
29 as a tax-free reorganization under Section 368(a)(1)(G) of the
30 Internal Revenue Code.

31 (f) For purposes of this section:

32 (1) “Eligible small business” means any trade or business that
33 has gross receipts, less returns and allowances, of less than one
34 million dollars (\$1,000,000) during the income year.

35 (2) Except as provided in subdivision (g), “new business” means
36 any trade or business activity that is first commenced in this state
37 on or after January 1, 1994.

38 (3) “Title 11 or similar case” shall have the same meaning as
39 in Section 368(a)(3) of the Internal Revenue Code.

1 (4) In the case of any trade or business activity conducted by a
2 partnership or an “S” corporation, paragraphs (1) and (2) shall be
3 applied to the partnership or “S” corporation.

4 (g) For purposes of this section, in determining whether a trade
5 or business activity qualifies as a new business under paragraph
6 (2) of subdivision (e), the following rules shall apply:

7 (1) In any case where a taxpayer purchases or otherwise acquires
8 all or any portion of the assets of an existing trade or business
9 (irrespective of the form of entity) that is doing business in this
10 state (within the meaning of Section 23101), the trade or business
11 thereafter conducted by the taxpayer (or any related person) shall
12 not be treated as a new business if the aggregate fair market value
13 of the acquired assets (including real, personal, tangible, and
14 intangible property) used by the taxpayer (or any related person)
15 in the conduct of its trade or business exceeds 20 percent of the
16 aggregate fair market value of the total assets of the trade or
17 business being conducted by the taxpayer (or any related person).
18 For purposes of this paragraph only, the following rules shall apply:

19 (A) The determination of the relative fair market values of the
20 acquired assets and the total assets shall be made as of the last day
21 of the first taxable year in which the taxpayer (or any related
22 person) first uses any of the acquired trade or business assets in
23 its business activity.

24 (B) Any acquired assets that constituted property described in
25 Section 1221(1) of the Internal Revenue Code in the hands of the
26 transferor shall not be treated as assets acquired from an existing
27 trade or business, unless those assets also constitute property
28 described in Section 1221(1) of the Internal Revenue Code in the
29 hands of the acquiring taxpayer (or related person).

30 (2) In any case where a taxpayer (or any related person) is
31 engaged in one or more trade or business activities in this state, or
32 has been engaged in one or more trade or business activities in this
33 state within the preceding 36 months (“prior trade or business
34 activity”), and thereafter commences an additional trade or business
35 activity in this state, the additional trade or business activity shall
36 only be treated as a new business if the additional trade or business
37 activity is classified under a different division of the Standard
38 Industrial Classification (SIC) Manual published by the United
39 States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and the taxpayer first commences doing business in this state
6 (within the meaning of Section 23101) after December 31, 1993
7 (other than by purchase or other acquisition described in paragraph
8 (1)), the trade or business activity shall be treated as a new business
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade or
13 business activity is a new business shall be made by treating the
14 taxpayer as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the rules
16 of paragraph (1).

17 (5) "Related person" shall mean any person that is related to
18 the taxpayer under either Section 267 or 318 of the Internal
19 Revenue Code.

20 (6) "Acquire" shall include any transfer, whether or not for
21 consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,
23 the term "new business" shall include any taxpayer that is engaged
24 in biopharmaceutical activities or other biotechnology activities
25 that are described in Codes 2833 to 2836, inclusive, of the Standard
26 Industrial Classification (SIC) Manual published by the United
27 States Office of Management and Budget, 1987 edition, and as
28 further amended, and that has not received regulatory approval for
29 any product from the Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that
32 use organisms or materials derived from organisms, and their
33 cellular, subcellular, or molecular components, in order to provide
34 pharmaceutical products for human or animal therapeutics and
35 diagnostics. Biopharmaceutical activities make use of living
36 organisms to make commercial products, as opposed to
37 pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (h) For purposes of corporations whose net income is determined
5 under Chapter 17 (commencing with Section 25101), Section
6 25108 shall apply to each of the following:

7 (1) The amount of net operating loss incurred in any taxable
8 year that may be carried forward to another taxable year.

9 (2) The amount of any loss carry forward that may be deducted
10 in any taxable year.

11 (i) The provisions of Section 172(b)(1)(D) of the Internal
12 Revenue Code, relating to bad debt losses of commercial banks,
13 shall not be applicable.

14 (j) The Franchise Tax Board may prescribe appropriate
15 regulations to carry out the purposes of this section, including any
16 regulations necessary to prevent the avoidance of the purposes of
17 this section through splitups, shell corporations, partnerships, tiered
18 ownership structures, or otherwise.

19 (k) The Franchise Tax Board may reclassify any net operating
20 loss carryover determined under either paragraph (2) or (3) of
21 subdivision (b) as a net operating loss carryover under paragraph
22 (1) of subdivision (b) upon a showing that the reclassification is
23 necessary to prevent evasion of the purposes of this section.

24 (l) Except as otherwise provided, the amendments made by
25 Chapter 107 of the Statutes of 2000 shall apply to net operating
26 losses for taxable years beginning on or after January 1, 2000.

27 SEC. 190. Section 24900 of the Revenue and Taxation Code
28 is amended and renumbered to read:

29 24452. (a) The Franchise Tax Board may include in the gross
30 income of the taxpayer (or a member of the taxpayer's combined
31 reporting group) in that taxable year the taxpayer's pro rata share
32 (or the pro rata share of a member of the taxpayer's combined
33 reporting group) of any of those insurers' current earnings and
34 profits in that taxable year, but not to exceed an amount equal to
35 the specific insurer's net income attributable to investment income
36 for that year minus that insurer's net written premiums received
37 in that same taxable year, if all of the following apply:

38 (1) For any taxable year an insurer is a member of a taxpayer's
39 commonly controlled group.

1 (2) The ratio of the five-year average net written premiums to
2 the five-year average total income of all insurers in the commonly
3 controlled group is equal to or less than 0.10 (or, for taxable years
4 beginning on or after January 1, 2008, 0.15).

5 (3) The accumulation of earnings and profits of the insurers in
6 the commonly controlled group had a substantial purpose of
7 avoidance of taxes on, according to, or measured by income, of
8 this state or any other state.

9 The amount so included shall be treated as a dividend received
10 from an insurance company during the taxable year, and to the
11 extent applicable, Section 24410 shall apply to that amount.

12 (b) If the insurer members of the commonly controlled group
13 constitute a predominantly captive insurance group (as defined in
14 paragraph (6) of subdivision (e)), then the ratio described in
15 subdivision (a) shall be 0.40.

16 (c) To the extent that amounts are included in the gross income
17 of a taxpayer (or a member of the taxpayer's combined reporting
18 group) pursuant to subdivision (a), those amounts shall not again
19 be considered as investment income in the application of the ratio
20 described in paragraph (2) of subdivision (a).

21 (d) The amounts included in gross income under subdivision
22 (a) shall not again be included in gross income when subsequent
23 distributions are made to the taxpayer (or a member of the
24 taxpayer's combined reporting group), or another taxpayer that
25 acquires an interest in the stock of the taxpayer (or a member of
26 the taxpayer's combined reporting group with respect to which
27 subdivision (a) was applied), or any successor or assign of the
28 respective taxpayers (or a member of the taxpayer's combined
29 reporting group) described in this subdivision. For purposes of
30 applying this subdivision, distributions from an insurer shall be
31 considered first made from amounts included under subdivision
32 (a).

33 (e) For purposes of this section, the following definitions shall
34 apply:

35 (1) Except as otherwise provided, the phrases "net written
36 premiums," "five-year average net written premiums" and the
37 "five-year average total income" shall each have the same meaning,
38 respectively, as applicable for purposes of subdivision (c) of
39 Section 24410, whether or not a dividend is actually received from

1 any insurer member of the taxpayer’s commonly controlled group
2 in that taxable year.

3 (2) “Net income attributable to investment income” means net
4 income of the insurer multiplied by a ratio, the numerator of which
5 is the insurer’s gross investment income from interest, dividends
6 (other than dividends from members of the taxpayer’s commonly
7 controlled group), rent, and realized gains or losses, and the
8 denominator of which is the insurer’s gross income (other than
9 dividends from members of the taxpayer’s commonly controlled
10 group) from all sources. In the application of the preceding
11 sentence, if an insurer is required to file a Statutory Annual
12 Statement pursuant to the Annual Statement Instructions and
13 Accounting Practices and Procedures Manual promulgated by the
14 National Association of Insurance Commissioners, “net income”
15 means net income required to be reported in the insurer’s Statutory
16 Annual Statement.

17 (3) An insurer is any insurer within the meaning of Section 28
18 of Article XIII of the California Constitution, whether or not the
19 insurer is engaged in business in California.

20 (4) The phrase “commonly controlled group” shall have the
21 same meaning as that phrase has under Section 25105.

22 (5) The phrase “combined reporting group” means those
23 corporations whose income is required to be included in the same
24 combined report pursuant to Section 25101 or 25110.

25 (6) A “predominantly captive insurance group” means the
26 insurer members of a commonly controlled group where the
27 insurers receive more than 50 percent of their net written premiums
28 (without regard to the weighting factors in paragraph (1) of
29 subdivision (e) of Section 24410) from members of the commonly
30 controlled group or the ratios in clause (i) or clause (ii) of
31 subparagraph (B) of paragraph (1) of subdivision (d) of Section
32 24410 is greater than 50 percent. The provisions of paragraph (4)
33 of subdivision (d) of Section 24410 shall apply for purposes of
34 this paragraph.

35 (7) (A) The taxpayer’s “pro rata share” of the current earnings
36 and profits of an insurer member of a commonly controlled group
37 is the amount that would have been received as a dividend by the
38 taxpayer (or a member of the taxpayer’s combined reporting group)
39 if both of the following apply:

1 (i) The insurer had directly distributed its current earnings and
2 profits with respect to its stock held by the taxpayer (or member
3 of the taxpayer's combined reporting group).

4 (ii) In the case of an insurer holding the stock of another insurer,
5 all other insurer members of the taxpayer's commonly controlled
6 group had distributed the same current earnings and profits with
7 respect to their stock, in the same taxable year, until amounts were
8 received as a dividend by the taxpayer (or a member of the
9 taxpayer's combined reporting group) from an insurer member of
10 the commonly controlled group.

11 (B) In the application of this section, amounts treated as a
12 dividend received by a partnership shall be considered a dividend
13 received by each partner that is a member of the commonly
14 controlled group, either directly or through a series of tiered
15 partnerships.

16 (f) The Franchise Tax Board may prescribe those regulations
17 that are appropriate to describe conditions under which the
18 accumulation of earnings and profits of those insurers described
19 in paragraph (2) of subdivision (a) do not have the substantial
20 purpose of avoidance of taxes on, according to, or measured by
21 income, of this state or any other state.

22 (g) If this section or any portion of this section is held invalid,
23 or the application of this section to any person or circumstance is
24 held invalid, that invalidity shall not affect other provisions of the
25 act adding this section, or the provisions of this section that are
26 severable.

27 SEC. 191. Section 1755 of the Unemployment Insurance Code
28 is amended to read:

29 1755. (a) If any person or employing unit is delinquent in the
30 payment of any contributions, penalties, or interest provided for
31 in this division, the director may, not later than three years after
32 the payment became delinquent or within 10 years after the last
33 entry of a judgment under Article 5 (commencing with Section
34 1815) or within 10 years after the last recording or filing of a notice
35 of state tax lien under Section 7171 of the Government Code,
36 collect the delinquency or enforce any liens by levy served either
37 personally or by first-class mail, to all persons having in their
38 possession or under their control any credits or personal property
39 belonging to the delinquent person or employing unit, or owing
40 any debts to the person or employing unit at the time of the receipt

1 of the notice of levy or coming into their possession or under their
2 control for the period of one year from the time of receipt of the
3 notice of levy. Any person upon whom a levy has been served
4 having in his or her possession or under his or her control any
5 credits or personal property belonging to the delinquent person or
6 employing unit or owing any debts to the person or employing
7 unit at the time of the receipt of the levy or coming into his or her
8 possession or under his or her control for the period of one year
9 from the time of receipt of the notice of levy, shall surrender the
10 credits or personal property to the director or pay to the director
11 the amount of any debt owing the delinquent employer within five
12 days of service of the levy, and shall surrender the credits or
13 personal property, or the amount of any debt owing to the
14 delinquent employer coming into his or her possession or under
15 his or her control within one year of receipt of the notice of levy
16 within five days of the date of coming into possession or control
17 of the credits or personal property, or the amount of any debt owing
18 to the delinquent employer is incurred. Any person in possession
19 of any credits or personal property or owing any debts to the
20 delinquent person or employing unit who surrenders the credits or
21 personal property or pays the debts owing the delinquent person
22 or employing unit shall be discharged from any obligation or
23 liability to the delinquent person or employing unit with respect
24 to the credits or personal property surrendered or debts paid to the
25 director.

26 (b) (1) If the levy is made on a deposit or credits or personal
27 property in the possession or under the control of a financial
28 institution, the notice of levy shall be served on that financial
29 institution at the same location as legal process is required to be
30 served pursuant to Section 684.115 of the Code of Civil Procedure,
31 and the levy will apply to all credits or personal property in the
32 deposit account only at the time that notice of levy is received by
33 the financial institution.

34 (2) For purposes of this section:

35 (A) "Deposit account" has the same meaning as in paragraph
36 (29) of subdivision (a) of Section 9102 of the Commercial Code.

37 (B) "Financial institution" has the same meaning as in Section
38 481.113 of the Code of Civil Procedure.

39 (C) "Legal process" has the same meaning as in Section 482.070
40 of the Code of Civil Procedure.

1 SEC. 192. Section 14211 of the Unemployment Insurance
2 Code is amended to read:

3 14211. (a) (1) Beginning program year 2012, an amount equal
4 to at least 25 percent of funds available under Title I of the federal
5 Workforce Investment Act of 1998 (Public Law 105-220) provided
6 to local workforce investment boards for adults and dislocated
7 workers shall be spent on workforce training programs. This
8 minimum may be met either by spending 25 percent of those base
9 formula funds on training or by combining a portion of those base
10 formula funds with leveraged funds as specified in subdivision
11 (b).

12 (2) Beginning program year 2016, an amount equal to at least
13 30 percent of funds available under Title I of the federal Workforce
14 Investment Act of 1998 (Public Law 105-220) provided to local
15 workforce investment boards for adults and dislocated workers
16 shall be spent on workforce training programs. This minimum may
17 be met either by spending 30 percent of those base formula funds
18 on training or by combining a portion of those base formula funds
19 with leveraged funds as specified in subdivision (b).

20 (3) Expenditures that shall count toward the minimum
21 percentage of funds shall include only training services as defined
22 in Section 2864(d)(4)(D) of Title 29 of the United States Code and
23 Sections 663.300 and 663.508 of Title 20 of the Code of Federal
24 Regulations, including all of the following:

25 (A) Occupational skills training, including training for
26 nontraditional employment.

27 (B) On-the-job training.

28 (C) Programs that combine workplace training with related
29 instruction, which may include cooperative education programs.

30 (D) Training programs operated by the private sector.

31 (E) Skill upgrading and retraining.

32 (F) Entrepreneurial training.

33 (G) Job readiness training.

34 (H) Adult education and literacy activities provided in
35 combination with services described in any of subparagraphs (A)
36 to (G), inclusive.

37 (I) Customized training conducted with a commitment by an
38 employer or group of employers to employ an individual upon
39 successful completion of the training.

1 (b) (1) Local workforce investment boards may receive a credit
2 of up to 10 percent of their adult and dislocated worker formula
3 fund base allocations for public education and training funds and
4 private resources from industry and from joint labor-management
5 trusts that are leveraged by a local workforce investment board
6 for training services described in paragraph (3) of subdivision (a).
7 This credit may be applied toward the minimum training
8 requirements in paragraphs (1) and (2) of subdivision (a).

9 (A) Leveraged funds that may be applied toward the credit
10 allowed by this subdivision shall only include the following:

11 (i) Federal Pell Grants established under Title IV of the federal
12 Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).

13 (ii) Programs authorized by the federal Workforce Investment
14 Act of 1998 (Public Law 105-220).

15 (iii) Trade adjustment assistance.

16 (iv) Department of Labor National Emergency Grants.

17 (v) Match funds from employers, industry, and industry
18 associations.

19 (vi) Match funds from joint labor-management trusts.

20 (vii) Employment training panel grants.

21 (B) Credit for leveraged funds shall only be given if the local
22 workforce investment board keeps records of all training
23 expenditures it chooses to apply to the credit. Training expenditures
24 may only be applied to the credit if the relevant training costs can
25 be independently verified by the Employment Development
26 Department and training participants must be coenrolled in the
27 federal Workforce Investment Act of 1998 performance monitoring
28 system.

29 (2) The use of leveraged funds to partially meet the training
30 requirements specified in paragraphs (1) and (2) of subdivision
31 (a) is the prerogative of a local workforce investment board. Costs
32 arising from the recordkeeping required to demonstrate compliance
33 with the leveraging requirements of this subdivision are the
34 responsibility of the board.

35 (c) Beginning program year 2012, the Employment Development
36 Department shall calculate for each local workforce investment
37 board, within six months after the end of the second program year
38 of the two-year period of availability for expenditure of federal
39 Workforce Investment Act of 1998 funds, whether the local
40 workforce investment board met the requirements of subdivision

1 (a). The Employment Development Department shall provide to
2 each local workforce investment board its individual calculations
3 with respect to the expenditure requirements of subdivision (a).

4 (d) A local workforce investment area that does not meet the
5 requirements of subdivision (a) shall submit a corrective action
6 plan to the Employment Development Department that provides
7 reasons for not meeting the requirements and describes actions
8 taken to address the identified expenditure deficiencies. A local
9 workforce investment area shall provide a corrective action plan
10 to the Employment Development Department pursuant to this
11 section within 90 days of receiving the calculations described in
12 subdivision (c).

13 (e) For the purpose of this section, “program year” has the same
14 meaning as provided in Section 667.100 of Title 20 of the Code
15 of Federal Regulations.

16 SEC. 193. Section 11205 of the Vehicle Code, as amended by
17 Section 456 of Chapter 931 of the Statutes of 1998, is amended to
18 read:

19 11205. (a) The department shall publish semiannually, or more
20 often as necessary to serve the purposes of this act, a list of all
21 traffic violator schools which are licensed pursuant to this section.
22 The list shall identify classroom facilities within a judicial district
23 that are at a different location from a licensed school’s principal
24 facility. The department shall transmit the list to each municipal
25 court and to each superior court in a county in which there is no
26 municipal court, with a sufficient number of copies to allow the
27 courts to provide one copy to each person referred to a licensed
28 traffic violator school. The department shall, at least semiannually,
29 revise the list to ensure that each court has a current list of all
30 licensed traffic violator schools.

31 (b) Each licensed traffic violator school owner shall be permitted
32 one school name per judicial district.

33 (c) The referral list shall be organized alphabetically, in sections
34 for each county, and contain subsections for each judicial district
35 within the county. The order of the names within each judicial
36 district shall be random pursuant to a drawing or lottery conducted
37 by the department.

38 (d) Except as otherwise provided in subdivision (d) of Section
39 42005, the court shall use either the current referral list of traffic
40 violator schools published by the department when it orders a

1 person to complete a traffic violator school pursuant to subdivision
2 (a) or (b) of Section 42005 or, when a court utilizing a nonprofit
3 agency for traffic violator school administration and monitoring
4 services in which all traffic violator schools licensed by the
5 department are allowed the opportunity to participate, a statewide
6 referral list may be published by the nonprofit agency and
7 distributed by the court. The agency shall monitor each classroom
8 location situated within the judicial districts in which that agency
9 provides services to the courts and is represented on its referral
10 list. The monitoring shall occur at least once every 90 days with
11 reports forwarded to the department and the respective courts on
12 a monthly basis.

13 (e) The court may charge a traffic violator a fee to defray the
14 costs incurred by the agency for the monitoring reports and services
15 provided to the court. The court may delegate collection of the fee
16 to the agency. Fees shall be approved and regulated by the court.
17 Until December 31, 1996, the fee shall not exceed the actual cost
18 incurred by the agency or five dollars (\$5), whichever is less.

19 SEC. 194. Section 12804.11 of the Vehicle Code is amended
20 to read:

21 12804.11. (a) To operate firefighting equipment, a driver,
22 including a tiller operator, is required to do either of the following:

23 (1) Obtain and maintain a firefighter endorsement issued by the
24 department and obtain and maintain a class C license as described
25 in Section 12804.9, a restricted class A license as described in
26 Section 12804.12, or a noncommercial class B license as described
27 in Section 12804.10.

28 (2) Obtain and maintain a class A or B license as described in
29 Section 12804.9 and, as appropriate, for the size and configuration
30 of the firefighting equipment operated.

31 (b) To qualify for a firefighter endorsement the driver shall do
32 all of the following:

33 (1) (A) Provide to the department proof of current employment
34 as a firefighter or registration as a volunteer firefighter with a fire
35 department and evidence of fire equipment operation training by
36 providing a letter or other indication from the chief of the fire
37 department or his or her designee.

38 (B) For purposes of this section, evidence of fire equipment
39 operation training means the applicant has successfully completed
40 Fire Apparatus Driver/Operator 1A taught by an instructor

1 registered with the Office of the State Fire Marshal or fire
2 department driver training that meets all of the following
3 requirements:

4 (i) Meets or exceeds the standards outlined in NFPA 1002,
5 Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator
6 1A course adopted by the Office of the State Fire Marshal.

7 (ii) Prepares the applicant to safely operate the department's
8 fire equipment that the applicant will be authorized to operate.

9 (iii) Includes a classroom (cognitive) portion of at least 16 hours.

10 (iv) Includes a manipulative portion of at least 14 hours, which
11 includes directly supervised behind-the-wheel driver training.

12 (C) Driver training shall be conducted by a person who is
13 registered with the Office of the State Fire Marshal to instruct a
14 Fire Apparatus Driver/Operator 1A course or a person who meets
15 all of the following criteria:

16 (i) Possesses a minimum of five years of fire service experience
17 as an emergency vehicle operator, three of which must be at the
18 rank of engineer or higher.

19 (ii) Possesses a valid California class A or B license or a class
20 A or B license restricted to the operation of firefighting equipment.

21 (iii) Is certified as a qualified training instructor or training
22 officer by the State of California, the federal government, or a
23 county training officers' association.

24 (2) Pass the written firefighter examination developed by the
25 department with the cooperation of the Office of the State Fire
26 Marshal.

27 (3) Upon application and every two years thereafter, submit
28 medical information on a form approved by the department.

29 (c) There shall be no additional charge for adding a firefighter
30 endorsement to an original license or when renewing a license. To
31 add a firefighter endorsement to an existing license when not
32 renewing the license, the applicant shall pay the fee for a duplicate
33 license pursuant to Section 14901.

34 (d) (1) A driver of firefighting equipment is subject to the
35 requirements of subdivision (a) if both of the following conditions
36 exist:

37 (A) The equipment is operated by a person employed as a
38 firefighter by a federal or state agency, by a regularly organized
39 fire department of a city, county, city and county, or district, or by
40 a tribal fire department or registered as a volunteer member of a

1 regularly organized fire department having official recognition of
2 the city, county, city and county, or district in which the department
3 is located, or of a tribal fire department.

4 (B) The motor vehicle is used to travel to and from the scene
5 of an emergency situation, or to transport equipment used in the
6 control of an emergency situation, and which is owned, leased, or
7 rented by, or under the exclusive control of, a federal or state
8 agency, a regularly organized fire department of a city, county,
9 city and county, or district, a volunteer fire department having
10 official recognition of the city, county, city and county, or district
11 in which the department is located, or a tribal fire department.

12 (2) A driver of firefighting equipment is not required to obtain
13 and maintain a firefighter endorsement pursuant to paragraph (1)
14 of subdivision (a) if the driver is operating the firefighting
15 equipment for training purposes, during a nonemergency, while
16 under the direct supervision of a fire department employee who is
17 properly licensed to operate the equipment and is authorized by
18 the fire department to provide training.

19 (e) For purposes of this section, a tiller operator is the driver of
20 the rear free-axle portion of a ladder truck.

21 (f) For purposes of this section, “firefighting equipment” means
22 a motor vehicle, that meets the definition of a class A or class B
23 vehicle described in subdivision (b) of Section 12804.9, that is
24 used to travel to and from the scene of an emergency situation, or
25 to transport equipment used in the control of an emergency
26 situation, and that is owned, leased, or rented by, or under the
27 exclusive control of, a federal or state agency, a regularly organized
28 fire department of a city, county, city and county, or district, or a
29 volunteer fire department having official recognition of the city,
30 county, city and county, or district in which the department is
31 located.

32 (g) Notwithstanding paragraph (1) of subdivision (a), a regularly
33 organized fire department, having official recognition of the city,
34 county, city and county, or district in which the department is
35 located, may require an employee or a volunteer of the fire
36 department who is a driver or operator of firefighting equipment
37 to hold a class A or B license.

38 (h) This section applies to a person hired by a fire department,
39 or to a person renewing a driver’s license, on or after January 1,
40 2011.

1 SEC. 195. Section 16028 of the Vehicle Code is amended to
2 read:

3 16028. (a) Upon the demand of a peace officer pursuant to
4 subdivision (b) or upon the demand of a peace officer or traffic
5 collision investigator pursuant to subdivision (c), every person
6 who drives a motor vehicle upon a highway shall provide evidence
7 of financial responsibility for the vehicle that is in effect at the
8 time the demand is made. The evidence of financial responsibility
9 may be provided using a mobile electronic device. However, a
10 peace officer shall not stop a vehicle for the sole purpose of
11 determining whether the vehicle is being driven in violation of this
12 subdivision.

13 (b) If a notice to appear is issued for any alleged violation of
14 this code, except a violation specified in Chapter 9 (commencing
15 with Section 22500) of Division 11 or any local ordinance adopted
16 pursuant to that chapter, the cited driver shall furnish written
17 evidence of financial responsibility or may provide electronic
18 verification of evidence of financial responsibility using a mobile
19 electronic device upon request of the peace officer issuing the
20 citation. The peace officer shall request and write the driver's
21 evidence of financial responsibility on the notice to appear, except
22 when the peace officer is unable to write the driver's evidence of
23 financial responsibility on the notice to appear due to an emergency
24 that requires his or her presence elsewhere. If the cited driver fails
25 to provide evidence of financial responsibility at the time the notice
26 to appear is issued, the peace officer may issue the driver a notice
27 to appear for violation of subdivision (a). The notice to appear for
28 violation of subdivision (a) shall be written on the same citation
29 form as the original violation.

30 (c) If a peace officer, or a regularly employed and salaried
31 employee of a city or county who has been trained as a traffic
32 collision investigator, is summoned to the scene of an accident
33 described in Section 16000, the driver of a motor vehicle that is
34 in any manner involved in the accident shall furnish written
35 evidence of financial responsibility or may provide electronic
36 verification of evidence of financial responsibility using a mobile
37 electronic device upon the request of the peace officer or traffic
38 collision investigator. If the driver fails to provide evidence of
39 financial responsibility when requested, the peace officer may
40 issue the driver a notice to appear for violation of this subdivision.

1 A traffic collision investigator may cause a notice to appear to be
2 issued for a violation of this subdivision, upon review of that
3 citation by a peace officer.

4 (d) (1) If, at the time a notice to appear for a violation of
5 subdivision (a) is issued, the person is driving a motor vehicle
6 owned or leased by the driver’s employer, and the vehicle is being
7 driven with the permission of the employer, this section shall apply
8 to the employer rather than the driver. In that case, a notice to
9 appear shall be issued to the employer rather than the driver, and
10 the driver may sign the notice on behalf of the employer.

11 (2) The driver shall notify the employer of the receipt of the
12 notice issued pursuant to paragraph (1) not later than five days
13 after receipt.

14 (e) A person issued a notice to appear for a violation of
15 subdivision (a) may personally appear before the clerk of the court,
16 as designated in the notice to appear, and provide written evidence
17 of financial responsibility in a form consistent with Section 16020,
18 showing that the driver was in compliance with that section at the
19 time the notice to appear for violating subdivision (a) was issued.
20 In lieu of the personal appearance, the person may submit by mail
21 to the court written evidence of having had financial responsibility
22 at the time the notice to appear was issued. Upon receipt by the
23 clerk of that written evidence of financial responsibility in a form
24 consistent with Section 16020, further proceedings on the notice
25 to appear for the violation of subdivision (a) shall be dismissed.

26 (f) For the purposes of this section, “mobile electronic device”
27 means a portable computing and communication device that has
28 a display screen with touch input or a miniature keyboard.

29 (g) For the purposes of this section, when a person provides
30 evidence of financial responsibility using a mobile electronic device
31 to a peace officer, the peace officer shall only view the evidence
32 of financial responsibility and is prohibited from viewing any other
33 content on the mobile electronic device.

34 (h) If a person presents a mobile electronic device pursuant to
35 this section, that person assumes all liability for any damage to the
36 mobile electronic device.

37 SEC. 196. Section 23612 of the Vehicle Code is amended to
38 read:

39 23612. (a) (1) (A) A person who drives a motor vehicle is
40 deemed to have given his or her consent to chemical testing of his

1 or her blood or breath for the purpose of determining the alcoholic
2 content of his or her blood, if lawfully arrested for an offense
3 allegedly committed in violation of Section 23140, 23152, or
4 23153. If a blood or breath test, or both, are unavailable, then
5 paragraph (2) of subdivision (d) applies.

6 (B) A person who drives a motor vehicle is deemed to have
7 given his or her consent to chemical testing of his or her blood for
8 the purpose of determining the drug content of his or her blood, if
9 lawfully arrested for an offense allegedly committed in violation
10 of Section 23140, 23152, or 23153. If a blood test is unavailable,
11 the person shall be deemed to have given his or her consent to
12 chemical testing of his or her urine and shall submit to a urine test.

13 (C) The testing shall be incidental to a lawful arrest and
14 administered at the direction of a peace officer having reasonable
15 cause to believe the person was driving a motor vehicle in violation
16 of Section 23140, 23152, or 23153.

17 (D) The person shall be told that his or her failure to submit to,
18 or the failure to complete, the required chemical testing will result
19 in a fine, mandatory imprisonment if the person is convicted of a
20 violation of Section 23152 or 23153, and (i) the suspension of the
21 person's privilege to operate a motor vehicle for a period of one
22 year, (ii) the revocation of the person's privilege to operate a motor
23 vehicle for a period of two years if the refusal occurs within 10
24 years of a separate violation of Section 23103 as specified in
25 Section 23103.5, or of Section 23140, 23152, or 23153 of this
26 code, or of Section 191.5 or subdivision (a) of Section 192.5 of
27 the Penal Code that resulted in a conviction, or if the person's
28 privilege to operate a motor vehicle has been suspended or revoked
29 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that
30 occurred on a separate occasion, or (iii) the revocation of the
31 person's privilege to operate a motor vehicle for a period of three
32 years if the refusal occurs within 10 years of two or more separate
33 violations of Section 23103 as specified in Section 23103.5, or of
34 Section 23140, 23152, or 23153 of this code, or of Section 191.5
35 or subdivision (a) of Section 192.5 of the Penal Code, or any
36 combination thereof, that resulted in convictions, or if the person's
37 privilege to operate a motor vehicle has been suspended or revoked
38 two or more times pursuant to Section 13353, 13353.1, or 13353.2
39 for offenses that occurred on separate occasions, or if there is any

1 combination of those convictions, administrative suspensions, or
2 revocations.

3 (2) (A) If the person is lawfully arrested for driving under the
4 influence of an alcoholic beverage, the person has the choice of
5 whether the test shall be of his or her blood or breath and the officer
6 shall advise the person that he or she has that choice. If the person
7 arrested either is incapable, or states that he or she is incapable,
8 of completing the chosen test, the person shall submit to the
9 remaining test. If a blood or breath test, or both, are unavailable,
10 then paragraph (2) of subdivision (d) applies.

11 (B) If the person is lawfully arrested for driving under the
12 influence of any drug or the combined influence of an alcoholic
13 beverage and any drug, the person has the choice of whether the
14 test shall be of his or her blood or breath, and the officer shall
15 advise the person that he or she has that choice.

16 (C) A person who chooses to submit to a breath test may also
17 be requested to submit to a blood test if the officer has reasonable
18 cause to believe that the person was driving under the influence
19 of a drug or the combined influence of an alcoholic beverage and
20 a drug and if the officer has a clear indication that a blood test will
21 reveal evidence of the person being under the influence. The officer
22 shall state in his or her report the facts upon which that belief and
23 that clear indication are based. The officer shall advise the person
24 that he or she is required to submit to an additional test. The person
25 shall submit to and complete a blood test. If the person arrested is
26 incapable of completing the blood test, the person shall submit to
27 and complete a urine test.

28 (3) If the person is lawfully arrested for an offense allegedly
29 committed in violation of Section 23140, 23152, or 23153, and,
30 because of the need for medical treatment, the person is first
31 transported to a medical facility where it is not feasible to
32 administer a particular test of, or to obtain a particular sample of,
33 the person's blood or breath, the person has the choice of those
34 tests, including a urine test, that are available at the facility to
35 which that person has been transported. In that case, the officer
36 shall advise the person of those tests that are available at the
37 medical facility and that the person's choice is limited to those
38 tests that are available.

39 (4) The officer shall also advise the person that he or she does
40 not have the right to have an attorney present before stating whether

1 he or she will submit to a test or tests, before deciding which test
2 or tests to take, or during administration of the test or tests chosen,
3 and that, in the event of refusal to submit to a test or tests, the
4 refusal may be used against him or her in a court of law.

5 (5) A person who is unconscious or otherwise in a condition
6 rendering him or her incapable of refusal is deemed not to have
7 withdrawn his or her consent and a test or tests may be
8 administered whether or not the person is told that his or her failure
9 to submit to, or the noncompletion of, the test or tests will result
10 in the suspension or revocation of his or her privilege to operate
11 a motor vehicle. A person who is dead is deemed not to have
12 withdrawn his or her consent and a test or tests may be
13 administered at the direction of a peace officer.

14 (b) A person who is afflicted with hemophilia is exempt from
15 the blood test required by this section, but shall submit to, and
16 complete, a urine test.

17 (c) A person who is afflicted with a heart condition and is using
18 an anticoagulant under the direction of a licensed physician and
19 surgeon is exempt from the blood test required by this section, but
20 shall submit to, and complete, a urine test.

21 (d) (1) A person lawfully arrested for an offense allegedly
22 committed while the person was driving a motor vehicle in
23 violation of Section 23140, 23152, or 23153 may request the
24 arresting officer to have a chemical test made of the arrested
25 person's blood or breath for the purpose of determining the
26 alcoholic content of that person's blood, and, if so requested, the
27 arresting officer shall have the test performed.

28 (2) If a blood or breath test is not available under subparagraph
29 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
30 of paragraph (2) of subdivision (a), or under paragraph (1) of this
31 subdivision, the person shall submit to the remaining test in order
32 to determine the percent, by weight, of alcohol in the person's
33 blood. If both the blood and breath tests are unavailable, the person
34 shall be deemed to have given his or her consent to chemical testing
35 of his or her urine and shall submit to a urine test.

36 (e) If the person, who has been arrested for a violation of Section
37 23140, 23152, or 23153, refuses or fails to complete a chemical
38 test or tests, or requests that a blood or urine test be taken, the
39 peace officer, acting on behalf of the department, shall serve the
40 notice of the order of suspension or revocation of the person's

1 privilege to operate a motor vehicle personally on the arrested
2 person. The notice shall be on a form provided by the department.

3 (f) If the peace officer serves the notice of the order of
4 suspension or revocation of the person's privilege to operate a
5 motor vehicle, the peace officer shall take possession of all driver's
6 licenses issued by this state that are held by the person. The
7 temporary driver's license shall be an endorsement on the notice
8 of the order of suspension and shall be valid for 30 days from the
9 date of arrest.

10 (g) (1) The peace officer shall immediately forward a copy of
11 the completed notice of suspension or revocation form and any
12 driver's license taken into possession under subdivision (f), with
13 the report required by Section 13380, to the department. If the
14 person submitted to a blood or urine test, the peace officer shall
15 forward the results immediately to the appropriate forensic
16 laboratory. The forensic laboratory shall forward the results of the
17 chemical tests to the department within 15 calendar days of the
18 date of the arrest.

19 (2) (A) Notwithstanding any other law, a document containing
20 data prepared and maintained in the governmental forensic
21 laboratory computerized database system that is electronically
22 transmitted or retrieved through public or private computer
23 networks to or by the department is the best available evidence of
24 the chemical test results in all administrative proceedings conducted
25 by the department. In addition, any other official record that is
26 maintained in the governmental forensic laboratory, relates to a
27 chemical test analysis prepared and maintained in the governmental
28 forensic laboratory computerized database system, and is
29 electronically transmitted and retrieved through a public or private
30 computer network to or by the department is admissible as evidence
31 in the department's administrative proceedings. In order to be
32 admissible as evidence in administrative proceedings, a document
33 described in this subparagraph shall bear a certification by the
34 employee of the department who retrieved the document certifying
35 that the information was received or retrieved directly from the
36 computerized database system of a governmental forensic
37 laboratory and that the document accurately reflects the data
38 received or retrieved.

1 (B) Notwithstanding any other law, the failure of an employee
2 of the department to certify under subparagraph (A) is not a public
3 offense.

4 (h) A preliminary alcohol screening test that indicates the
5 presence or concentration of alcohol based on a breath sample in
6 order to establish reasonable cause to believe the person was
7 driving a vehicle in violation of Section 23140, 23152, or 23153
8 is a field sobriety test and may be used by an officer as a further
9 investigative tool.

10 (i) If the officer decides to use a preliminary alcohol screening
11 test, the officer shall advise the person that he or she is requesting
12 that person to take a preliminary alcohol screening test to assist
13 the officer in determining if that person is under the influence of
14 alcohol or drugs, or a combination of alcohol and drugs. The
15 person's obligation to submit to a blood, breath, or urine test, as
16 required by this section, for the purpose of determining the alcohol
17 or drug content of that person's blood, is not satisfied by the person
18 submitting to a preliminary alcohol screening test. The officer shall
19 advise the person of that fact and of the person's right to refuse to
20 take the preliminary alcohol screening test.

21 SEC. 197. Section 34510.5 of the Vehicle Code is amended to
22 read:

23 34510.5. (a) (1) A broker of construction trucking services,
24 as defined in Section 3322 of the Civil Code, shall not furnish
25 construction transportation services to any construction project
26 unless it has secured a surety bond of not less than fifteen thousand
27 dollars (\$15,000) executed by an admitted surety insurer. The
28 surety bond shall ensure the payment of the claims of a contracted
29 motor carrier of property in dump truck equipment if the broker
30 fails to pay the contracted motor carrier within the time period
31 specified in paragraph (1) of subdivision (a) of Section 3322 of
32 the Civil Code.

33 (2) (A) A broker of construction trucking services annually
34 shall provide written evidence of the broker's valid surety bond
35 to a third-party nonprofit organization that is related to the industry
36 and regularly maintains a published database of bonded brokers
37 or post a current copy of the surety bond on the broker's Internet
38 Web site.

39 (B) When a copy of a surety bond is provided to a third-party
40 nonprofit organization, the broker shall notify the third-party

1 nonprofit organization if at any time the surety bond is cancelled
2 or expired. When a copy of the surety bond is posted on the
3 broker's Internet Web site, the broker shall remove the copy of
4 the surety bond from his or her Internet Web site if at any time the
5 surety bond is cancelled or expired.

6 (C) A third-party nonprofit organization shall not charge a
7 broker for posting evidence of a valid surety bond or limit the
8 posting of the bond only to the organization's members.

9 (D) A third-party nonprofit organization shall not be liable for
10 any damages caused by the publication of any information provided
11 pursuant to this paragraph that is erroneous or outdated.

12 (b) A broker of construction trucking services shall not hire,
13 or otherwise engage the services of, a motor carrier of property to
14 furnish construction transportation services unless the broker
15 provides, prior to the commencement of work each calendar year,
16 written evidence of the broker's valid surety bond to any person
17 that hires, or otherwise engages the services of, the broker to
18 furnish construction transportation services and also to the hired
19 motor carrier of property.

20 (c) A broker of construction trucking services who furnishes
21 construction transportation services in violation of this section is
22 guilty of a misdemeanor and subject to a fine of up to five thousand
23 dollars (\$5,000).

24 (d) In any civil action brought against a broker of construction
25 trucking services by a motor carrier of property in dump truck
26 equipment with whom the broker contracted during any period of
27 time in which the broker did not have a surety bond in violation
28 of this section, the failure to have the bond shall create a rebuttable
29 presumption that the broker failed to pay to the motor carrier the
30 amount due and owing.

31 (e) For purposes of this section, "a broker of construction
32 trucking services" does not include a facility that meets all the
33 following requirements:

- 34 (1) Arranges for transportation services of its product.
- 35 (2) Primarily handles raw materials to produce a new product.
- 36 (3) Is a rock product operation (such as an "aggregate"
37 operation), a hot mixing asphalt plant, or a concrete, concrete
38 product, or Portland cement product manufacturing facility.
- 39 (4) Does not accept a fee for the arrangement.

1 (f) For the purposes of this section, “written evidence of the
 2 broker’s valid surety bond” includes a copy of the surety bond, a
 3 certificate of insurance, a continuation certificate, or other similar
 4 documentation originally issued from the surety that includes the
 5 surety’s and broker’s name, the bond number, and the effective
 6 and expiration dates of the bond.

7 SEC. 198. Section 40000.20 of the Vehicle Code is amended
 8 to read:

9 40000.20. A third or subsequent violation of Section 23225,
 10 relating to the storage of an opened container of an alcoholic
 11 beverage, or Section 23223, relating to the possession of an open
 12 container of an alcoholic beverage, by a driver of a vehicle used
 13 to provide transportation services on a prearranged basis, operating
 14 under a valid certificate or permit pursuant to the Passenger
 15 Charter-party Carriers’ Act (Chapter 8 (commencing with Section
 16 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

17 SEC. 199. Section 85057.5 of the Water Code is amended to
 18 read:

19 85057.5. (a) “Covered action” means a plan, program, or
 20 project as defined pursuant to Section 21065 of the Public
 21 Resources Code that meets all of the following conditions:

- 22 (1) Will occur, in whole or in part, within the boundaries of the
 23 Delta or Suisun Marsh.
- 24 (2) Will be carried out, approved, or funded by the state or a
 25 local public agency.
- 26 (3) Is covered by one or more provisions of the Delta Plan.
- 27 (4) Will have a significant impact on achievement of one or
 28 both of the coequal goals or the implementation of
 29 government-sponsored flood control programs to reduce risks to
 30 people, property, and state interests in the Delta.

31 (b) “Covered action” does not include any of the following:

- 32 (1) A regulatory action of a state agency.
- 33 (2) Routine maintenance and operation of the State Water
 34 Project or the federal Central Valley Project.
- 35 (3) Regional transportation plans prepared pursuant to Section
 36 65080 of the Government Code.
- 37 (4) A plan, program, project, or activity within the secondary
 38 zone of the Delta that the applicable metropolitan planning
 39 organization pursuant to Section 65080 of the Government Code
 40 has determined is consistent with either a sustainable communities

1 strategy or an alternative planning strategy that the State Air
2 Resources Board has determined would, if implemented, achieve
3 the greenhouse gas emission reduction targets established by that
4 board pursuant to subparagraph (A) of paragraph (2) of subdivision
5 (b) of Section 65080 of the Government Code. For purposes of
6 this paragraph, “consistent with” means consistent with the use
7 designation, density, building intensity, transportation plan, and
8 applicable policies specified for the area in the sustainable
9 communities strategy or the alternative planning strategy, as
10 applicable, and any infrastructure necessary to support the plan,
11 program, project, or activity.

12 (5) Routine maintenance and operation of a facility located, in
13 whole or in part, in the Delta, that is owned or operated by a local
14 public agency.

15 (6) A plan, program, project, or activity that occurs, in whole
16 or in part, in the Delta, if both of the following conditions are met:

17 (A) The plan, program, project, or activity is undertaken by a
18 local public agency that is located, in whole or in part, in the Delta.

19 (B) Either a notice of determination is filed, pursuant to Section
20 21152 of the Public Resources Code, for the plan, program, project,
21 or activity by, or the plan, program, project, or activity is fully
22 permitted by, September 30, 2009.

23 (7) (A) A project within the secondary zone, as defined pursuant
24 to Section 29731 of the Public Resources Code as of January 1,
25 2009, for which a notice of approval or determination pursuant to
26 Section 21152 of the Public Resources Code has been filed before
27 the date on which the Delta Plan becomes effective.

28 (B) A project for which a notice of approval or determination
29 is filed on or after the date on which the final Bay Delta
30 Conservation Plan becomes effective, and before the date on which
31 the Delta Plan becomes effective, is not a covered action but shall
32 be consistent with the Bay Delta Conservation Plan.

33 (C) Subparagraphs (A) and (B) do not apply to either of the
34 following:

35 (i) A project that is within a Restoration Opportunity Area as
36 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of
37 the Bay Delta Conservation Plan, August 3, 2009, or as shown in
38 a final Bay Delta Conservation Plan.

39 (ii) A project that is within the alignment of a conveyance
40 facility as shown in Figures 1 to 5, inclusive, of the Final Draft

1 Initial Assessment of Dual Delta Water Conveyance Report, April
2 23, 2008, and in future revisions of this document by the
3 department.

4 (8) Leases approved by a special district if all of the following
5 apply:

6 (A) The uses proposed by the lease are authorized by the
7 applicable general plan and zoning ordinances of the city where
8 the special district is located.

9 (B) The uses proposed by the lease are approved by the city
10 where the special district is located and the city complies with
11 Chapter 3 (commencing with Section 85225) of Part 3, if
12 applicable, prior to approval of the lease by the special district.

13 (C) The special district complies with the California
14 Environmental Quality Act (Division 13 (commencing with Section
15 21000) of the Public Resources Code) prior to approving the lease.

16 (9) (A) Routine dredging activities that are necessary for
17 maintenance of facilities operated by a special district.

18 (B) For purposes of this paragraph, “routine dredging activities”
19 are limited to the following:

20 (i) Dredging to maintain the Stockton Deep Water Ship Channel
21 at a depth of 40 feet in the sediment trap at the confluence of the
22 San Joaquin River, between river mile 39.3 to river mile 40.2, and
23 to maintain the remaining Stockton Deep Water Ship Channel at
24 a depth of 35 feet plus two feet of overdredge from river mile 35
25 to river mile 43.

26 (ii) Dredging designed to maintain the Sacramento Deep Water
27 Ship Channel at a depth of 30 feet plus two feet of overdredge
28 from river mile 0.0 to river mile 30, and at a depth of 35 feet from
29 river mile 35 to river mile 43.

30 (C) Except as provided by this subdivision, it is the intent of
31 the Legislature that this exemption shall not be interpreted or
32 treated as changing or modifying current substantive and procedural
33 regulations applicable to the decision to approve dredging
34 operations.

35 (c) For purposes of this section, “special district” means the
36 Port of Stockton or the Port of West Sacramento.

37 (d) This section shall not be interpreted to authorize the
38 abrogation of a vested right whether created by statute or by
39 common law.

1 SEC. 200. Section 366.21 of the Welfare and Institutions Code
2 is amended to read:

3 366.21. (a) Every hearing conducted by the juvenile court
4 reviewing the status of a dependent child shall be placed on the
5 appearance calendar. The court shall advise all persons present at
6 the hearing of the date of the future hearing and of their right to
7 be present and represented by counsel.

8 (b) Except as provided in Sections 294 and 295, notice of the
9 hearing shall be provided pursuant to Section 293.

10 (c) At least 10 calendar days prior to the hearing, the social
11 worker shall file a supplemental report with the court regarding
12 the services provided or offered to the parent or legal guardian to
13 enable him or her to assume custody and the efforts made to
14 achieve legal permanence for the child if efforts to reunify fail,
15 including, but not limited to, efforts to maintain relationships
16 between a child who is 10 years of age or older and has been in
17 out-of-home placement for six months or longer and individuals
18 who are important to the child, consistent with the child's best
19 interests; the progress made; and, where relevant, the prognosis
20 for return of the child to the physical custody of his or her parent
21 or legal guardian; and shall make his or her recommendation for
22 disposition. If the child is a member of a sibling group described
23 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
24 361.5, the report and recommendation may also take into account
25 those factors described in subdivision (e) relating to the child's
26 sibling group. If the recommendation is not to return the child to
27 a parent or legal guardian, the report shall specify why the return
28 of the child would be detrimental to the child. The social worker
29 shall provide the parent or legal guardian, counsel for the child,
30 and any court-appointed child advocate with a copy of the report,
31 including his or her recommendation for disposition, at least 10
32 calendar days prior to the hearing. In the case of a child removed
33 from the physical custody of his or her parent or legal guardian,
34 the social worker shall, at least 10 calendar days prior to the
35 hearing, provide a summary of his or her recommendation for
36 disposition to any foster parents, relative caregivers, and certified
37 foster parents who have been approved for adoption by the State
38 Department of Social Services when it is acting as an adoption
39 agency or by a county adoption agency, community care facility,
40 or foster family agency having the physical custody of the child.

1 The social worker shall include a copy of the Judicial Council
2 Caregiver Information Form (JV-290) with the summary of
3 recommendations to the child's foster parents, relative caregivers,
4 or foster parents approved for adoption, in the caregiver's primary
5 language when available, along with information on how to file
6 the form with the court.

7 (d) Prior to any hearing involving a child in the physical custody
8 of a community care facility or a foster family agency that may
9 result in the return of the child to the physical custody of his or
10 her parent or legal guardian, or in adoption or the creation of a
11 legal guardianship, or in the case of an Indian child, in consultation
12 with the child's tribe, tribal customary adoption, the facility or
13 agency shall file with the court a report, or a Judicial Council
14 Caregiver Information Form (JV-290), containing its
15 recommendation for disposition. Prior to the hearing involving a
16 child in the physical custody of a foster parent, a relative caregiver,
17 or a certified foster parent who has been approved for adoption by
18 the State Department of Social Services when it is acting as an
19 adoption agency or by a county adoption agency, the foster parent,
20 relative caregiver, or the certified foster parent who has been
21 approved for adoption by the State Department of Social Services
22 when it is acting as an adoption agency or by a county adoption
23 agency, may file with the court a report containing his or her
24 recommendation for disposition. The court shall consider the report
25 and recommendation filed pursuant to this subdivision prior to
26 determining any disposition.

27 (e) At the review hearing held six months after the initial
28 dispositional hearing, but no later than 12 months after the date
29 the child entered foster care as determined in Section 361.49,
30 whichever occurs earlier, after considering the admissible and
31 relevant evidence, the court shall order the return of the child to
32 the physical custody of his or her parent or legal guardian unless
33 the court finds, by a preponderance of the evidence, that the return
34 of the child to his or her parent or legal guardian would create a
35 substantial risk of detriment to the safety, protection, or physical
36 or emotional well-being of the child. The social worker shall have
37 the burden of establishing that detriment. At the hearing, the court
38 shall consider the criminal history, obtained pursuant to paragraph
39 (1) of subdivision (f) of Section 16504.5, of the parent or legal
40 guardian subsequent to the child's removal to the extent that the

1 criminal record is substantially related to the welfare of the child
2 or the parent's or guardian's ability to exercise custody and control
3 regarding his or her child, provided the parent or legal guardian
4 agreed to submit fingerprint images to obtain criminal history
5 information as part of the case plan. The failure of the parent or
6 legal guardian to participate regularly and make substantive
7 progress in court-ordered treatment programs shall be prima facie
8 evidence that return would be detrimental. In making its
9 determination, the court shall review and consider the social
10 worker's report and recommendations and the report and
11 recommendations of any child advocate appointed pursuant to
12 Section 356.5; and shall consider the efforts or progress, or both,
13 demonstrated by the parent or legal guardian and the extent to
14 which he or she availed himself or herself to services provided,
15 taking into account the particular barriers to an incarcerated,
16 institutionalized, detained, or deported parent's or legal guardian's
17 access to those court-mandated services and ability to maintain
18 contact with his or her child.

19 Regardless of whether the child is returned to a parent or legal
20 guardian, the court shall specify the factual basis for its conclusion
21 that the return would be detrimental or would not be detrimental.
22 The court also shall make appropriate findings pursuant to
23 subdivision (a) of Section 366; and, where relevant, shall order
24 any additional services reasonably believed to facilitate the return
25 of the child to the custody of his or her parent or legal guardian.
26 The court shall also inform the parent or legal guardian that if the
27 child cannot be returned home by the 12-month permanency
28 hearing, a proceeding pursuant to Section 366.26 may be instituted.
29 This section does not apply in a case where, pursuant to Section
30 361.5, the court has ordered that reunification services shall not
31 be provided.

32 If the child was under three years of age on the date of the initial
33 removal, or is a member of a sibling group described in
34 subparagraph (C) of paragraph (1) of subdivision (a) of Section
35 361.5, and the court finds by clear and convincing evidence that
36 the parent failed to participate regularly and make substantive
37 progress in a court-ordered treatment plan, the court may schedule
38 a hearing pursuant to Section 366.26 within 120 days. If, however,
39 the court finds there is a substantial probability that the child, who
40 was under three years of age on the date of initial removal or is a

1 member of a sibling group described in subparagraph (C) of
2 paragraph (1) of subdivision (a) of Section 361.5, may be returned
3 to his or her parent or legal guardian within six months or that
4 reasonable services have not been provided, the court shall continue
5 the case to the 12-month permanency hearing.

6 For the purpose of placing and maintaining a sibling group
7 together in a permanent home, the court, in making its
8 determination to schedule a hearing pursuant to Section 366.26
9 for some or all members of a sibling group, as described in
10 subparagraph (C) of paragraph (1) of subdivision (a) of Section
11 361.5, shall review and consider the social worker's report and
12 recommendations. Factors the report shall address, and the court
13 shall consider, may include, but need not be limited to, whether
14 the sibling group was removed from parental care as a group, the
15 closeness and strength of the sibling bond, the ages of the siblings,
16 the appropriateness of maintaining the sibling group together, the
17 detriment to the child if sibling ties are not maintained, the
18 likelihood of finding a permanent home for the sibling group,
19 whether the sibling group is currently placed together in a
20 preadoptive home or has a concurrent plan goal of legal
21 permanency in the same home, the wishes of each child whose
22 age and physical and emotional condition permits a meaningful
23 response, and the best interests of each child in the sibling group.
24 The court shall specify the factual basis for its finding that it is in
25 the best interests of each child to schedule a hearing pursuant to
26 Section 366.26 within 120 days for some or all of the members of
27 the sibling group.

28 If the child was removed initially under subdivision (g) of
29 Section 300 and the court finds by clear and convincing evidence
30 that the whereabouts of the parent are still unknown, or the parent
31 has failed to contact and visit the child, the court may schedule a
32 hearing pursuant to Section 366.26 within 120 days. The court
33 shall take into account any particular barriers to a parent's ability
34 to maintain contact with his or her child due to the parent's
35 incarceration, institutionalization, detention by the United States
36 Department of Homeland Security, or deportation. If the court
37 finds by clear and convincing evidence that the parent has been
38 convicted of a felony indicating parental unfitness, the court may
39 schedule a hearing pursuant to Section 366.26 within 120 days.

1 If the child had been placed under court supervision with a
2 previously noncustodial parent pursuant to Section 361.2, the court
3 shall determine whether supervision is still necessary. The court
4 may terminate supervision and transfer permanent custody to that
5 parent, as provided for by paragraph (1) of subdivision (b) of
6 Section 361.2.

7 In all other cases, the court shall direct that any reunification
8 services previously ordered shall continue to be offered to the
9 parent or legal guardian pursuant to the time periods set forth in
10 subdivision (a) of Section 361.5, provided that the court may
11 modify the terms and conditions of those services.

12 If the child is not returned to his or her parent or legal guardian,
13 the court shall determine whether reasonable services that were
14 designed to aid the parent or legal guardian in overcoming the
15 problems that led to the initial removal and the continued custody
16 of the child have been provided or offered to the parent or legal
17 guardian. The court shall order that those services be initiated,
18 continued, or terminated.

19 (f) The permanency hearing shall be held no later than 12
20 months after the date the child entered foster care, as that date is
21 determined pursuant to Section 361.49. At the permanency hearing,
22 the court shall determine the permanent plan for the child, which
23 shall include a determination of whether the child will be returned
24 to the child's home and, if so, when, within the time limits of
25 subdivision (a) of Section 361.5. After considering the relevant
26 and admissible evidence, the court shall order the return of the
27 child to the physical custody of his or her parent or legal guardian
28 unless the court finds, by a preponderance of the evidence, that
29 the return of the child to his or her parent or legal guardian would
30 create a substantial risk of detriment to the safety, protection, or
31 physical or emotional well-being of the child. The social worker
32 shall have the burden of establishing that detriment. At the
33 permanency hearing, the court shall consider the criminal history,
34 obtained pursuant to paragraph (1) of subdivision (f) of Section
35 16504.5, of the parent or legal guardian subsequent to the child's
36 removal to the extent that the criminal record is substantially related
37 to the welfare of the child or the parent's or legal guardian's ability
38 to exercise custody and control regarding his or her child, provided
39 that the parent or legal guardian agreed to submit fingerprint images
40 to obtain criminal history information as part of the case plan. The

1 court shall also determine whether reasonable services that were
2 designed to aid the parent or legal guardian to overcome the
3 problems that led to the initial removal and continued custody of
4 the child have been provided or offered to the parent or legal
5 guardian. For each youth 16 years of age and older, the court shall
6 also determine whether services have been made available to assist
7 him or her in making the transition from foster care to independent
8 living. The failure of the parent or legal guardian to participate
9 regularly and make substantive progress in court-ordered treatment
10 programs shall be prima facie evidence that return would be
11 detrimental. In making its determination, the court shall review
12 and consider the social worker's report and recommendations and
13 the report and recommendations of any child advocate appointed
14 pursuant to Section 356.5, shall consider the efforts or progress,
15 or both, demonstrated by the parent or legal guardian and the extent
16 to which he or she availed himself or herself of services provided,
17 taking into account the particular barriers to an incarcerated,
18 institutionalized, detained, or deported parent's or legal guardian's
19 access to those court-mandated services and ability to maintain
20 contact with his or her child, and shall make appropriate findings
21 pursuant to subdivision (a) of Section 366.

22 Regardless of whether the child is returned to his or her parent
23 or legal guardian, the court shall specify the factual basis for its
24 decision. If the child is not returned to a parent or legal guardian,
25 the court shall specify the factual basis for its conclusion that the
26 return would be detrimental. The court also shall make a finding
27 pursuant to subdivision (a) of Section 366. If the child is not
28 returned to his or her parent or legal guardian, the court shall
29 consider, and state for the record, in-state and out-of-state
30 placement options. If the child is placed out of the state, the court
31 shall make a determination whether the out-of-state placement
32 continues to be appropriate and in the best interests of the child.

33 (g) If the time period in which the court-ordered services were
34 provided has met or exceeded the time period set forth in
35 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
36 of Section 361.5, as appropriate, and a child is not returned to the
37 custody of a parent or legal guardian at the permanency hearing
38 held pursuant to subdivision (f), the court shall do one of the
39 following:

1 (1) Continue the case for up to six months for a permanency
2 review hearing, provided that the hearing shall occur within 18
3 months of the date the child was originally taken from the physical
4 custody of his or her parent or legal guardian. The court shall
5 continue the case only if it finds that there is a substantial
6 probability that the child will be returned to the physical custody
7 of his or her parent or legal guardian and safely maintained in the
8 home within the extended period of time or that reasonable services
9 have not been provided to the parent or legal guardian. For the
10 purposes of this section, in order to find a substantial probability
11 that the child will be returned to the physical custody of his or her
12 parent or legal guardian and safely maintained in the home within
13 the extended period of time, the court shall be required to find all
14 of the following:

15 (A) That the parent or legal guardian has consistently and
16 regularly contacted and visited with the child.

17 (B) That the parent or legal guardian has made significant
18 progress in resolving problems that led to the child's removal from
19 the home.

20 (C) The parent or legal guardian has demonstrated the capacity
21 and ability both to complete the objectives of his or her treatment
22 plan and to provide for the child's safety, protection, physical and
23 emotional well-being, and special needs.

24 For purposes of this subdivision, the court's decision to continue
25 the case based on a finding or substantial probability that the child
26 will be returned to the physical custody of his or her parent or legal
27 guardian is a compelling reason for determining that a hearing
28 held pursuant to Section 366.26 is not in the best interests of the
29 child.

30 The court shall inform the parent or legal guardian that if the
31 child cannot be returned home by the next permanency review
32 hearing, a proceeding pursuant to Section 366.26 may be instituted.
33 The court may not order that a hearing pursuant to Section 366.26
34 be held unless there is clear and convincing evidence that
35 reasonable services have been provided or offered to the parent or
36 legal guardian.

37 (2) Continue the case for up to six months for a permanency
38 review hearing, provided that the hearing shall occur within 18
39 months of the date the child was originally taken from the physical
40 custody of his or her parent or legal guardian, if the parent has

1 been arrested and issued an immigration hold, detained by the
2 United States Department of Homeland Security, or deported to
3 his or her country of origin, and the court determines either that
4 there is a substantial probability that the child will be returned to
5 the physical custody of his or her parent or legal guardian and
6 safely maintained in the home within the extended period of time
7 or that reasonable services have not been provided to the parent
8 or legal guardian.

9 (3) For purposes of paragraph (2), in order to find a substantial
10 probability that the child will be returned to the physical custody
11 of his or her parent or legal guardian and safely maintained in the
12 home within the extended period of time, the court must find all
13 of the following:

14 (A) The parent or legal guardian has consistently and regularly
15 contacted and visited with the child, taking into account any
16 particular barriers to a parent's ability to maintain contact with his
17 or her child due to the parent's arrest and receipt of an immigration
18 hold, detention by the United States Department of Homeland
19 Security, or deportation.

20 (B) The parent or legal guardian has made significant progress
21 in resolving the problems that led to the child's removal from the
22 home.

23 (C) The parent or legal guardian has demonstrated the capacity
24 or ability both to complete the objectives of his or her treatment
25 plan and to provide for the child's safety, protection, physical and
26 emotional well-being, and special needs.

27 (4) Order that a hearing be held within 120 days, pursuant to
28 Section 366.26, but only if the court does not continue the case to
29 the permanency planning review hearing and there is clear and
30 convincing evidence that reasonable services have been provided
31 or offered to the parents or legal guardians. On and after January
32 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
33 if the child is a nonminor dependent, unless the nonminor
34 dependent is an Indian child and tribal customary adoption is
35 recommended as the permanent plan.

36 (5) Order that the child remain in long-term foster care, but only
37 if the court finds by clear and convincing evidence, based upon
38 the evidence already presented to it, including a recommendation
39 by the State Department of Social Services when it is acting as an
40 adoption agency or by a county adoption agency, that there is a

1 compelling reason for determining that a hearing held pursuant to
2 Section 366.26 is not in the best interests of the child because the
3 child is not a proper subject for adoption and has no one willing
4 to accept legal guardianship. For purposes of this section, a
5 recommendation by the State Department of Social Services when
6 it is acting as an adoption agency or by a county adoption agency
7 that adoption is not in the best interests of the child shall constitute
8 a compelling reason for the court's determination. That
9 recommendation shall be based on the present circumstances of
10 the child and shall not preclude a different recommendation at a
11 later date if the child's circumstances change. On and after January
12 1, 2012, the nonminor dependent's legal status as an adult is in
13 and of itself a compelling reason not to hold a hearing pursuant to
14 Section 366.26. The court may order that a nonminor dependent
15 who otherwise is eligible pursuant to Section 11403 remain in a
16 planned, permanent living arrangement.

17 If the court orders that a child who is 10 years of age or older
18 remain in long-term foster care, the court shall determine whether
19 the agency has made reasonable efforts to maintain the child's
20 relationships with individuals other than the child's siblings who
21 are important to the child, consistent with the child's best interests,
22 and may make any appropriate order to ensure that those
23 relationships are maintained.

24 If the child is not returned to his or her parent or legal guardian,
25 the court shall consider, and state for the record, in-state and
26 out-of-state options for permanent placement. If the child is placed
27 out of the state, the court shall make a determination whether the
28 out-of-state placement continues to be appropriate and in the best
29 interests of the child.

30 (h) In any case in which the court orders that a hearing pursuant
31 to Section 366.26 shall be held, it shall also order the termination
32 of reunification services to the parent or legal guardian. The court
33 shall continue to permit the parent or legal guardian to visit the
34 child pending the hearing unless it finds that visitation would be
35 detrimental to the child. The court shall make any other appropriate
36 orders to enable the child to maintain relationships with individuals,
37 other than the child's siblings, who are important to the child,
38 consistent with the child's best interests. When the court orders a
39 termination of reunification services to the parent or legal guardian,
40 it shall also order that the child's caregiver receive the child's birth

1 certificate in accordance with Sections 16010.4 and 16010.5.
2 Additionally, when the court orders a termination of reunification
3 services to the parent or legal guardian, it shall order, when
4 appropriate, that a child who is 16 years of age or older receive
5 his or her birth certificate.

6 (i) (1) Whenever a court orders that a hearing pursuant to
7 Section 366.26, including, when, in consultation with the child's
8 tribe, tribal customary adoption is recommended, shall be held, it
9 shall direct the agency supervising the child and the county
10 adoption agency, or the State Department of Social Services when
11 it is acting as an adoption agency, to prepare an assessment that
12 shall include:

13 (A) Current search efforts for an absent parent or parents or
14 legal guardians.

15 (B) A review of the amount of and nature of any contact between
16 the child and his or her parents or legal guardians and other
17 members of his or her extended family since the time of placement.
18 Although the extended family of each child shall be reviewed on
19 a case-by-case basis, "extended family" for the purpose of this
20 subparagraph shall include, but not be limited to, the child's
21 siblings, grandparents, aunts, and uncles.

22 (C) An evaluation of the child's medical, developmental,
23 scholastic, mental, and emotional status.

24 (D) A preliminary assessment of the eligibility and commitment
25 of any identified prospective adoptive parent or legal guardian,
26 including the prospective tribal customary adoptive parent,
27 particularly the caretaker, to include a social history including
28 screening for criminal records and prior referrals for child abuse
29 or neglect, the capability to meet the child's needs, and the
30 understanding of the legal and financial rights and responsibilities
31 of adoption and guardianship. If a proposed guardian is a relative
32 of the minor, the assessment shall also consider, but need not be
33 limited to, all of the factors specified in subdivision (a) of Section
34 361.3 and in Section 361.4.

35 (E) The relationship of the child to any identified prospective
36 adoptive parent or legal guardian, the duration and character of
37 the relationship, the degree of attachment of the child to the
38 prospective relative guardian or adoptive parent, the relative's or
39 adoptive parent's strong commitment to caring permanently for
40 the child, the motivation for seeking adoption or guardianship, a

1 statement from the child concerning placement and the adoption
2 or guardianship, and whether the child, if over 12 years of age,
3 has been consulted about the proposed relative guardianship
4 arrangements, unless the child's age or physical, emotional, or
5 other condition precludes his or her meaningful response, and if
6 so, a description of the condition.

7 (F) A description of efforts to be made to identify a prospective
8 adoptive parent or legal guardian, including, but not limited to,
9 child-specific recruitment and listing on an adoption exchange
10 within the state or out of the state.

11 (G) An analysis of the likelihood that the child will be adopted
12 if parental rights are terminated.

13 (H) In the case of an Indian child, in addition to subparagraphs
14 (A) to (G), inclusive, an assessment of the likelihood that the child
15 will be adopted, when, in consultation with the child's tribe, a
16 tribal customary adoption, as defined in Section 366.24, is
17 recommended. If tribal customary adoption is recommended, the
18 assessment shall include an analysis of both of the following:

19 (i) Whether tribal customary adoption would or would not be
20 detrimental to the Indian child and the reasons for reaching that
21 conclusion.

22 (ii) Whether the Indian child cannot or should not be returned
23 to the home of the Indian parent or Indian custodian and the reasons
24 for reaching that conclusion.

25 (2) (A) A relative caregiver's preference for legal guardianship
26 over adoption, if it is due to circumstances that do not include an
27 unwillingness to accept legal or financial responsibility for the
28 child, shall not constitute the sole basis for recommending removal
29 of the child from the relative caregiver for purposes of adoptive
30 placement.

31 (B) Regardless of his or her immigration status, a relative
32 caregiver shall be given information regarding the permanency
33 options of guardianship and adoption, including the long-term
34 benefits and consequences of each option, prior to establishing
35 legal guardianship or pursuing adoption. If the proposed permanent
36 plan is guardianship with an approved relative caregiver for a
37 minor eligible for aid under the Kin-GAP Program, as provided
38 for in Article 4.7 (commencing with Section 11385) of Chapter 2
39 of Part 3 of Division 9, the relative caregiver shall be informed
40 about the terms and conditions of the negotiated agreement

1 pursuant to Section 11387 and shall agree to its execution prior to
2 the hearing held pursuant to Section 366.26. A copy of the executed
3 negotiated agreement shall be attached to the assessment.

4 (j) If, at any hearing held pursuant to Section 366.26, a
5 guardianship is established for the minor with an approved relative
6 caregiver, and juvenile court dependency is subsequently
7 dismissed, the minor shall be eligible for aid under the Kin-GAP
8 Program, as provided for in Article 4.5 (commencing with Section
9 11360) or Article 4.7 (commencing with Section 11385), as
10 applicable, of Chapter 2 of Part 3 of Division 9.

11 (k) As used in this section, “relative” means an adult who is
12 related to the minor by blood, adoption, or affinity within the fifth
13 degree of kinship, including stepparents, stepsiblings, and all
14 relatives whose status is preceded by the words “great,”
15 “great-great,” or “grand,” or the spouse of any of those persons
16 even if the marriage was terminated by death or dissolution. If the
17 proposed permanent plan is guardianship with an approved relative
18 caregiver for a minor eligible for aid under the Kin-GAP Program,
19 as provided for in Article 4.7 (commencing with Section 11385)
20 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
21 section has the same meaning as “relative” as defined in
22 subdivision (c) of Section 11391.

23 (l) For purposes of this section, evidence of any of the following
24 circumstances may not, in and of itself, be deemed a failure to
25 provide or offer reasonable services:

26 (1) The child has been placed with a foster family that is eligible
27 to adopt a child, or has been placed in a preadoptive home.

28 (2) The case plan includes services to make and finalize a
29 permanent placement for the child if efforts to reunify fail.

30 (3) Services to make and finalize a permanent placement for
31 the child, if efforts to reunify fail, are provided concurrently with
32 services to reunify the family.

33 (m) The implementation and operation of the amendments to
34 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
35 shall be subject to appropriation through the budget process and
36 by phase, as provided in Section 366.35.

37 SEC. 201. Section 366.22 of the Welfare and Institutions Code
38 is amended to read:

39 366.22. (a) When a case has been continued pursuant to
40 paragraph (1) or (2) of subdivision (g) of Section 366.21, the

1 permanency review hearing shall occur within 18 months after the
2 date the child was originally removed from the physical custody
3 of his or her parent or legal guardian. After considering the
4 admissible and relevant evidence, the court shall order the return
5 of the child to the physical custody of his or her parent or legal
6 guardian unless the court finds, by a preponderance of the evidence,
7 that the return of the child to his or her parent or legal guardian
8 would create a substantial risk of detriment to the safety, protection,
9 or physical or emotional well-being of the child. The social worker
10 shall have the burden of establishing that detriment. At the
11 permanency review hearing, the court shall consider the criminal
12 history, obtained pursuant to paragraph (1) of subdivision (f) of
13 Section 16504.5, of the parent or legal guardian subsequent to the
14 child's removal, to the extent that the criminal record is
15 substantially related to the welfare of the child or the parent's or
16 legal guardian's ability to exercise custody and control regarding
17 his or her child, provided that the parent or legal guardian agreed
18 to submit fingerprint images to obtain criminal history information
19 as part of the case plan. The failure of the parent or legal guardian
20 to participate regularly and make substantive progress in
21 court-ordered treatment programs shall be prima facie evidence
22 that return would be detrimental. In making its determination, the
23 court shall review and consider the social worker's report and
24 recommendations and the report and recommendations of any child
25 advocate appointed pursuant to Section 356.5; shall consider the
26 efforts or progress, or both, demonstrated by the parent or legal
27 guardian and the extent to which he or she availed himself or
28 herself of services provided, taking into account the particular
29 barriers of an incarcerated or institutionalized parent's or legal
30 guardian's access to those court-mandated services and ability to
31 maintain contact with his or her child; and shall make appropriate
32 findings pursuant to subdivision (a) of Section 366.

33 Whether or not the child is returned to his or her parent or legal
34 guardian, the court shall specify the factual basis for its decision.
35 If the child is not returned to a parent or legal guardian, the court
36 shall specify the factual basis for its conclusion that return would
37 be detrimental. If the child is not returned to his or her parent or
38 legal guardian, the court shall consider, and state for the record,
39 in-state and out-of-state options for the child's permanent
40 placement. If the child is placed out of the state, the court shall

1 make a determination whether the out-of-state placement continues
2 to be appropriate and in the best interests of the child.

3 Unless the conditions in subdivision (b) are met and the child is
4 not returned to a parent or legal guardian at the permanency review
5 hearing, the court shall order that a hearing be held pursuant to
6 Section 366.26 in order to determine whether adoption, or, in the
7 case of an Indian child, in consultation with the child's tribe, tribal
8 customary adoption, guardianship, or long-term foster care is the
9 most appropriate plan for the child. On and after January 1, 2012,
10 a hearing pursuant to Section 366.26 shall not be ordered if the
11 child is a nonminor dependent, unless the nonminor dependent is
12 an Indian child, and tribal customary adoption is recommended as
13 the permanent plan. However, if the court finds by clear and
14 convincing evidence, based on the evidence already presented to
15 it, including a recommendation by the State Department of Social
16 Services when it is acting as an adoption agency or by a county
17 adoption agency, that there is a compelling reason, as described
18 in paragraph (5) of subdivision (g) of Section 366.21, for
19 determining that a hearing held under Section 366.26 is not in the
20 best interests of the child because the child is not a proper subject
21 for adoption and has no one willing to accept legal guardianship,
22 the court may, only under these circumstances, order that the child
23 remain in long-term foster care. On and after January 1, 2012, the
24 nonminor dependent's legal status as an adult is in and of itself a
25 compelling reason not to hold a hearing pursuant to Section 366.26.
26 The court may order that a nonminor dependent who otherwise is
27 eligible pursuant to Section 11403 remain in a planned, permanent
28 living arrangement. If the court orders that a child who is 10 years
29 of age or older remain in long-term foster care, the court shall
30 determine whether the agency has made reasonable efforts to
31 maintain the child's relationships with individuals other than the
32 child's siblings who are important to the child, consistent with the
33 child's best interests, and may make any appropriate order to ensure
34 that those relationships are maintained. The hearing shall be held
35 no later than 120 days from the date of the permanency review
36 hearing. The court shall also order termination of reunification
37 services to the parent or legal guardian. The court shall continue
38 to permit the parent or legal guardian to visit the child unless it
39 finds that visitation would be detrimental to the child. The court
40 shall determine whether reasonable services have been offered or

1 provided to the parent or legal guardian. For purposes of this
2 subdivision, evidence of any of the following circumstances shall
3 not, in and of themselves, be deemed a failure to provide or offer
4 reasonable services:

5 (1) The child has been placed with a foster family that is eligible
6 to adopt a child, or has been placed in a preadoptive home.

7 (2) The case plan includes services to make and finalize a
8 permanent placement for the child if efforts to reunify fail.

9 (3) Services to make and finalize a permanent placement for
10 the child, if efforts to reunify fail, are provided concurrently with
11 services to reunify the family.

12 (b) If the child is not returned to a parent or legal guardian at
13 the permanency review hearing and the court determines by clear
14 and convincing evidence that the best interests of the child would
15 be met by the provision of additional reunification services to a
16 parent or legal guardian who is making significant and consistent
17 progress in a court-ordered residential substance abuse treatment
18 program, or a parent recently discharged from incarceration,
19 institutionalization, or the custody of the United States Department
20 of Homeland Security and making significant and consistent
21 progress in establishing a safe home for the child's return, the court
22 may continue the case for up to six months for a subsequent
23 permanency review hearing, provided that the hearing shall occur
24 within 24 months of the date the child was originally taken from
25 the physical custody of his or her parent or legal guardian. The
26 court shall continue the case only if it finds that there is a
27 substantial probability that the child will be returned to the physical
28 custody of his or her parent or legal guardian and safely maintained
29 in the home within the extended period of time or that reasonable
30 services have not been provided to the parent or legal guardian.
31 For the purposes of this section, in order to find a substantial
32 probability that the child will be returned to the physical custody
33 of his or her parent or legal guardian and safely maintained in the
34 home within the extended period of time, the court shall be required
35 to find all of the following:

36 (1) That the parent or legal guardian has consistently and
37 regularly contacted and visited with the child.

38 (2) That the parent or legal guardian has made significant and
39 consistent progress in the prior 18 months in resolving problems
40 that led to the child's removal from the home.

1 (3) The parent or legal guardian has demonstrated the capacity
2 and ability both to complete the objectives of his or her substance
3 abuse treatment plan as evidenced by reports from a substance
4 abuse provider as applicable, or complete a treatment plan
5 postdischarge from incarceration, institutionalization, or detention,
6 or following deportation to his or her country of origin and his or
7 her return to the United States, and to provide for the child's safety,
8 protection, physical and emotional well-being, and special needs.

9 For purposes of this subdivision, the court's decision to continue
10 the case based on a finding or substantial probability that the child
11 will be returned to the physical custody of his or her parent or legal
12 guardian is a compelling reason for determining that a hearing
13 held pursuant to Section 366.26 is not in the best interests of the
14 child.

15 The court shall inform the parent or legal guardian that if the
16 child cannot be returned home by the subsequent permanency
17 review hearing, a proceeding pursuant to Section 366.26 may be
18 instituted. The court may not order that a hearing pursuant to
19 Section 366.26 be held unless there is clear and convincing
20 evidence that reasonable services have been provided or offered
21 to the parent or legal guardian.

22 (c) (1) Whenever a court orders that a hearing pursuant to
23 Section 366.26, including when a tribal customary adoption is
24 recommended, shall be held, it shall direct the agency supervising
25 the child and the county adoption agency, or the State Department
26 of Social Services when it is acting as an adoption agency, to
27 prepare an assessment that shall include:

28 (A) Current search efforts for an absent parent or parents.

29 (B) A review of the amount of and nature of any contact between
30 the child and his or her parents and other members of his or her
31 extended family since the time of placement. Although the
32 extended family of each child shall be reviewed on a case-by-case
33 basis, "extended family" for the purposes of this subparagraph
34 shall include, but not be limited to, the child's siblings,
35 grandparents, aunts, and uncles.

36 (C) An evaluation of the child's medical, developmental,
37 scholastic, mental, and emotional status.

38 (D) A preliminary assessment of the eligibility and commitment
39 of any identified prospective adoptive parent or legal guardian,
40 particularly the caretaker, to include a social history including

1 screening for criminal records and prior referrals for child abuse
2 or neglect, the capability to meet the child's needs, and the
3 understanding of the legal and financial rights and responsibilities
4 of adoption and guardianship. If a proposed legal guardian is a
5 relative of the minor, the assessment shall also consider, but need
6 not be limited to, all of the factors specified in subdivision (a) of
7 Section 361.3 and Section 361.4.

8 (E) The relationship of the child to any identified prospective
9 adoptive parent or legal guardian, the duration and character of
10 the relationship, the degree of attachment of the child to the
11 prospective relative guardian or adoptive parent, the relative's or
12 adoptive parent's strong commitment to caring permanently for
13 the child, the motivation for seeking adoption or legal guardianship,
14 a statement from the child concerning placement and the adoption
15 or legal guardianship, and whether the child, if over 12 years of
16 age, has been consulted about the proposed relative guardianship
17 arrangements, unless the child's age or physical, emotional, or
18 other condition precludes his or her meaningful response, and if
19 so, a description of the condition.

20 (F) An analysis of the likelihood that the child will be adopted
21 if parental rights are terminated.

22 (G) In the case of an Indian child, in addition to subparagraphs
23 (A) to (F), inclusive, an assessment of the likelihood that the child
24 will be adopted, when, in consultation with the child's tribe, a
25 tribal customary adoption, as defined in Section 366.24, is
26 recommended. If tribal customary adoption is recommended, the
27 assessment shall include an analysis of both of the following:

28 (i) Whether tribal customary adoption would or would not be
29 detrimental to the Indian child and the reasons for reaching that
30 conclusion.

31 (ii) Whether the Indian child cannot or should not be returned
32 to the home of the Indian parent or Indian custodian and the reasons
33 for reaching that conclusion.

34 (2) (A) A relative caregiver's preference for legal guardianship
35 over adoption, if it is due to circumstances that do not include an
36 unwillingness to accept legal or financial responsibility for the
37 child, shall not constitute the sole basis for recommending removal
38 of the child from the relative caregiver for purposes of adoptive
39 placement.

1 (B) Regardless of his or her immigration status, a relative
2 caregiver shall be given information regarding the permanency
3 options of guardianship and adoption, including the long-term
4 benefits and consequences of each option, prior to establishing
5 legal guardianship or pursuing adoption. If the proposed permanent
6 plan is guardianship with an approved relative caregiver for a
7 minor eligible for aid under the Kin-GAP Program, as provided
8 for in Article 4.7 (commencing with Section 11385) of Chapter 2
9 of Part 3 of Division 9, the relative caregiver shall be informed
10 about the terms and conditions of the negotiated agreement
11 pursuant to Section 11387 and shall agree to its execution prior to
12 the hearing held pursuant to Section 366.26. A copy of the executed
13 negotiated agreement shall be attached to the assessment.

14 (d) This section shall become operative January 1, 1999. If at
15 any hearing held pursuant to Section 366.26, a legal guardianship
16 is established for the minor with an approved relative caregiver,
17 and juvenile court dependency is subsequently dismissed, the minor
18 shall be eligible for aid under the Kin-GAP Program, as provided
19 for in Article 4.5 (commencing with Section 11360) or Article 4.7
20 (commencing with Section 11385), as applicable, of Chapter 2 of
21 Part 3 of Division 9.

22 (e) As used in this section, “relative” means an adult who is
23 related to the child by blood, adoption, or affinity within the fifth
24 degree of kinship, including stepparents, stepsiblings, and all
25 relatives whose status is preceded by the words “great,”
26 “great-great,” or “grand,” or the spouse of any of those persons
27 even if the marriage was terminated by death or dissolution. If the
28 proposed permanent plan is guardianship with an approved relative
29 caregiver for a minor eligible for aid under the Kin-GAP Program,
30 as provided for in Article 4.7 (commencing with Section 11385)
31 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
32 section has the same meaning as “relative” as defined in
33 subdivision (c) of Section 11391.

34 (f) The implementation and operation of the amendments to
35 subdivision (a) enacted at the 2005–06 Regular Session shall be
36 subject to appropriation through the budget process and by phase,
37 as provided in Section 366.35.

38 SEC. 202. Section 366.25 of the Welfare and Institutions Code
39 is amended to read:

1 366.25. (a) (1) When a case has been continued pursuant to
2 subdivision (b) of Section 366.22, the subsequent permanency
3 review hearing shall occur within 24 months after the date the
4 child was originally removed from the physical custody of his or
5 her parent or legal guardian. After considering the relevant and
6 admissible evidence, the court shall order the return of the child
7 to the physical custody of his or her parent or legal guardian unless
8 the court finds, by a preponderance of the evidence, that the return
9 of the child to his or her parent or legal guardian would create a
10 substantial risk of detriment to the safety, protection, or physical
11 or emotional well-being of the child. The social worker shall have
12 the burden of establishing that detriment. At the subsequent
13 permanency review hearing, the court shall consider the criminal
14 history, obtained pursuant to paragraph (1) of subdivision (f) of
15 Section 16504.5, of the parent or legal guardian subsequent to the
16 child's removal to the extent that the criminal record is substantially
17 related to the welfare of the child or parent's or legal guardian's
18 ability to exercise custody and control regarding his or her child
19 provided that the parent or legal guardian agreed to submit
20 fingerprint images to obtain criminal history information as part
21 of the case plan. The failure of the parent or legal guardian to
22 participate regularly and make substantive progress in court-ordered
23 treatment programs shall be prima facie evidence that return would
24 be detrimental. In making its determination, the court shall review
25 and consider the social worker's report and recommendations and
26 the report and recommendations of any child advocate appointed
27 pursuant to Section 356.5; shall consider the efforts or progress,
28 or both, demonstrated by the parent or legal guardian and the extent
29 to which he or she availed himself or herself of services provided;
30 and shall make appropriate findings pursuant to subdivision (a) of
31 Section 366.

32 (2) Whether or not the child is returned to his or her parent or
33 legal guardian, the court shall specify the factual basis for its
34 decision. If the child is not returned to a parent or legal guardian,
35 the court shall specify the factual basis for its conclusion that return
36 would be detrimental. If the child is not returned to his or her parent
37 or legal guardian, the court shall consider and state for the record,
38 in-state and out-of-state options for the child's permanent
39 placement. If the child is placed out of the state, the court shall

1 make a determination whether the out-of-state placement continues
2 to be appropriate and in the best interests of the child.

3 (3) If the child is not returned to a parent or legal guardian at
4 the subsequent permanency review hearing, the court shall order
5 that a hearing be held pursuant to Section 366.26 in order to
6 determine whether adoption, or, in the case of an Indian child,
7 tribal customary adoption, guardianship, or long-term foster care
8 is the most appropriate plan for the child. On and after January 1,
9 2012, a hearing pursuant to Section 366.26 shall not be ordered if
10 the child is a nonminor dependent, unless the nonminor dependent
11 is an Indian child and tribal customary adoption is recommended
12 as the permanent plan. However, if the court finds by clear and
13 convincing evidence, based on the evidence already presented to
14 it, including a recommendation by the State Department of Social
15 Services when it is acting as an adoption agency or by a county
16 adoption agency, that there is a compelling reason, as described
17 in paragraph (5) of subdivision (g) of Section 366.21, for
18 determining that a hearing held under Section 366.26 is not in the
19 best interest of the child because the child is not a proper subject
20 for adoption or, in the case of an Indian child, tribal customary
21 adoption, and has no one willing to accept legal guardianship, then
22 the court may, only under these circumstances, order that the child
23 remain in long-term foster care. On and after January 1, 2012, the
24 nonminor dependent's legal status as an adult is in and of itself a
25 compelling reason not to hold a hearing pursuant to Section 366.26.
26 The court may order that a nonminor dependent who otherwise is
27 eligible pursuant to Section 11403 remain in a planned, permanent
28 living arrangement. If the court orders that a child who is 10 years
29 of age or older remain in long-term foster care, the court shall
30 determine whether the agency has made reasonable efforts to
31 maintain the child's relationships with individuals other than the
32 child's siblings who are important to the child, consistent with the
33 child's best interests, and may make any appropriate order to ensure
34 that those relationships are maintained. The hearing shall be held
35 no later than 120 days from the date of the subsequent permanency
36 review hearing. The court shall also order termination of
37 reunification services to the parent or legal guardian. The court
38 shall continue to permit the parent or legal guardian to visit the
39 child unless it finds that visitation would be detrimental to the
40 child. The court shall determine whether reasonable services have

1 been offered or provided to the parent or legal guardian. For
2 purposes of this paragraph, evidence of any of the following
3 circumstances shall not, in and of themselves, be deemed a failure
4 to provide or offer reasonable services:

5 (A) The child has been placed with a foster family that is eligible
6 to adopt a child, or has been placed in a preadoptive home.

7 (B) The case plan includes services to make and finalize a
8 permanent placement for the child if efforts to reunify fail.

9 (C) Services to make and finalize a permanent placement for
10 the child, if efforts to reunify fail, are provided concurrently with
11 services to reunify the family.

12 (b) (1) Whenever a court orders that a hearing pursuant to
13 Section 366.26 shall be held, it shall direct the agency supervising
14 the child and the county adoption agency, or the State Department
15 of Social Services when it is acting as an adoption agency, to
16 prepare an assessment that shall include:

17 (A) Current search efforts for an absent parent or parents.

18 (B) A review of the amount of, and nature of, any contact
19 between the child and his or her parents and other members of his
20 or her extended family since the time of placement. Although the
21 extended family of each child shall be reviewed on a case-by-case
22 basis, “extended family” for the purposes of this paragraph shall
23 include, but not be limited to, the child’s siblings, grandparents,
24 aunts, and uncles.

25 (C) An evaluation of the child’s medical, developmental,
26 scholastic, mental, and emotional status.

27 (D) A preliminary assessment of the eligibility and commitment
28 of any identified prospective adoptive parent or legal guardian,
29 including a prospective tribal customary adoptive parent,
30 particularly the caretaker, to include a social history including
31 screening for criminal records and prior referrals for child abuse
32 or neglect, the capability to meet the child’s needs, and the
33 understanding of the legal and financial rights and responsibilities
34 of adoption and guardianship. If a proposed legal guardian is a
35 relative of the minor, the assessment shall also consider, but need
36 not be limited to, all of the factors specified in subdivision (a) of
37 Section 361.3 and in Section 361.4.

38 (E) The relationship of the child to any identified prospective
39 adoptive parent or legal guardian, including a prospective tribal
40 customary adoptive parent, the duration and character of the

1 relationship, the degree of attachment of the child to the prospective
2 relative guardian or adoptive parent, the relative's or adoptive
3 parent's strong commitment to caring permanently for the child,
4 the motivation for seeking adoption or legal guardianship, a
5 statement from the child concerning placement and the adoption
6 or legal guardianship, and whether the child, if over 12 years of
7 age, has been consulted about the proposed relative guardianship
8 arrangements, unless the child's age or physical, emotional, or
9 other condition precludes his or her meaningful response, and if
10 so, a description of the condition.

11 (F) An analysis of the likelihood that the child will be adopted
12 if parental rights are terminated.

13 (G) In the case of an Indian child, in addition to subparagraphs
14 (A) to (F), inclusive, an assessment of the likelihood that the child
15 will be adopted, when, in consultation with the child's tribe, a
16 tribal customary adoption, as defined in Section 366.24, is
17 recommended. If tribal customary adoption is recommended, the
18 assessment shall include an analysis of both of the following:

19 (i) Whether tribal customary adoption would or would not be
20 detrimental to the Indian child and the reasons for reaching that
21 conclusion.

22 (ii) Whether the Indian child cannot or should not be returned
23 to the home of the Indian parent or Indian custodian and the reasons
24 for reaching that conclusion.

25 (2) (A) A relative caregiver's preference for legal guardianship
26 over adoption, if it is due to circumstances that do not include an
27 unwillingness to accept legal or financial responsibility for the
28 child, shall not constitute the sole basis for recommending removal
29 of the child from the relative caregiver for purposes of adoptive
30 placement.

31 (B) Regardless of his or her immigration status, a relative
32 caregiver shall be given information regarding the permanency
33 options of guardianship and adoption, including the long-term
34 benefits and consequences of each option, prior to establishing
35 legal guardianship or pursuing adoption. If the proposed permanent
36 plan is guardianship with an approved relative caregiver for a
37 minor eligible for aid under the Kin-GAP Program, as provided
38 for in Article 4.7 (commencing with Section 11385) of Chapter 2
39 of Part 3 of Division 9, the relative caregiver shall be informed
40 about the terms and conditions of the negotiated agreement

1 pursuant to Section 11387 and shall agree to its execution prior to
2 the hearing held pursuant to Section 366.26. A copy of the executed
3 negotiated agreement shall be attached to the assessment.

4 (c) If, at any hearing held pursuant to Section 366.26, a
5 guardianship is established for the minor with an approved relative
6 caregiver, and juvenile court dependency is subsequently
7 dismissed, the minor shall be eligible for aid under the Kin-GAP
8 Program, as provided for in Article 4.5 (commencing with Section
9 11360) or Article 4.7 (commencing with Section 11385), as
10 applicable, of Chapter 2 of Part 3 of Division 9.

11 (d) As used in this section, “relative” means an adult who is
12 related to the minor by blood, adoption, or affinity within the fifth
13 degree of kinship, including stepparents, stepsiblings, and all
14 relatives whose status is preceded by the words “great,”
15 “great-great,” or “grand,” or the spouse of any of those persons
16 even if the marriage was terminated by death or dissolution. If the
17 proposed permanent plan is guardianship with an approved relative
18 caregiver for a minor eligible for aid under the Kin-GAP Program,
19 as provided in Article 4.7 (commencing with Section 11385) of
20 Chapter 2 of Part 3 of Division 9, “relative” as used in this section
21 has the same meaning as “relative” as defined in subdivision (c)
22 of Section 11391.

23 (e) The implementation and operation of subdivision (a) enacted
24 at the 2005–06 Regular Session shall be subject to appropriation
25 through the budget process and by phase, as provided in Section
26 366.35.

27 SEC. 203. Section 4141 of the Welfare and Institutions Code
28 is amended to read:

29 4141. (a) (1) Each state hospital shall update its injury and
30 illness prevention plan at least once a year to include necessary
31 safeguards to prevent workplace safety hazards in connection with
32 workplace violence associated with patient assaults on employees.

33 (2) Updated injury and illness prevention plans shall address,
34 but shall not be limited to, all of the following:

35 (A) Control of physical access throughout the hospital and
36 grounds.

37 (B) Alarm systems.

38 (C) Presence of security personnel.

39 (D) Training.

40 (E) Buddy systems.

1 (F) Communication.

2 (G) Emergency responses.

3 (3) (A) The department shall submit the updated injury and
4 illness prevention plans to the Legislature every two years.

5 (B) (i) The requirement for submitting the updated injury and
6 illness prevention plans imposed pursuant to subparagraph (A) is
7 inoperative four years after the date the first report is due, pursuant
8 to Section 10231.5 of the Government Code.

9 (ii) Updated injury and illness prevention plans submitted
10 pursuant to subparagraph (A) shall be submitted in compliance
11 with Section 9795 of the Government Code.

12 (b) Each state hospital shall establish an injury and illness
13 prevention committee comprised of hospital management and
14 employees designated by the hospital’s director in consultation
15 with the employee bargaining units. The committee shall be
16 responsible for providing recommendations to the hospital director
17 for updates to the injury and illness prevention plan. The committee
18 shall meet at least four times per year.

19 (c) Each state hospital shall develop an incident reporting
20 procedure that can be used, at a minimum, to develop reports of
21 patient assaults on employees and assist the hospital in identifying
22 risks of patient assaults on employees. Data obtained from the
23 incident reporting procedures shall be accessible to staff. The
24 incident reporting procedure shall be designed to provide hospital
25 management with immediate notification of reported incidents.
26 The hospital shall provide for timely and efficient responses and
27 investigations to incident reports made under the incident reporting
28 procedure. Incident reports shall also be forwarded to the injury
29 and illness prevention committee established pursuant to
30 subdivision (b).

31 SEC. 204. Section 4427.5 of the Welfare and Institutions Code
32 is amended to read:

33 4427.5. (a) (1) A developmental center shall immediately
34 report the following incidents involving a resident to the local law
35 enforcement agency having jurisdiction over the city or county in
36 which the developmental center is located, regardless of whether
37 the Office of Protective Services has investigated the facts and
38 circumstances relating to the incident:

39 (A) A death.

40 (B) A sexual assault, as defined in Section 15610.63.

1 (C) An assault with a deadly weapon, as described in Section
2 245 of the Penal Code, by a nonresident of the developmental
3 center.

4 (D) An assault with force likely to produce great bodily injury,
5 as described in Section 245 of the Penal Code.

6 (E) An injury to the genitals when the cause of the injury is
7 undetermined.

8 (F) A broken bone when the cause of the break is undetermined.

9 (2) If the incident is reported to the law enforcement agency by
10 telephone, a written report of the incident shall also be submitted
11 to the agency, within two working days.

12 (3) The reporting requirements of this subdivision are in addition
13 to, and do not substitute for, the reporting requirements of
14 mandated reporters, and any other reporting and investigative
15 duties of the developmental center and the department as required
16 by law.

17 (4) This subdivision does not prevent the developmental center
18 from reporting any other criminal act constituting a danger to the
19 health or safety of the residents of the developmental center to the
20 local law enforcement agency.

21 (b) (1) The department shall report to the agency described in
22 subdivision (i) of Section 4900 any of the following incidents
23 involving a resident of a developmental center:

24 (A) Any unexpected or suspicious death, regardless of whether
25 the cause is immediately known.

26 (B) Any allegation of sexual assault, as defined in Section
27 15610.63, in which the alleged perpetrator is a developmental
28 center or department employee or contractor.

29 (C) Any report made to the local law enforcement agency in
30 the jurisdiction in which the facility is located that involves
31 physical abuse, as defined in Section 15610.63, in which a staff
32 member is implicated.

33 (2) A report pursuant to this subdivision shall be made no later
34 than the close of the first business day following the discovery of
35 the reportable incident.

36 (c) The department shall do both of the following:

37 (1) Annually provide written information to every developmental
38 center employee regarding all of the following:

39 (A) The statutory and departmental requirements for mandatory
40 reporting of suspected or known abuse.

1 (B) The rights and protections afforded to individuals' reporting
2 of suspected or known abuse.

3 (C) The penalties for failure to report suspected or known abuse.

4 (D) The telephone numbers for reporting suspected or known
5 abuse or neglect to designated investigators of the department and
6 to local law enforcement agencies.

7 (2) On or before August 1, 2001, in consultation with employee
8 organizations, advocates, consumers, and family members, develop
9 a poster that encourages staff, residents, and visitors to report
10 suspected or known abuse and provides information on how to
11 make these reports.

12 SEC. 205. Section 4648 of the Welfare and Institutions Code
13 is amended to read:

14 4648. In order to achieve the stated objectives of a consumer's
15 individual program plan, the regional center shall conduct activities,
16 including, but not limited to, all of the following:

17 (a) Securing needed services and supports.

18 (1) It is the intent of the Legislature that services and supports
19 assist individuals with developmental disabilities in achieving the
20 greatest self-sufficiency possible and in exercising personal
21 choices. The regional center shall secure services and supports
22 that meet the needs of the consumer, as determined in the
23 consumer's individual program plan, and within the context of the
24 individual program plan, the planning team shall give highest
25 preference to those services and supports which would allow
26 minors with developmental disabilities to live with their families,
27 adult persons with developmental disabilities to live as
28 independently as possible in the community, and that allow all
29 consumers to interact with persons without disabilities in positive,
30 meaningful ways.

31 (2) In implementing individual program plans, regional centers,
32 through the planning team, shall first consider services and supports
33 in natural community, home, work, and recreational settings.
34 Services and supports shall be flexible and individually tailored
35 to the consumer and, where appropriate, his or her family.

36 (3) A regional center may, pursuant to vendorization or a
37 contract, purchase services or supports for a consumer from any
38 individual or agency which the regional center and consumer or,
39 where appropriate, his or her parents, legal guardian, or

1 conservator, or authorized representatives, determines will best
2 accomplish all or any part of that consumer's program plan.

3 (A) Vendorization or contracting is the process for identification,
4 selection, and utilization of service vendors or contractors, based
5 on the qualifications and other requirements necessary in order to
6 provide the service.

7 (B) A regional center may reimburse an individual or agency
8 for services or supports provided to a regional center consumer if
9 the individual or agency has a rate of payment for vendored or
10 contracted services established by the department, pursuant to this
11 division, and is providing services pursuant to an emergency
12 vendorization or has completed the vendorization procedures or
13 has entered into a contract with the regional center and continues
14 to comply with the vendorization or contracting requirements. The
15 director shall adopt regulations governing the vendorization process
16 to be utilized by the department, regional centers, vendors, and
17 the individual or agency requesting vendorization.

18 (C) Regulations shall include, but not be limited to: the vendor
19 application process, and the basis for accepting or denying an
20 application; the qualification and requirements for each category
21 of services that may be provided to a regional center consumer
22 through a vendor; requirements for emergency vendorization;
23 procedures for termination of vendorization; the procedure for an
24 individual or an agency to appeal any vendorization decision made
25 by the department or regional center.

26 (D) A regional center may vendorize a licensed facility for
27 exclusive services to persons with developmental disabilities at a
28 capacity equal to or less than the facility's licensed capacity. A
29 facility already licensed on January 1, 1999, shall continue to be
30 vendorized at their full licensed capacity until the facility agrees
31 to vendorization at a reduced capacity.

32 (E) Effective July 1, 2009, notwithstanding any other provision
33 of law or regulation to the contrary, a regional center shall not
34 newly vendor a State Department of Social Services licensed
35 24-hour residential care facility with a licensed capacity of 16 or
36 more beds, unless the facility qualifies for receipt of federal funds
37 under the Medicaid Program.

38 (4) Notwithstanding subparagraph (B), a regional center may
39 contract or issue a voucher for services and supports provided to
40 a consumer or family at a cost not to exceed the maximum rate of

1 payment for that service or support established by the department.
2 If a rate has not been established by the department, the regional
3 center may, for an interim period, contract for a specified service
4 or support with, and establish a rate of payment for, any provider
5 of the service or support necessary to implement a consumer's
6 individual program plan. Contracts may be negotiated for a period
7 of up to three years, with annual review and subject to the
8 availability of funds.

9 (5) In order to ensure the maximum flexibility and availability
10 of appropriate services and supports for persons with
11 developmental disabilities, the department shall establish and
12 maintain an equitable system of payment to providers of services
13 and supports identified as necessary to the implementation of a
14 ~~consumers'~~ *consumer's* individual program plan. The system of
15 payment shall include provision for a rate to ensure that the
16 provider can meet the special needs of consumers and provide
17 quality services and supports in the least restrictive setting as
18 required by law.

19 (6) The regional center and the consumer, or where appropriate,
20 his or her parents, legal guardian, conservator, or authorized
21 representative, including those appointed pursuant to subdivision
22 (d) of Section 4548, subdivision (b) of Section 4701.6, or
23 subdivision (e) of Section 4705, shall, pursuant to the individual
24 program plan, consider all of the following when selecting a
25 provider of consumer services and supports:

26 (A) A provider's ability to deliver quality services or supports
27 which can accomplish all or part of the consumer's individual
28 program plan.

29 (B) A provider's success in achieving the objectives set forth
30 in the individual program plan.

31 (C) Where appropriate, the existence of licensing, accreditation,
32 or professional certification.

33 (D) The cost of providing services or supports of comparable
34 quality by different providers, if available, shall be reviewed, and
35 the least costly available provider of comparable service, including
36 the cost of transportation, who is able to accomplish all or part of
37 the consumer's individual program plan, consistent with the
38 particular needs of the consumer and family as identified in the
39 individual program plan, shall be selected. In determining the least
40 costly provider, the availability of federal financial participation

1 shall be considered. The consumer shall not be required to use the
2 least costly provider if it will result in the consumer moving from
3 an existing provider of services or supports to more restrictive or
4 less integrated services or supports.

5 (E) The consumer's choice of providers, or, where appropriate,
6 the consumer's ~~parent's~~ *parents'*, legal guardian's, authorized
7 representative's, or conservator's choice of providers.

8 (7) No service or support provided by any agency or individual
9 shall be continued unless the consumer or, where appropriate, his
10 or her parents, legal guardian, or conservator, or authorized
11 representative, including those appointed pursuant to subdivision
12 (d) of Section 4548, subdivision (b) of Section 4701.6, or
13 subdivision (e) of Section 4705, is satisfied and the regional center
14 and the consumer or, when appropriate, the person's parents or
15 legal guardian or conservator agree that planned services and
16 supports have been provided, and reasonable progress toward
17 objectives have been made.

18 (8) Regional center funds shall not be used to supplant the
19 budget of any agency which has a legal responsibility to serve all
20 members of the general public and is receiving public funds for
21 providing those services.

22 (9) (A) A regional center may, directly or through an agency
23 acting on behalf of the center, provide placement in, purchase of,
24 or follow-along services to persons with developmental disabilities
25 in, appropriate community living arrangements, including, but not
26 limited to, support service for consumers in homes they own or
27 lease, foster family placements, health care facilities, and licensed
28 community care facilities. In considering appropriate placement
29 alternatives for children with developmental disabilities, approval
30 by the child's parent or guardian shall be obtained before placement
31 is made.

32 (B) Effective July 1, 2012, notwithstanding any other provision
33 of law or regulation to the contrary, a regional center shall not
34 purchase residential services from a State Department of Social
35 Services licensed 24-hour residential care facility with a licensed
36 capacity of 16 or more beds. This prohibition on regional center
37 purchase of residential services shall not apply to any of the
38 following:

39 (i) A residential facility with a licensed capacity of 16 or more
40 beds that has been approved to participate in the department's

1 Home and Community Based Services Waiver or another existing
2 waiver program or certified to participate in the Medi-Cal program.

3 (ii) A residential facility service provider that has a written
4 agreement and specific plan prior to July 1, 2012, with the
5 vendoring regional center to downsize the existing facility by
6 transitioning its residential services to living arrangements of 15
7 beds or less or restructure the large facility to meet federal
8 Medicaid eligibility requirements on or before June 30, 2013.

9 (iii) A residential facility licensed as a mental health
10 rehabilitation center by the State Department of Mental Health or
11 successor agency under any of the following circumstances:

12 (I) The facility is eligible for Medicaid reimbursement.

13 (II) The facility has a department-approved plan in place by
14 June 30, 2013, to transition to a program structure eligible for
15 federal Medicaid funding, and this transition will be completed by
16 June 30, 2014. The department may grant an extension for the date
17 by which the transition will be completed if the facility
18 demonstrates that it has made significant progress toward transition,
19 and states with specificity the timeframe by which the transition
20 will be completed and the specified steps that will be taken to
21 accomplish the transition. A regional center may pay for the costs
22 of care and treatment of a consumer residing in the facility on June
23 30, 2012, until June 30, 2013, inclusive, and, if the facility has a
24 department-approved plan in place by June 30, 2013, may continue
25 to pay the costs under this subparagraph until June 30, 2014, or
26 until the end of any period during which the department has granted
27 an extension.

28 (III) There is an emergency circumstance in which the regional
29 center determines that it cannot locate alternate federally eligible
30 services to meet the consumer's needs. Under such an emergency
31 circumstance, an assessment shall be completed by the regional
32 center as soon as possible and within 30 days of admission. An
33 individual program plan meeting shall be convened immediately
34 following the assessment to determine the services and supports
35 needed for stabilization and to develop a plan to transition the
36 consumer from the facility into the community. If transition is not
37 expected within 90 days of admission, an individual program plan
38 meeting shall be held to discuss the status of transition and to
39 determine if the consumer is still in need of placement in the
40 facility. Commencing October 1, 2012, this determination shall

1 be made after also considering resource options identified by the
2 statewide specialized resource service. If it is determined that
3 emergency services continue to be necessary, the regional center
4 shall submit an updated transition plan that can cover a period of
5 up to 90 days. In no event shall placements under these emergency
6 circumstances exceed 180 days.

7 (C) (i) Effective July 1, 2012, notwithstanding any other
8 provision of law or regulation to the contrary, a regional center
9 shall not purchase new residential services from institutions for
10 mental disease, as described in Part 5 (commencing with Section
11 5900) of Division 5, for which federal Medicaid funding is not
12 available.

13 (ii) The prohibition described in clause (i) shall not apply to
14 emergencies, as determined by the regional center, when a regional
15 center cannot locate alternate federally eligible services to meet
16 the consumer's needs. As soon as possible within 30 days of
17 admission due to an emergency, an assessment shall be completed
18 by the regional center. An individual program plan meeting shall
19 be convened immediately following the assessment, to determine
20 the services and supports needed for stabilization and to develop
21 a plan to transition the consumer from the facility to the
22 community. If transition is not expected within 90 days of
23 admission, an emergency individual program plan meeting shall
24 be held to discuss the status of transition and to determine if the
25 consumer is still in need of placement in the facility. If emergency
26 services continue to be necessary, the regional center shall submit
27 an updated transition plan to the department for an extension of
28 up to 90 days. Placement shall not exceed 180 days.

29 (iii) Regional centers shall complete a comprehensive
30 assessment of any consumer residing in an institution for mental
31 disease as of July 1, 2012, for which federal Medicaid funding is
32 not available. The comprehensive assessment shall be completed
33 prior to the consumer's next scheduled individual program plan
34 meeting and shall include identification of the services and supports
35 needed and the timeline for identifying or developing those services
36 needed to transition the consumer back to the community. Effective
37 October 1, 2012, the regional center shall also consider resource
38 options identified by the statewide specialized resource service.
39 For each individual program plan meeting convened pursuant to
40 this subparagraph, the clients' rights advocate for the regional

1 center shall be notified of the meeting and may participate in the
2 meeting unless the consumer objects on his or her own behalf.

3 (D) Each person with developmental disabilities placed by the
4 regional center in a community living arrangement shall have the
5 rights specified in this division. These rights shall be brought to
6 the person's attention by any means necessary to reasonably
7 communicate these rights to each resident, provided that, at a
8 minimum, the Director of Developmental Services—~~prepare,~~
9 ~~provide, and require~~ *prepares, provides, and requires* to be clearly
10 posted in all residential facilities and day programs a poster using
11 simplified language and pictures that is designed to be more
12 understandable by persons with cognitive disabilities and that the
13 rights information shall also be available through the regional
14 center to each residential facility and day program in alternative
15 formats, including, but not limited to, other languages, braille, and
16 audio tapes, when necessary to meet the communication needs of
17 consumers.

18 (E) Consumers are eligible to receive supplemental services,
19 including, but not limited to, additional staffing, pursuant to the
20 process described in subdivision (d) of Section 4646. Necessary
21 additional staffing that is not specifically included in the rates paid
22 to the service provider may be purchased by the regional center if
23 the additional staff are in excess of the amount required by
24 regulation and the individual's planning team determines the
25 additional services are consistent with the provisions of the
26 individual program plan. Additional staff should be periodically
27 reviewed by the planning team for consistency with the individual
28 program plan objectives in order to determine if continued use of
29 the additional staff is necessary and appropriate and if the service
30 is producing outcomes consistent with the individual program plan.
31 Regional centers shall monitor programs to ensure that the
32 additional staff is being provided and utilized appropriately.

33 (10) Emergency and crisis intervention services, including, but
34 not limited to, mental health services and behavior modification
35 services, may be provided, as needed, to maintain persons with
36 developmental disabilities in the living arrangement of their own
37 choice. Crisis services shall first be provided without disrupting a
38 person's living arrangement. If crisis intervention services are
39 unsuccessful, emergency housing shall be available in the person's
40 home community. If dislocation cannot be avoided, every effort

1 shall be made to return the person to his or her living arrangement
2 of choice, with all necessary supports, as soon as possible.

3 (11) Among other service and support options, planning teams
4 shall consider the use of paid roommates or neighbors, personal
5 assistance, technical and financial assistance, and all other service
6 and support options which would result in greater self-sufficiency
7 for the consumer and cost-effectiveness to the state.

8 (12) When facilitation as specified in an individual program
9 plan requires the services of an individual, the facilitator shall be
10 of the consumer's choosing.

11 (13) The community support may be provided to assist
12 individuals with developmental disabilities to fully participate in
13 community and civic life, including, but not limited to, programs,
14 services, work opportunities, business, and activities available to
15 persons without disabilities. This facilitation shall include, but not
16 be limited to, any of the following:

17 (A) Outreach and education to programs and services within
18 the community.

19 (B) Direct support to individuals which would enable them to
20 more fully participate in their community.

21 (C) Developing unpaid natural supports when possible.

22 (14) When feasible and recommended by the individual program
23 planning team, for purposes of facilitating better and cost-effective
24 services for consumers or family members, technology, including
25 telecommunication technology, may be used in conjunction with
26 other services and supports. Technology in lieu of a consumer's
27 in-person appearances at judicial proceedings or administrative
28 due process hearings may be used only if the consumer or, when
29 appropriate, the consumer's parent, legal guardian, conservator,
30 or authorized representative, gives informed consent. Technology
31 may be used in lieu of, or in conjunction with, in-person training
32 for providers, as appropriate.

33 (15) Other services and supports may be provided as set forth
34 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

35 (16) Notwithstanding any other provision of law or regulation
36 to the contrary, effective July 1, 2009, regional centers shall not
37 purchase experimental treatments, therapeutic services, or devices
38 that have not been clinically determined or scientifically proven
39 to be effective or safe or for which risks and complications are
40 unknown. Experimental treatments or therapeutic services include

1 experimental medical or nutritional therapy when the use of the
2 product for that purpose is not a general physician practice. For
3 regional center consumers receiving these services as part of their
4 individual program plan (IPP) or individualized family service
5 plan (IFSP) on July 1, 2009, this prohibition shall apply on August
6 1, 2009.

7 (b) (1) Advocacy for, and protection of, the civil, legal, and
8 service rights of persons with developmental disabilities as
9 established in this division.

10 (2) Whenever the advocacy efforts of a regional center to secure
11 or protect the civil, legal, or service rights of any of its consumers
12 prove ineffective, the regional center or the person with
13 developmental disabilities or his or her parents, legal guardian, or
14 other representative may request the area board to initiate action
15 under the provisions defining area board advocacy functions
16 established in this division.

17 (c) The regional center may assist consumers and families
18 directly, or through a provider, in identifying and building circles
19 of support within the community.

20 (d) In order to increase the quality of community services and
21 protect consumers, the regional center shall, when appropriate,
22 take either of the following actions:

23 (1) Identify services and supports that are ineffective or of poor
24 quality and provide or secure consultation, training, or technical
25 assistance services for any agency or individual provider to assist
26 that agency or individual provider in upgrading the quality of
27 services or supports.

28 (2) Identify providers of services or supports that may not be
29 in compliance with local, state, and federal statutes and regulations
30 and notify the appropriate licensing or regulatory authority, or
31 request the area board to investigate the possible noncompliance.

32 (e) When necessary to expand the availability of needed services
33 of good quality, a regional center may take actions that include,
34 but are not limited to, the following:

35 (1) Soliciting an individual or agency by requests for proposals
36 or other means, to provide needed services or supports not presently
37 available.

38 (2) Requesting funds from the Program Development Fund,
39 pursuant to Section 4677, or community placement plan funds

1 designated from that fund, to reimburse the startup costs needed
2 to initiate a new program of services and supports.

3 (3) Using creative and innovative service delivery models,
4 including, but not limited to, natural supports.

5 (f) Except in emergency situations, a regional center shall not
6 provide direct treatment and therapeutic services, but shall utilize
7 appropriate public and private community agencies and service
8 providers to obtain those services for its consumers.

9 (g) Where there are identified gaps in the system of services
10 and supports or where there are identified consumers for whom
11 no provider will provide services and supports contained in his or
12 her individual program plan, the department may provide the
13 services and supports directly.

14 (h) At least annually, regional centers shall provide the
15 consumer, his or her parents, legal guardian, conservator, or
16 authorized representative a statement of services and supports the
17 regional center purchased for the purpose of ensuring that they are
18 delivered. The statement shall include the type, unit, month, and
19 cost of services and supports purchased.

20 SEC. 206. Section 4684.53 of the Welfare and Institutions
21 Code is amended to read:

22 4684.53. (a) The State Department of Developmental Services
23 and the State Department of Social Services shall jointly implement
24 a licensing program to provide special health care and intensive
25 support services to adults in homelike community settings.

26 (b) The program shall be implemented through approved
27 community placement plans, as follows:

28 (1) For closure of Agnews Developmental Center, through the
29 following regional centers:

30 (A) The San Andreas Regional Center.

31 (B) The Regional Center of the East Bay.

32 (C) The Golden Gate Regional Center.

33 (2) All regional centers involved in the closure of the Lanterman
34 Developmental Center, as determined by the State Department of
35 Developmental Services.

36 (3) All regional centers transitioning developmental center
37 residents to placements in the community.

38 (c) Each ARFPSHN shall possess a community care facility
39 license issued pursuant to Article 9 (commencing with Section
40 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code,

1 and shall be subject to the requirements of Chapter 1 (commencing
 2 with Section 80000) of Division 6 of Title 22 of the California
 3 Code of Regulations, except for Article 8 (commencing with
 4 Section 80090).

5 (d) For purposes of this article, a health facility licensed pursuant
 6 to subdivision (e) or (h) of Section 1250 of the Health and Safety
 7 Code may place its licensed bed capacity in voluntary suspension
 8 for the purpose of licensing the facility to operate an ARFPSHN
 9 if the facility is selected to participate pursuant to Section 4684.58.

10 Consistent with subdivision (a) of Section 4684.50, any facility
 11 licensed pursuant to this section shall serve up to five adults. A
 12 facility’s bed capacity shall not be placed in voluntary suspension
 13 until all consumers residing in the facility under the license to be
 14 suspended have been relocated. A consumer shall not be relocated
 15 unless it is reflected in the consumer’s individual program plan
 16 developed pursuant to Sections 4646 and 4646.5.

17 (e) Each ARFPSHN is subject to the requirements of
 18 Subchapters 5 to 9, inclusive, of Chapter 1 of, and Subchapters 2
 19 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code
 20 of Regulations.

21 (f) Each ARFPSHN shall ensure that an operable automatic fire
 22 sprinkler system is installed and maintained.

23 (g) Each ARFPSHN shall have an operable automatic fire
 24 sprinkler system that is approved by the State Fire Marshal and
 25 that meets the National Fire Protection Association (NFPA) 13D
 26 standard for the installation of sprinkler systems in single- and
 27 two-family dwellings and manufactured homes. A local jurisdiction
 28 shall not require a sprinkler system exceeding this standard by
 29 amending the standard or by applying standards other than NFPA
 30 13D. A public water agency shall not interpret this section as
 31 changing the status of a facility from a residence entitled to
 32 residential water rates, nor shall a new meter or larger connection
 33 pipe be required of the facility.

34 (h) Each ARFPSHN shall provide an alternative power source
 35 to operate all functions of the facility for a minimum of six hours
 36 in the event the primary power source is interrupted. The alternative
 37 power source shall comply with the manufacturer’s
 38 recommendations for installation and operation. The alternative
 39 power source shall be maintained in safe operating condition, and
 40 shall be tested every 14 days under the full load condition for a

1 minimum of 10 minutes. Written records of inspection,
2 performance, exercising period, and repair of the alternative power
3 source shall be regularly maintained on the premises and available
4 for inspection by the State Department of Developmental Services.

5 SEC. 207. Section 4792.1 of the Welfare and Institutions Code
6 is repealed.

7 SEC. 208. Section 5008 of the Welfare and Institutions Code
8 is amended to read:

9 5008. Unless the context otherwise requires, the following
10 definitions shall govern the construction of this part:

11 (a) "Evaluation" consists of multidisciplinary professional
12 analyses of a person's medical, psychological, educational, social,
13 financial, and legal conditions as may appear to constitute a
14 problem. Persons providing evaluation services shall be properly
15 qualified professionals and may be full-time employees of an
16 agency providing evaluation services or may be part-time
17 employees or may be employed on a contractual basis.

18 (b) "Court-ordered evaluation" means an evaluation ordered by
19 a superior court pursuant to Article 2 (commencing with Section
20 5200) or by a court pursuant to Article 3 (commencing with Section
21 5225) of Chapter 2.

22 (c) "Intensive treatment" consists of such hospital and other
23 services as may be indicated. Intensive treatment shall be provided
24 by properly qualified professionals and carried out in facilities
25 qualifying for reimbursement under the California Medical
26 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing
27 with Section 14000) of Part 3 of Division 9, or under Title XVIII
28 of the federal Social Security Act and regulations thereunder.
29 Intensive treatment may be provided in hospitals of the United
30 States government by properly qualified professionals. Nothing
31 in this part shall be construed to prohibit an intensive treatment
32 facility from also providing 72-hour treatment and evaluation.

33 (d) "Referral" is referral of persons by each agency or facility
34 providing intensive treatment or evaluation services to other
35 agencies or individuals. The purpose of referral shall be to provide
36 for continuity of care, and may include, but need not be limited
37 to, informing the person of available services, making appointments
38 on the person's behalf, discussing the person's problem with the
39 agency or individual to which the person has been referred,
40 appraising the outcome of referrals, and arranging for personal

1 escort and transportation when necessary. Referral shall be
2 considered complete when the agency or individual to whom the
3 person has been referred accepts responsibility for providing the
4 necessary services. All persons shall be advised of available precare
5 services which prevent initial recourse to hospital treatment or
6 aftercare services which support adjustment to community living
7 following hospital treatment. These services may be provided
8 through county welfare departments, the State Department of State
9 Hospitals, Short-Doyle programs, or other local agencies.

10 Each agency or facility providing evaluation services shall
11 maintain a current and comprehensive file of all community
12 services, both public and private. These files shall contain current
13 agreements with agencies or individuals accepting referrals, as
14 well as appraisals of the results of past referrals.

15 (e) “Crisis intervention” consists of an interview or series of
16 interviews within a brief period of time, conducted by qualified
17 professionals, and designed to alleviate personal or family
18 situations which present a serious and imminent threat to the health
19 or stability of the person or the family. The interview or interviews
20 may be conducted in the home of the person or family, or on an
21 inpatient or outpatient basis with such therapy, or other services,
22 as may be appropriate. Crisis intervention may, as appropriate,
23 include suicide prevention, psychiatric, welfare, psychological,
24 legal, or other social services.

25 (f) “Prepetition screening” is a screening of all petitions for
26 court-ordered evaluation as provided in Article 2 (commencing
27 with Section 5200) of Chapter 2, consisting of a professional
28 review of all petitions; an interview with the petitioner and,
29 whenever possible, the person alleged, as a result of mental
30 disorder, to be a danger to others, or to himself or herself, or to be
31 gravely disabled, to assess the problem and explain the petition;
32 when indicated, efforts to persuade the person to receive, on a
33 voluntary basis, comprehensive evaluation, crisis intervention,
34 referral, and other services specified in this part.

35 (g) “Conservatorship investigation” means investigation by an
36 agency appointed or designated by the governing body of cases in
37 which conservatorship is recommended pursuant to Chapter 3
38 (commencing with Section 5350).

39 (h) (1) For purposes of Article 1 (commencing with Section
40 5150), Article 2 (commencing with Section 5200), and Article 4

1 (commencing with Section 5250) of Chapter 2, and for the purposes
2 of Chapter 3 (commencing with Section 5350), “gravely disabled”
3 means either of the following:

4 (A) A condition in which a person, as a result of a mental
5 disorder, is unable to provide for his or her basic personal needs
6 for food, clothing, or shelter.

7 (B) A condition in which a person; has been found mentally
8 incompetent under Section 1370 of the Penal Code and all of the
9 following facts exist:

10 (i) The indictment or information pending against the defendant
11 at the time of commitment charges a felony involving death, great
12 bodily harm, or a serious threat to the physical well-being of
13 another person.

14 (ii) The indictment or information has not been dismissed.

15 (iii) As a result of *a* mental disorder, the person is unable to
16 understand the nature and purpose of the proceedings taken against
17 him or her and to assist counsel in the conduct of his or her defense
18 in a rational manner.

19 (2) For purposes of Article 3 (commencing with Section 5225)
20 and Article 4 (commencing with Section 5250), of Chapter 2, and
21 for the purposes of Chapter 3 (commencing with Section 5350),
22 “gravely disabled” means a condition in which a person, as a result
23 of impairment by chronic alcoholism, is unable to provide for his
24 or her basic personal needs for food, clothing, or shelter.

25 (3) The term “gravely disabled” does not include ~~mentally~~
26 ~~retarded~~ *intellectually disabled* persons by reason of being ~~mentally~~
27 ~~retarded~~ *intellectually disabled* alone.

28 (i) “Peace officer” means a duly sworn peace officer as that
29 term is defined in Chapter 4.5 (commencing with Section 830) of
30 Title 3 of Part 2 of the Penal Code who has completed the basic
31 training course established by the Commission on Peace Officer
32 Standards and Training, or any parole officer or probation officer
33 specified in Section 830.5 of the Penal Code when acting in relation
34 to cases for which he or she has a legally mandated responsibility.

35 (j) “Postcertification treatment” means an additional period of
36 treatment pursuant to Article 6 (commencing with Section 5300)
37 of Chapter 2.

38 (k) “Court,” unless otherwise specified, means a court of record.

1 (l) “Antipsychotic medication” means any medication
2 customarily prescribed for the treatment of symptoms of psychoses
3 and other severe mental and emotional disorders.

4 (m) “Emergency” means a situation in which action to impose
5 treatment over the person’s objection is immediately necessary
6 for the preservation of life or the prevention of serious bodily harm
7 to the patient or others, and it is impracticable to first gain consent.
8 It is not necessary for harm to take place or become unavoidable
9 prior to treatment.

10 SEC. 209. Section 5328.03 of the Welfare and Institutions
11 Code is amended to read:

12 5328.03. (a) (1) Notwithstanding Section 5328 of this code,
13 Section 3025 of the Family Code, or paragraph (2) of subdivision
14 (c) of Section 56.11 of the Civil Code, a psychotherapist who
15 knows that a minor has been removed from the physical custody
16 of his or her parent or guardian pursuant to Article 6 (commencing
17 with Section 300) to Article 10 (commencing with Section 360),
18 inclusive, of Chapter 2 of Part 1 of Division 2 shall not release
19 mental health records of the minor patient and shall not disclose
20 mental health information about that minor patient based upon an
21 authorization to release those records or the information signed
22 by the minor’s parent or guardian. This restriction shall not apply
23 if the juvenile court has issued an order authorizing the parent or
24 guardian to sign an authorization for the release of the records or
25 information after finding that such an order would not be
26 detrimental to the minor patient.

27 (2) Notwithstanding Section 5328 of this code or Section 3025
28 of the Family Code, a psychotherapist who knows that a minor
29 has been removed from the physical custody of his or her parent
30 or guardian pursuant to Article 6 (commencing with Section 300)
31 to Article 10 (commencing with Section 360), inclusive, of Chapter
32 2 of Part 1 of Division 2 shall not allow the parent or guardian to
33 inspect or obtain copies of mental health records of the minor
34 patient. This restriction shall not apply if the juvenile court has
35 issued an order authorizing the parent or guardian to inspect or
36 obtain copies of the mental health records of the minor patient
37 after finding that such an order would not be detrimental to the
38 minor patient.

39 (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

For the Best Interest and Protection of

15

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 _____, 20__, and an order of detention
27 issued thereon by a judge of the superior court of this county, and a return of
28 the said order:

26

27

28

And it further appearing that the provisions of Sections 6250 to 6254,
29 inclusive, of the Welfare and Institutions Code have been complied with;

29

30

And it further appearing that Dr. _____ and Dr. _____, two regularly
31 appointed and qualified medical examiners of this county, have made a
32 personal examination of the alleged _____, and have made and signed the
33 certificate of the medical examiners, which certificate is attached hereto and
34 made a part hereof;

31

32

33

34

35

Now therefore, after examination and certificate made as aforesaid, the court
36 is satisfied and believes that _____ is a _____ and is so _____.

36

37

It is ordered, adjudged, and decreed:

38

That _____ is a _____ and that _he

39

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 Department of Veterans Affairs or
8 other agency of the United States, to wit: _____ at _____.

9 It is further ordered and directed that _____ of this county, take, convey,
10 and deliver _____ to the proper authorities of the hospital or establishment
11 designated herein to be cared for as provided by law.

12 Dated this _____ day of _____, 20__.

13 _____
14 Judge of the Superior Court

15 * Strike out when not applicable.

16
17 SEC. 211. Section 7295 of the Welfare and Institutions Code
18 is amended to read:

19 7295. (a) To ensure its safety and security, a state hospital that
20 is under the jurisdiction of the State Department of State Hospitals,
21 as listed in Section 4100, may develop a list of items that are
22 deemed contraband and prohibited on hospital grounds and control
23 and eliminate contraband on hospital grounds.

24 (b) The State Department of State Hospitals shall develop a list
25 of items that shall be deemed contraband at every state hospital.

26 (c) A state hospital shall form a contraband committee,
27 comprised of hospital management and employees designated by
28 the hospital’s director, to develop the list of contraband items. The
29 committee shall develop the list with the participation of patient
30 representatives, or the patient government of the hospital, if one
31 is available, and the Office of Patients’ Rights.

32 (d) Each hospital’s list of contraband items developed pursuant
33 to subdivision (a), and the statewide list of contraband items
34 developed pursuant to subdivision (b), are subject to review and
35 approval by the Director of State Hospitals or his or her designee.

36 (e) A list of contraband items developed pursuant to subdivision
37 (a) shall be updated and subject to review and approval by the
38 director of the department, or his or her designee, no less often
39 than every six months.

1 (f) If an item presents an emergent danger to the safety and
2 security of a facility, the item may be placed immediately on a
3 contraband list by the Director of State Hospitals or the executive
4 director of the state hospital, but this placement shall be reviewed
5 by the contraband committee, if applicable, and approved by the
6 Director of State Hospitals or his or her designee within six weeks.

7 (g) The lists of contraband items developed pursuant to this
8 section shall be posted prominently in every unit of the hospital
9 and throughout the hospital, and provided to a patient upon request.

10 (h) The lists of contraband items developed pursuant to this
11 section shall be posted on the hospital's Internet Web site.

12 (i) For the purposes of this section, "contraband" means
13 materials, articles, or goods that a patient is prohibited from having
14 in his or her possession because the materials, articles, or goods
15 present a risk to the safety and security of the facility.

16 (j) Notwithstanding Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
18 the hospital and the department may implement, interpret, or make
19 specific this section without taking regulatory action.

20 SEC. 212. Section 12306 of the Welfare and Institutions Code,
21 as amended by Section 36 of Chapter 439 of the Statutes of 2012,
22 is amended to read:

23 12306. (a) The state and counties shall share the annual cost
24 of providing services under this article as specified in this section.

25 (b) Except as provided in subdivisions (c) and (d), the state shall
26 pay to each county, from the General Fund and any federal funds
27 received under Title XX of the federal Social Security Act available
28 for that purpose, 65 percent of the cost of providing services under
29 this article, and each county shall pay 35 percent of the cost of
30 providing those services.

31 (c) For services eligible for federal funding pursuant to Title
32 XIX of the federal Social Security Act under the Medi-Cal program
33 and, except as provided in subdivisions (b) and (d), the state shall
34 pay to each county, from the General Fund and any funds available
35 for that purpose, 65 percent of the nonfederal cost of providing
36 services under this article, and each county shall pay 35 percent
37 of the nonfederal cost of providing those services.

38 (d) (1) For the period of July 1, 1992, to June 30, 1994,
39 inclusive, the state's share of the cost of providing services under

1 this article shall be limited to the amount appropriated for that
2 purpose in the annual Budget Act.

3 (2) The department shall restore the funding reductions required
4 by subdivision (c) of Section 12301, fully or in part, as soon as
5 administratively practicable, if the amount appropriated from the
6 General Fund for the 1992–93 fiscal year under this article is
7 projected to exceed the sum of the General Fund expenditures
8 under Section 14132.95 and the actual General Fund expenditures
9 under this article for the 1992–93 fiscal year. The entire amount
10 of the excess shall be applied to the restoration. Services shall not
11 be restored under this paragraph until the Department of Finance
12 has determined that the restoration of services would result in no
13 additional costs to the state or to the counties relative to the
14 combined state appropriation and county matching funds for
15 in-home supportive services under this article in the 1992–93 fiscal
16 year.

17 (e) This section shall become operative only if Chapter 45 of
18 the Statutes of 2012 is deemed inoperative pursuant to Section 15
19 of that chapter.

20 SEC. 213. Section 12306 of the Welfare and Institutions Code,
21 as amended by Section 37 of Chapter 439 of the Statutes of 2012,
22 is amended to read:

23 12306. (a) The state and counties shall share the annual cost
24 of providing services under this article as specified in this section.

25 (b) Except as provided in subdivisions (c) and (d), the state shall
26 pay to each county, from the General Fund and any federal funds
27 received under Title XX of the federal Social Security Act available
28 for that purpose, 65 percent of the cost of providing services under
29 this article, and each county shall pay 35 percent of the cost of
30 providing those services.

31 (c) For services eligible for federal funding pursuant to Title
32 XIX of the federal Social Security Act under the Medi-Cal program
33 and, except as provided in subdivisions (b) and (d), the state shall
34 pay to each county, from the General Fund and any funds available
35 for that purpose, 65 percent of the nonfederal cost of providing
36 services under this article, and each county shall pay 35 percent
37 of the nonfederal cost of providing those services.

38 (d) (1) For the period of July 1, 1992, to June 30, 1994,
39 inclusive, the state’s share of the cost of providing services under

1 this article shall be limited to the amount appropriated for that
2 purpose in the annual Budget Act.

3 (2) The department shall restore the funding reductions required
4 by subdivision (c) of Section 12301, fully or in part, as soon as
5 administratively practicable, if the amount appropriated from the
6 General Fund for the 1992–93 fiscal year under this article is
7 projected to exceed the sum of the General Fund expenditures
8 under Section 14132.95 and the actual General Fund expenditures
9 under this article for the 1992–93 fiscal year. The entire amount
10 of the excess shall be applied to the restoration. Services shall not
11 be restored under this paragraph until the Department of Finance
12 has determined that the restoration of services would result in no
13 additional costs to the state or to the counties relative to the
14 combined state appropriation and county matching funds for
15 in-home supportive services under this article in the 1992–93 fiscal
16 year.

17 (e) For the period during which Section 12306.15 is operative,
18 each county's share of the costs of providing services pursuant to
19 this article specified in subdivisions (b) and (c) shall remain, but
20 the County IHSS Maintenance of Effort pursuant to Section
21 12306.15 shall be in lieu of that share.

22 (f) This section shall become inoperative only if Chapter 45 of
23 the Statutes of 2012 is deemed inoperative pursuant to Section 15
24 of that chapter.

25 SEC. 214. Section 14005.27 of the Welfare and Institutions
26 Code is amended to read:

27 14005.27. (a) Individuals enrolled in the Healthy Families
28 Program pursuant to Part 6.2 (commencing with Section 12693)
29 of Division 2 of the Insurance Code on June 27, 2012, and who
30 are determined eligible to receive benefits pursuant to subdivisions
31 (a) and (b) of Section 14005.26, shall be transitioned into Medi-Cal,
32 pursuant to this section.

33 (b) To the extent necessary and for the purposes of carrying out
34 the provisions of this section, in performing initial eligibility
35 determinations for children enrolled in the Healthy Families
36 Program pursuant to Part 6.2 (commencing with Section 12693)
37 of Division 2 of the Insurance Code, the department shall adopt
38 the option pursuant to Section 1902(e)(13) of the federal Social
39 Security Act (42 U.S.C. Sec. 1396a(e)(13)) to allow the department
40 or county human services departments to rely upon findings made

1 by the Managed Risk Medical Insurance Board (MRMIB)
2 regarding one or more components of eligibility. The department
3 shall seek federal approval of a state plan amendment to implement
4 this subdivision.

5 (c) To the extent necessary, the department shall seek federal
6 approval of a state plan amendment or a waiver to provide
7 presumptive eligibility for the optional targeted low-income
8 category of eligibility pursuant to Section 14005.26 for individuals
9 presumptively eligible for or enrolled in the Healthy Families
10 Program pursuant to Part 6.2 (commencing with Section 12693)
11 of Division 2 of the Insurance Code. The presumptive eligibility
12 shall be based upon the most recent information contained in the
13 individual's Healthy Families Program file. The timeframe for the
14 presumptive eligibility shall begin no sooner than January 1, 2013,
15 and shall continue until a determination of Medi-Cal eligibility is
16 made, which determination shall be performed within one year of
17 the individual's Healthy Families Program annual review date.

18 (d) (1) The California Health and Human Services Agency, in
19 consultation with the Managed Risk Medical Insurance Board, the
20 State Department of Health Care Services, the Department of
21 Managed Health Care, and diverse stakeholders groups, shall
22 provide the fiscal and policy committees of the Legislature with
23 a strategic plan for the transition of the Healthy Families Program
24 pursuant to this section by no later than October 1, 2012. This
25 strategic plan shall, at a minimum, address all of the following:

26 (A) State, county, and local administrative components which
27 facilitate a successful subscriber transition such as communication
28 and outreach to subscribers and applicants, eligibility processing,
29 enrollment, communication, and linkage with health plan providers,
30 payments of applicable premiums, and overall systems operation
31 functions.

32 (B) Methods and processes for diverse stakeholder engagement
33 throughout the entire transition, including all phases of the
34 transition.

35 (C) State monitoring of managed care health plans' performance
36 and accountability for provision of services, and initial quality
37 indicators for children and adolescents transitioning to Medi-Cal.

38 (D) Health care and dental delivery system components such
39 as standards for informing and enrollment materials, network
40 adequacy, performance measures and metrics, fiscal solvency, and

1 related factors that ensure timely access to quality health and dental
2 care for children and adolescents transitioning to Medi-Cal.

3 (E) Inclusion of applicable operational steps, timelines, and key
4 milestones.

5 (F) A time certain for the transfer of the Healthy Families
6 Advisory Board, as described in Part 6.2 (commencing with Section
7 12693) of Division 2 of the Insurance Code, to the State
8 Department of Health Care Services.

9 (2) The intent of this strategic plan is to serve as an overall guide
10 for the development of each plan for each phase of this transition,
11 pursuant to paragraphs (1) to (8), inclusive, of subdivision (e), to
12 ensure clarity and consistency in approach and subscriber
13 continuity of care. This strategic plan may also be updated by the
14 California Health and Human Services Agency as applicable and
15 provided to the Legislature upon completion.

16 (e) (1) The department shall transition individuals from the
17 Healthy Families Program to the Medi-Cal program in four phases,
18 as follows:

19 (A) Phase 1. Individuals enrolled in a Healthy Families Program
20 health plan that is a Medi-Cal managed care health plan shall be
21 enrolled in the same plan no earlier than January 1, 2013, pursuant
22 to the requirements of this section and Section 14011.6, and to the
23 extent the individual is otherwise eligible under this chapter and
24 Chapter 8 (commencing with Section 14200).

25 (B) Phase 2. Individuals enrolled in a Healthy Families Program
26 managed care health plan that is a subcontractor of a Medi-Cal
27 managed health care plan, to the extent possible, shall be enrolled
28 into a Medi-Cal managed health care plan that includes the
29 individuals' current plan pursuant to the requirements of this
30 section and Section 14011.6, and to the extent the individuals are
31 otherwise eligible under this chapter and Chapter 8 (commencing
32 with Section 14200). The transition of individuals described in
33 this subparagraph shall begin no earlier than April 1, 2013.

34 (C) Phase 3. Individuals enrolled in a Healthy Families Program
35 plan that is not a Medi-Cal managed care plan and does not contract
36 or subcontract with a Medi-Cal managed care plan shall be enrolled
37 in a Medi-Cal managed care plan in that county. Enrollment shall
38 include consideration of the individuals' primary care providers
39 pursuant to the requirements of this section and Section 14011.6,
40 and to the extent the individuals are otherwise eligible under this

1 chapter and Chapter 8 (commencing with Section 14200). The
2 transition of individuals described in this subparagraph shall begin
3 no earlier than August 1, 2013.

4 (D) Phase 4.

5 (i) Individuals residing in a county that is not a Medi-Cal
6 managed care county shall be provided services under the Medi-Cal
7 fee-for-service delivery system, subject to clause (ii). The transition
8 of individuals described in this subparagraph shall begin no earlier
9 than September 1, 2013.

10 (ii) In the event the department creates a managed health care
11 system in the counties described in clause (i), individuals residing
12 in those counties shall be enrolled in managed health care plans
13 pursuant to this chapter and Chapter 8 (commencing with Section
14 14200).

15 (2) For the transition of individuals pursuant to subparagraphs
16 (A), (B), (C), and (D) of paragraph (1), implementation plans shall
17 be developed to ensure state and county systems readiness, health
18 plan network adequacy, and continuity of care with the goal of
19 ensuring there is no disruption of service and there is continued
20 access to coverage for all transitioning individuals. If an individual
21 is not retained with his or her current primary care provider, the
22 implementation plan shall require the managed care plan to report
23 to the department as to how continuity of care is being provided.
24 Transition of individuals described in subparagraphs (A), (B), (C),
25 and (D) of paragraph (1) shall not occur until 90 days after the
26 department has submitted an implementation plan to the fiscal and
27 policy committees of the Legislature. The implementation plans
28 shall include, but not be limited to, information on health and
29 dental plan network adequacy, continuity of care, eligibility and
30 enrollment requirements, consumer protections, and family
31 notifications.

32 (3) The following requirements shall be in place prior to
33 implementation of Phase 1, and shall be required for all phases of
34 the transition:

35 (A) Managed care plan performance measures shall be integrated
36 and coordinated with the Healthy Families Program performance
37 standards including, but not limited to, child-only Healthcare
38 Effectiveness Data and Information Set (HEDIS) measures, and
39 measures indicative of performance in serving children and
40 adolescents. These performance measures shall also be in

1 compliance with all performance requirements under the
2 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
3 (commencing with Section 1340) of Division 2 of the Health and
4 Safety Code) and existing Medi-Cal managed care performance
5 measurements and standards as set forth in this chapter and Chapter
6 8 (commencing with Section 14200); of Title 22 of the California
7 Code of Regulations, and all-plan letters, including, but not limited
8 to, network adequacy and linguistic services, and shall be met prior
9 to the transition of individuals pursuant to Phase 1.

10 (B) Medi-Cal managed care health plans shall allow enrollees
11 to remain with their current primary care provider. If an individual
12 does not remain with the current primary care provider, the plan
13 shall report to the department as to how continuity of care is being
14 provided.

15 (4) (A) As individuals are transitioned pursuant to
16 subparagraphs (A), (B), (C), and (D) of paragraph (1), for
17 individuals residing in all counties except the Counties of
18 Sacramento and Los Angeles, their dental coverage shall transition
19 to fee-for-service dental coverage and may be provided by their
20 current provider if the provider is a Medi-Cal fee-for-service dental
21 provider.

22 (B) For individuals residing in the County of Sacramento, their
23 dental coverage shall continue to be provided by their current
24 dental managed care plan if their plan is a Medi-Cal dental
25 managed care plan. If their plan is not a Medi-Cal dental managed
26 care plan, they shall select a Medi-Cal dental managed care plan.
27 If they do not choose a Medi-Cal dental managed care plan, they
28 shall be assigned to a plan with preference to a plan with which
29 their current provider is a contracted provider. Any children in the
30 Healthy Families Program transitioned into Medi-Cal dental
31 managed care plans shall also have access to the beneficiary dental
32 exception process, pursuant to Section 14089.09. Further, the
33 Sacramento advisory committee, established pursuant to Section
34 14089.08, shall be consulted regarding the transition of children
35 in the Healthy Families Program into Medi-Cal dental managed
36 care plans.

37 (C) (i) For individuals residing in the County of Los Angeles,
38 for purposes of continuity of care, their dental coverage shall
39 continue to be provided by their current dental managed care plan
40 if that plan is a Medi-Cal dental managed care plan. If their plan

1 is not a Medi-Cal dental managed care plan, they may select a
2 Medi-Cal dental managed care plan or choose to move into
3 Medi-Cal fee-for-service dental coverage.

4 (ii) It is the intent of the Legislature that children transitioning
5 to Medi-Cal under this section have a choice in dental coverage,
6 as provided under existing law.

7 (5) Dental health plan performance measures and benchmarks
8 shall be in accordance with Section 14459.6.

9 (6) Medi-Cal managed care health and dental plans shall report
10 to the department, as frequently as specified by the department,
11 specified information pertaining to transition implementation,
12 enrollees, and providers, including, but not limited to, grievances
13 related to access to care, continuity of care requests and outcomes,
14 and changes to provider networks, including provider enrollment
15 and disenrollment changes. The plans shall report this information
16 by county, and in the format requested by the department.

17 (7) The department may develop supplemental implementation
18 plans to separately account for the transition of individuals from
19 the Healthy Families Program to specific Medi-Cal delivery
20 systems.

21 (8) The department shall consult with the Legislature and
22 stakeholders, including, but not limited to, consumers, families,
23 consumer advocates, counties, providers, and health and dental
24 plans, in the development of implementation plans described in
25 paragraph (3) for individuals who are transitioned to Medi-Cal in
26 Phase 2, Phase 3, and Phase 4, as described in subparagraphs (B),
27 (C), and (D) of paragraph (1).

28 (9) (A) The department shall consult and collaborate with the
29 Department of Managed Health Care in assessing Medi-Cal
30 managed care health plan network adequacy in accordance with
31 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
32 2.2 (commencing with Section 1340) of Division 2 of the Health
33 and Safety Code) for purposes of the developed transition plans
34 pursuant to paragraph (2) for each of the phases.

35 (B) For purposes of individuals transitioning in Phase 1, as
36 described in subparagraph (A) of paragraph (1), network adequacy
37 shall be assessed as described in this paragraph and findings from
38 this assessment shall be provided to the fiscal and appropriate
39 policy committees of the Legislature 60 days prior to the effective
40 date of implementing this transition.

1 (10) The department shall provide monthly status reports to the
2 fiscal and policy committees of the Legislature on the transition
3 commencing no later than February 15, 2013. This monthly status
4 transition report shall include, but not be limited to, information
5 on health plan grievances related to access to care, continuity of
6 care requests and outcomes, changes to provider networks,
7 including provider enrollment and disenrollment changes, and
8 eligibility performance standards pursuant to subdivision (n). A
9 final comprehensive report shall be provided within 90 days after
10 completion of the last phase of transition.

11 (f) (1) The department and MRMIB shall work collaboratively
12 in the development of notices for individuals transitioned pursuant
13 to paragraph (1) of subdivision (e).

14 (2) The state shall provide written notice to individuals enrolled
15 in the Healthy Families Program of their transition to the Medi-Cal
16 program at least 60 days prior to the transition of individuals in
17 Phase 1, as described in subparagraph (A) of paragraph (1) of
18 subdivision (e), and at least 90 days prior to transition of
19 individuals in Phases 2, 3, and 4, as described in subparagraphs
20 (B), (C), and (D) of paragraph (1) of subdivision (e).

21 (3) Notices developed pursuant to this subdivision shall ensure
22 individuals are informed regarding the transition, including, but
23 not limited to, how individuals' systems of care may change, when
24 the changes will occur, and whom they can contact for assistance
25 when choosing a Medi-Cal managed care plan, if applicable,
26 including a toll-free telephone number, and with problems they
27 may encounter. The department shall consult with stakeholders
28 regarding notices developed pursuant to this subdivision. These
29 notices shall be developed using plain language, and written
30 translation of the notices shall be available for those who are
31 limited English proficient or non-English speaking in all Medi-Cal
32 threshold languages.

33 (4) The department shall designate department liaisons
34 responsible for the coordination of the Healthy Families Program
35 and may establish a children's-focused section for this purpose
36 and to facilitate the provision of health care services for children
37 enrolled in Medi-Cal.

38 (5) The department shall provide a process for ongoing
39 stakeholder consultation and make information publicly available,

1 including the achievement of benchmarks, enrollment data,
2 utilization data, and quality measures.

3 (g) (1) In order to aid the transition of Healthy Families Program
4 enrollees, MRMIB, on the effective date of the act that added this
5 section and continuing through the completion of the transition of
6 Healthy Families Program enrollees to the Medi-Cal program,
7 shall begin requesting and collecting from health plans contracting
8 with MRMIB pursuant to Part 6.2 (commencing with Section
9 12693) of Division 2 of the Insurance Code, information about
10 each health plan's provider network, including, but not limited to,
11 the primary care and all specialty care providers assigned to
12 individuals enrolled in the health plan. MRMIB shall obtain this
13 information in a manner that coincides with the transition activities
14 described in subdivision (d), and shall provide all of the collected
15 information to the department within 60 days of the department's
16 request for this information to ensure timely transitions of ~~the~~
17 Healthy Family ~~Programs~~ *Program* enrollees.

18 (2) The department shall analyze the existing Healthy Families
19 Program delivery system network and the Medi-Cal fee-for-service
20 provider networks, including, but not limited to, Medi-Cal dental
21 providers, to determine overlaps of the provider networks in each
22 county for which there are no Medi-Cal managed care plans or
23 dental managed care plans. To the extent there is a lack of existing
24 Medi-Cal fee-for-service providers available to serve the Healthy
25 Families Program enrollees, the department shall work with the
26 Healthy Families Program provider community to encourage
27 participation of those providers in the Medi-Cal program, and
28 develop a streamlined process to enroll them as Medi-Cal
29 providers.

30 (3) (A) MRMIB, within 60 days of a request by the department,
31 shall provide the department any data, information, or record
32 concerning the Healthy Families Program as is necessary to
33 implement the transition of enrollment required pursuant to this
34 section.

35 (B) Notwithstanding any other provision of law, all of the
36 following shall apply:

37 (i) The term "data, information, or record" shall include, but is
38 not limited to, personal information as defined in Section 1798.3
39 of the Civil Code.

1 (ii) Any data, information, or record shall be exempt from
2 disclosure under the California Public Records Act (Chapter 3.5
3 (commencing with Section 6250) of Division 7 of Title 1 of the
4 Government Code) and any other law, to the same extent that it
5 was exempt from disclosure or privileged prior to the provision
6 of the data, information, or record to the department.

7 (iii) The provision of any such data, information, or record to
8 the department shall not constitute a waiver of any evidentiary
9 privilege or exemption from disclosure.

10 (iv) The department shall keep all data, information, or records
11 provided by MRMIB confidential to the full extent permitted by
12 law, including, but not limited to, the California Public Records
13 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
14 of Title 1 of the Government Code), and consistent with MRMIB's
15 contractual obligations to keep the data, information, or records
16 confidential.

17 (h) This section shall be implemented only to the extent that all
18 necessary federal approvals and waivers have been obtained and
19 the enhanced rate of federal financial participation under Title XXI
20 of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.)
21 is available for targeted low-income children pursuant to that act.

22 (i) (1) The department shall exercise the option pursuant to
23 Section 1916A of the federal Social Security Act (42 U.S.C. Sec.
24 1396o-1) to impose premiums for individuals described in
25 subdivision (a) of Section 14005.26 whose family income has been
26 determined to be above 150 percent and up to and including 200
27 percent of the federal poverty level, after application of the income
28 disregard pursuant to subdivision (b) of Section 14005.26. The
29 department shall not impose premiums under this subdivision for
30 individuals described in subdivision (a) of Section 14005.26 whose
31 family income has been determined to be at or below 150 percent
32 of the federal poverty level, after application of the income
33 disregard pursuant to subdivision (b) of Section 14005.26. The
34 department shall obtain federal approval for the implementation
35 of this subdivision.

36 (2) All premiums imposed under this section shall equal the
37 family contributions described in paragraph (2) of subdivision (d)
38 of Section 12693.43 of the Insurance Code and shall be reduced
39 in conformity with subdivisions (e) and (f) of Section 12693.43
40 of the Insurance Code.

1 (j) The department shall not enroll targeted low-income children
2 described in this section in the Medi-Cal program until all
3 necessary federal approvals and waivers have been obtained, or
4 no sooner than January 1, 2013.

5 (k) (1) To the extent the new budget methodology pursuant to
6 paragraph (6) of subdivision (a) of Section 14154 is not fully
7 operational, for the purposes of implementing this section, for
8 individuals described in subdivision (a) whose family income has
9 been determined to be at or below 150 percent of the federal
10 poverty level, as determined pursuant to subdivision (b), the
11 department shall utilize the budgeting methodology for this
12 population as contained in the November 2011 Medi-Cal Local
13 Assistance Estimate for Medi-Cal county administration costs for
14 eligibility operations.

15 (2) For purposes of implementing this section, the department
16 shall include in the Medi-Cal Local Assistance Estimate an amount
17 for Medi-Cal eligibility operations associated with the transfer of
18 Healthy Families Program enrollees eligible pursuant to subdivision
19 (a) of Section 14005.26 and whose family income is determined
20 to be above 150 percent and up to and including 200 percent of
21 the federal poverty level, after application of the income disregard
22 pursuant to subdivision (b) of Section 14005.26. In developing an
23 estimate for this activity, the department shall consider the
24 projected number of final eligibility determinations each county
25 will process and projected county costs. Within 60 days of the
26 passage of the annual Budget Act, the department shall notify each
27 county of their allocation for this activity based upon the amount
28 allotted in the annual Budget Act for this purpose.

29 (l) When the new budget methodology pursuant to paragraph
30 (6) of subdivision (a) of Section 14154 is fully operational, the
31 new budget methodology shall be utilized to reimburse counties
32 for eligibility determinations made for individuals pursuant to this
33 section.

34 (m) Except as provided in subdivision (b), eligibility
35 determinations and annual redeterminations made pursuant to this
36 section shall be performed by county eligibility workers.

37 (n) In conducting the eligibility determinations for individuals
38 pursuant to this section and Section 14005.26, the following
39 reporting and performance standards shall apply to all counties:

1 (1) Counties shall report to the department, in a manner and for
2 a time period determined by the department, in consultation with
3 the County Welfare Directors Association, the number of
4 applications processed on a monthly basis, a breakout of the
5 applications based on income using the federal percentage of
6 poverty levels, the final disposition of each application, including
7 information on the approved Medi-Cal program, if applicable, and
8 the average number of days it took to make the final eligibility
9 determination for applications submitted directly to the county and
10 from the single point of entry (SPE).

11 (2) Notwithstanding any other law, the following performance
12 standards shall be applied to counties for eligibility determinations
13 for individuals eligible pursuant to this section:

14 (A) For children whose applications are received by the county
15 human services department from the SPE, the following standards
16 shall apply:

17 (i) Applications for children who are granted accelerated
18 enrollment by the SPE shall be processed according to the
19 timeframes specified in subdivision (d) of Section 14154.

20 (ii) Applications for children who are not granted accelerated
21 enrollment by the SPE due to the existence of an already active
22 Medi-Cal case shall be processed according to the timeframes
23 specified in subdivision (d) of Section 14154.

24 (iii) For applications for children who are not described in clause
25 (i) or (ii), 90 percent shall be processed within 10 working days
26 of being received, complete and without client errors.

27 (iv) If an application described in this section also contains
28 adults, and the adult applicants are required to submit additional
29 information beyond the information provided for the children, the
30 county shall process the eligibility for the child or children without
31 delay, consistent with this section while gathering the necessary
32 information to process eligibility for the adults.

33 (B) The department, in consultation with the County Welfare
34 Directors Association, shall develop reporting requirements for
35 the counties to provide regular data to the state regarding the
36 timeliness and outcomes of applications processed by the counties
37 that are received from the SPE.

38 (C) Performance thresholds and corrective action standards as
39 set forth in Section 14154 shall apply.

1 (D) For applications received directly ~~into~~ *by* the county, these
2 applications shall be processed by the counties in accordance with
3 the performance standards established under subdivision (d) of
4 Section 14154.

5 (3) This subdivision shall be implemented no sooner than
6 January 1, 2013.

7 (4) Twelve months after implementation of this section pursuant
8 to subdivision (e), the department shall provide enrollment
9 information regarding individuals determined eligible pursuant to
10 subdivision (a) to the fiscal and appropriate policy committees of
11 the Legislature.

12 (o) (1) Notwithstanding Chapter 3.5 (commencing with Section
13 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
14 for purposes of this transition, the department, without taking any
15 further regulatory action, shall implement, interpret, or make
16 specific this section by means of all-county letters, plan letters,
17 plan or provider bulletins, or similar instructions until the time
18 regulations are adopted. It is the intent of the Legislature that the
19 department be allowed temporary authority as necessary to
20 implement program changes until completion of the regulatory
21 process.

22 (2) To the extent otherwise required by Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code, the department shall adopt emergency
25 regulations implementing this section no later than July 1, 2014.
26 The department may thereafter readopt the emergency regulations
27 pursuant to that chapter. The adoption and readoption, by the
28 department, of regulations implementing this section shall be
29 deemed to be an emergency and necessary to avoid serious harm
30 to the public peace, health, safety, or general welfare for purposes
31 of Sections 11346.1 and 11349.6 of the Government Code, and
32 the department is hereby exempted from the requirement that it
33 describe facts showing the need for immediate action and from
34 review by the Office of Administrative Law.

35 (p) To implement this section, the department may enter into
36 and continue contracts with the Healthy Families Program
37 administrative vendor, for the purposes of implementing and
38 maintaining the necessary systems and activities for providing
39 health care coverage to optional targeted low-income children in
40 the Medi-Cal program for purposes of accelerated enrollment

1 application processing by single point of entry,
2 noneligibility-related case maintenance and premium collection,
3 maintenance of the Health-E-App Web portal, call center staffing
4 and operations, certified application assistant services, and
5 reporting capabilities. To further implement this section, the
6 department may also enter into a contract with the Health Care
7 Options Broker of the department for purposes of managed care
8 enrollment activities. The contracts entered into or amended under
9 this section may initially be completed on a noncompetitive bid
10 basis and are exempt from the Public Contract Code. Contracts
11 thereafter shall be entered into or amended on a competitive bid
12 basis and shall be subject to the Public Contract Code.

13 (q) (1) If at any time the director determines that this section
14 or any part of this section may jeopardize the state's ability to
15 receive federal financial participation under the federal Patient
16 Protection and Affordable Care Act (Public Law 111-148), or any
17 amendment or extension of that act, or any additional federal funds
18 that the director, in consultation with the Department of Finance,
19 determines would be advantageous to the state, the director shall
20 give notice to the fiscal and policy committees of the Legislature
21 and to the Department of Finance. After giving notice, this section
22 or any part of this section shall become inoperative on the date
23 that the director executes a declaration stating that the department
24 has determined, in consultation with the Department of Finance,
25 that it is necessary to cease to implement this section or a part or
26 parts thereof in order to receive federal financial participation, any
27 increase in the federal medical assistance percentage available on
28 or after October 1, 2008, or any additional federal funds that the
29 director, in consultation with the Department of Finance, has
30 determined would be advantageous to the state.

31 (2) The director shall retain the declaration described in
32 paragraph (1), shall provide a copy of the declaration to the
33 Secretary of the State, the Secretary of the Senate, the Chief Clerk
34 of the Assembly, and the Legislative Counsel, and shall post the
35 declaration on the department's Internet Web site.

36 (3) In the event that the director makes a determination under
37 paragraph (1) and this section ceases to be implemented, the
38 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 an applicant or to a provider for the purpose of determining
6 whether enrollment, continued enrollment, or certification is
7 warranted, or as necessary for the administration of the Medi-Cal
8 program. At the time of the visit, the applicant or provider shall
9 be required to demonstrate an established place of business
10 appropriate and adequate for the services billed or claimed to the
11 Medi-Cal program, as relevant to his or her scope of practice, as
12 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 licensings 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 subdivision shall be in
6 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 an applicant or to a provider for the purpose of determining
19 whether enrollment, continued enrollment, or certification is
20 warranted, or as necessary for the administration of the Medi-Cal
21 program. If an unannounced site visit is conducted by the
22 department for any enrolled provider, the provider shall permit
23 access to any and all of their provider locations. If a provider fails
24 to permit access for any site visit, the application shall be denied
25 and the provider shall be subject to deactivation. At the time of
26 the visit, the applicant or provider shall be required to demonstrate
27 an established place of business appropriate and adequate for the
28 services billed or claimed to the Medi-Cal program, as relevant to
29 his or her scope of practice, as indicated by, but not limited to, the
30 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 subdivision shall be in
24 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 *the* improved
39 provision of Medi-Cal and Medicare services that reduces the cost
40 of those services. Medi-Cal services include long-term services

1 and supports as defined in Section 14186.1, behavioral health
2 services, and any additional services offered by the demonstration
3 site.

4 (3) “Demonstration site” means a managed care health plan that
5 is selected to participate in the demonstration project under the
6 capitated payment model.

7 (4) “Dual eligible beneficiary” means an individual 21 years of
8 age or older who is enrolled for benefits under Medicare Part A
9 (42 U.S.C. Sec. 1395c et seq.) and Medicare Part B (42 U.S.C.
10 Sec. 1395j et seq.) and is eligible for medical assistance under the
11 Medi-Cal State Plan.

12 (d) No sooner than March 1, 2011, the department shall identify
13 health care models that may be included in the demonstration
14 project, shall develop a timeline and process for selecting,
15 financing, monitoring, and evaluating the demonstration sites, and
16 shall provide this timeline and process to the appropriate fiscal
17 and policy committees of the Legislature. The department may
18 implement these demonstration sites in phases.

19 (e) The department shall provide the fiscal and appropriate
20 policy committees of the Legislature with a copy of any report
21 submitted to CMS to meet the requirements under the
22 demonstration project.

23 (f) Goals for the demonstration project shall include all of the
24 following:

25 (1) Coordinate Medi-Cal and Medicare benefits across health
26 care settings and improve the continuity of care across acute care,
27 long-term care, behavioral health, including mental health and
28 substance use disorder services, and home- and community-based
29 services settings using a person-centered approach.

30 (2) Coordinate access to acute and long-term care services for
31 dual eligible beneficiaries.

32 (3) Maximize the ability of dual eligible beneficiaries to remain
33 in their homes and communities with appropriate services and
34 supports in lieu of institutional care.

35 (4) Increase the availability of and access to home- and
36 community-based services.

37 (5) Coordinate access to necessary and appropriate behavioral
38 health services, including mental health and substance use disorder
39 services.

40 (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
11 county-organized health system pursuant to Article 2.8
12 (commencing with Section 14087.5). The director shall consult
13 with the Legislature, CMS, and stakeholders when determining
14 the implementation date for this section. In determining the
15 counties in which to establish a demonstration site, the director
16 shall consider the following:

17 (1) Local support for integrating medical care, long-term care,
18 and home- and community-based services networks.

19 (2) A local stakeholder process that includes health plans,
20 providers, mental health representatives, community programs,
21 consumers, designated representatives of in-home supportive
22 services personnel, and other interested stakeholders in the
23 development, implementation, and continued operation of the
24 demonstration site.

25 (h) In developing the process for selecting, financing,
26 monitoring, and evaluating the health care models for the
27 demonstration project, the department shall enter into a
28 memorandum of understanding with CMS. Upon completion, the
29 memorandum of understanding shall be provided to the fiscal and
30 appropriate policy committees of the Legislature and posted on
31 the department's Internet Web site.

32 (i) The department shall negotiate the terms and conditions of
33 the memorandum of understanding, which shall address, but are
34 not limited to, the following:

35 (1) Reimbursement methods for a capitated payment model.
36 Under the capitated payment model, the demonstration sites shall
37 meet all of the following requirements:

38 (A) Have Medi-Cal managed care health plan and Medicare
39 dual eligible-special needs plan contract experience, or evidence
40 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~~ *Medicare-covered* benefits and
27 prevailing Medi-Cal fee-for-service rates for traditionally ~~Medi-Cal~~
28 ~~covered~~ *Medi-Cal-covered* benefits.

29 (2) Encounter data reporting requirements for both Medi-Cal
30 and Medicare services provided to beneficiaries enrolling in the
31 demonstration project.

32 (3) Quality assurance withholding from the demonstration site
33 payment, to be paid only if quality measures developed as part of
34 the memorandum of understanding and plan contracts are met.

35 (4) Provider network adequacy standards developed by the
36 department and CMS, in consultation with the Department of
37 Managed Health Care, the demonstration site, and stakeholders.

38 (5) Medicare and Medi-Cal appeals and hearing ~~process~~
39 *processes*.

1 (6) Unified marketing requirements and combined review
2 process by the department and CMS.

3 (7) Combined quality management and consolidated reporting
4 process by the department and CMS.

5 (8) Procedures related to combined federal and state contract
6 management to ensure access, quality, program integrity, and
7 financial solvency of the demonstration site.

8 (9) To the extent permissible under federal requirements,
9 implementation of the provisions of Sections 14182.16 and
10 14182.17 that are applicable to beneficiaries simultaneously eligible
11 for full-scope benefits under Medi-Cal and the Medicare Program.

12 (10) (A) In consultation with the hospital industry, CMS
13 approval to ensure that Medicare supplemental payments for direct
14 graduate medical education and Medicare add-on payments,
15 including indirect medical education and disproportionate share
16 hospital adjustments continue to be made available to hospitals
17 for services provided under the demonstration.

18 (B) The department shall seek CMS approval for CMS to
19 continue these payments either outside the capitation rates or, if
20 contained within the capitation rates, and to the extent permitted
21 under the demonstration project, shall require demonstration sites
22 to provide this reimbursement to hospitals.

23 (11) To the extent permitted under the demonstration project,
24 the default rate for noncontracting providers of physician services
25 shall be the prevailing Medicare fee schedule for services covered
26 by the Medicare Program and the prevailing Medi-Cal fee schedule
27 for services covered by the Medi-Cal program.

28 (j) (1) The department shall comply with and enforce the terms
29 and conditions of the memorandum of understanding with CMS,
30 as specified in subdivision (i). To the extent that the terms and
31 conditions do not address the specific selection, financing,
32 monitoring, and evaluation criteria listed in subdivision (i), the
33 department:

34 (A) Shall require the demonstration site to do all of the
35 following:

36 (i) Comply with additional site readiness criteria specified by
37 the department.

38 (ii) Comply with long-term services and ~~supports~~ *support*
39 requirements in accordance with Article 5.7 (commencing with
40 Section 14186).

1 (iii) To the extent permissible under federal requirements,
2 comply with the provisions of Sections 14182.16 and 14182.17
3 that are applicable to beneficiaries simultaneously eligible for
4 full-scope benefits under both Medi-Cal and the Medicare Program.

5 (iv) Comply with all transition of care requirements for Medicare
6 Part D benefits as described in Chapters 6 and 14 of the Medicare
7 Managed Care Manual, published by CMS, including transition
8 timeframes, notices, and emergency supplies.

9 (B) May require the demonstration site to forgo charging
10 premiums, coinsurance, copayments, and deductibles for Medicare
11 Part C and Medicare Part D services.

12 (2) The department shall notify the Legislature within 30 days
13 of the implementation of each provision in paragraph (1).

14 (k) The director may enter into exclusive or nonexclusive
15 contracts on a bid or negotiated basis and may amend existing
16 managed care contracts to provide or arrange for services provided
17 under this section. Contracts entered into or amended pursuant to
18 this section shall be exempt from the provisions of Chapter 2
19 (commencing with Section 10290) of Part 2 of Division 2 of the
20 Public Contract Code and Chapter 6 (commencing with Section
21 14825) of Part 5.5 of Division 3 of Title 2 of the Government
22 Code.

23 (l) (1) (A) Except for the exemptions provided for in this
24 section, the department shall enroll dual eligible beneficiaries into
25 a demonstration site unless the beneficiary makes an affirmative
26 choice to opt out of enrollment or is already enrolled on or before
27 June 1, 2013, in a managed care organization licensed under 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) that has previously contracted with the department
31 as a primary care case management plan pursuant to Article 2.9
32 (commencing with Section 14088) to provide services to
33 beneficiaries who are HIV positive or who have been diagnosed
34 with AIDS or in any entity with a contract with the department
35 pursuant to Chapter 8.75 (commencing with Section 14591).

36 (B) Dual eligible beneficiaries who opt out of enrollment into
37 a demonstration site may choose to remain enrolled in
38 fee-for-service Medicare or a Medicare Advantage plan for their
39 Medicare benefits, but shall be mandatorily enrolled into a

1 Medi-Cal managed care health plan pursuant to Section 14182.16,
2 except as exempted under subdivision (c) of Section 14182.16.

3 (C) (i) Persons meeting requirements for the Program of
4 All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
5 8.75 (commencing with Section 14591) or a managed care
6 organization licensed under the Knox-Keene Health Care Service
7 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
8 of Division 2 of the Health and Safety Code) that has previously
9 contracted with the department as a primary care case management
10 plan pursuant to Article 2.9 (commencing with Section 14088) to
11 provide services to beneficiaries who are HIV positive or who
12 have been diagnosed with AIDS, may select either of these
13 managed care health plans for their Medicare and Medi-Cal benefits
14 if one is available in that county.

15 (ii) In areas where a PACE plan is available, the PACE plan
16 shall be presented as an enrollment option, included in all
17 enrollment materials, enrollment assistance programs, and outreach
18 programs related to the demonstration project, and made available
19 to beneficiaries whenever enrollment choices and options are
20 presented. Persons meeting the age qualifications for PACE and
21 who choose PACE shall remain in the fee-for-service Medi-Cal
22 and Medicare programs, and shall not be assigned to a managed
23 care health plan for the lesser of 60 days or until they are assessed
24 for eligibility for PACE and determined not to be eligible for a
25 PACE plan. Persons enrolled in a PACE plan shall receive all
26 Medicare and Medi-Cal services from the PACE program pursuant
27 to the three-way agreement between the PACE program, the
28 department, and the federal Centers for Medicare and Medicaid
29 Services.

30 (2) To the extent that federal approval is obtained, the
31 department may require that any beneficiary, upon enrollment in
32 a demonstration site, remain enrolled in the Medicare portion of
33 the demonstration project on a mandatory basis for six months
34 from the date of initial enrollment. After the sixth month, a dual
35 eligible beneficiary may elect to enroll in a different demonstration
36 site, a different Medicare Advantage plan, fee-for-service Medicare,
37 PACE, or a managed care organization licensed under the
38 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
39 (commencing with Section 1340) of Division 2 of the Health and
40 Safety Code) that has previously contracted with the department

1 as a primary care case management plan pursuant to Article 2.9
2 (commencing with Section 14088) to provide services to
3 beneficiaries who are HIV positive or who have been diagnosed
4 with AIDS, for his or her Medicare benefits.

5 (A) During the six-month mandatory enrollment in a
6 demonstration site, a beneficiary may continue receiving services
7 from an out-of-network Medicare provider for primary and
8 specialty care services only if all of the following criteria are met:

9 (i) The dual eligible beneficiary demonstrates an existing
10 relationship with the provider prior to enrollment in a
11 demonstration site.

12 (ii) The provider is willing to accept payment from the
13 demonstration site based on the current Medicare fee schedule.

14 (iii) The demonstration site would not otherwise exclude the
15 provider from its provider network due to documented quality of
16 care concerns.

17 (B) The department shall develop a process to inform providers
18 and beneficiaries of the availability of continuity of services from
19 an existing provider and ensure that the beneficiary continues to
20 receive services without interruption.

21 (3) (A) Notwithstanding subparagraph (A) of paragraph (1), a
22 dual eligible beneficiary shall be excluded from enrollment in the
23 demonstration project if the beneficiary meets any of the following:

24 (i) The beneficiary has a prior diagnosis of end-stage renal
25 disease. This clause shall not apply to beneficiaries diagnosed with
26 end-stage renal disease subsequent to enrollment in the
27 demonstration project. The director may, with stakeholder input
28 and federal approval, authorize beneficiaries with a prior diagnosis
29 of end-stage renal disease in specified counties to voluntarily enroll
30 in the demonstration project.

31 (ii) The beneficiary has other health coverage, as defined in
32 paragraph (4) of subdivision (b) of Section 14182.16.

33 (iii) The beneficiary is enrolled in a home- and community-based
34 waiver that is a Medi-Cal benefit under Section 1915(c) of the
35 federal Social Security Act (42 U.S.C. Sec. 1396n(c)), except for
36 persons enrolled in Multipurpose Senior Services 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 project be achieved through shifts in utilization,
33 and not through reduced reimbursement rates to providers.

34 (f) In order to encourage quality improvement and promote
35 appropriate utilization incentives, including reduced
36 rehospitalization and shorter lengths of stay, for nursing facilities
37 providing the services under this section, the demonstration sites
38 may do any of the following:

39 (1) Utilize incentive or bonus payment programs that are in
40 addition to the rates identified in subdivisions (b) and (c).

1 (2) Opt to direct beneficiaries to facilities that demonstrate better
2 performance on quality or appropriate utilization factors.

3 SEC. 220. Section 14169.32 of the Welfare and Institutions
4 Code is amended to read:

5 14169.32. (a) There shall be imposed on each general acute
6 care hospital that is not an exempt facility a quality assurance fee,
7 provided that a quality assurance fee under this article shall not be
8 imposed on a converted hospital.

9 (b) The quality assurance fee shall be computed starting on July
10 1, 2011, and continue through and including December 31, 2013.

11 (c) Subject to Section 14169.34, upon receipt of federal
12 approval, the following shall become operative:

13 (1) Within 10 business days following receipt of the notice of
14 federal approval from the federal government, the department shall
15 send notice to each hospital subject to the quality assurance fee,
16 and publish on its Internet Web site, the following information:

17 (A) The date that the state received notice of federal approval.
18 (B) The fee percentage for each subject fiscal year.

19 (2) The notice to each hospital subject to the quality assurance
20 fee shall also state the following:

21 (A) The aggregate quality assurance fee after the application of
22 the fee percentage for each subject fiscal year.
23 (B) The aggregate quality assurance fee.
24 (C) The amount of each payment due from the hospital with
25 respect to the aggregate quality assurance fee.
26 (D) The date on which each payment is due.

27 (3) The hospitals shall pay the aggregate quality assurance fee
28 after application of the fee percentage for all subject fiscal years
29 in 10 installments. The department shall establish the date that
30 each installment is due, provided that the first installment shall be
31 due no earlier than 20 days following the department sending the
32 notice pursuant to paragraph (1), and the installments shall be paid
33 at least one month apart, but if possible, the installments shall be
34 paid on a quarterly basis.

35 (4) Notwithstanding any other provision of this section, the
36 amount of each hospital's aggregate quality assurance fee after
37 the application of the fee percentage for each subject fiscal year
38 that has not been paid by the hospital before December 15, 2013,
39 pursuant to paragraphs (3) and (8), shall be paid by the hospital
40 no later than December 15, 2013.

1 (5) (A) Notwithstanding subdivision (l) of Section 14169.31,
2 for the purpose of determining the installments under paragraph
3 (3), the department shall use an interim fee percentage as follows:

4 (i) One hundred percent for subject fiscal year 2011–12 until
5 the federal government has approved or disapproved additional
6 capitation payments described in Section 14169.5 for that subject
7 fiscal year.

8 (ii) One hundred percent for subject fiscal year 2012–13 until
9 the federal government has approved or disapproved additional
10 capitation payments described in Section 14169.5 for that subject
11 fiscal year.

12 (iii) Fifty percent for subject fiscal year 2013–14 until the federal
13 government has approved or disapproved additional capitation
14 payments described in Section 14169.5 for that subject fiscal year.

15 (B) The director may use a lower interim fee percentage for
16 each subject fiscal year under this paragraph as the director, in his
17 or her discretion, determines is reasonable in order to generate
18 sufficient but not excessive installment payments to make the
19 payments described in subdivision (b) of Section 14169.33.

20 (6) The director shall determine the final fee percentage for each
21 subject fiscal year within 15 days of the approval or disapproval,
22 in whole or in part, by the federal government of all changes to
23 the capitation rates of managed health care plans requested by the
24 department to implement Section 14169.5 for that subject fiscal
25 year, but in no event later than December 1, 2013. At the time the
26 director determines the final fee percentage for a subject fiscal
27 year, the director shall also determine the amount of future
28 installment payments of the quality assurance fee for each hospital
29 subject to the fee, if any are due. The amount of each future
30 installment payment shall be established by the director with the
31 objective that the total of the installment payments of the quality
32 assurance fee due from a hospital shall equal the director's estimate
33 for each subject fiscal year for the hospital of the aggregate quality
34 assurance fee after the application of the fee percentage.

35 (7) The director, within 15 days of determining the final fee
36 percentage for a subject fiscal year pursuant to paragraph (6), shall
37 send notice to each hospital subject to the quality assurance fee of
38 the following information:

39 (A) The final fee percentage for each subject fiscal year for
40 which the final fee percentage has been determined.

1 (B) The fee percentage determined under paragraph (5) for each
2 subject fiscal year for which the final fee percentage has not been
3 determined.

4 (C) The aggregate quality assurance fee after application of the
5 fee percentage for each subject fiscal year.

6 (D) The director's estimate of total quality assurance fee
7 payments due from the hospital under this article whether or not
8 paid. This amount shall be the sum of the aggregate quality
9 assurance fee after application of the fee percentage for each
10 subject fiscal year using the fee percentages contained in the notice.

11 (E) The total quality assurance fee payments that the hospital
12 has made under this article.

13 (F) The amount, if any, by which the total quality assurance fee
14 payments due from the hospital under this article as described in
15 subparagraph (C) exceed the total quality assurance fee payments
16 that the hospital has made under this article.

17 (G) The amount of each remaining installment of the quality
18 assurance fee, if any, due from the hospital and the date each
19 installment is due. This amount shall be the amount described in
20 subparagraph (F) divided by the number of installment payments
21 remaining.

22 (8) Each hospital that is sent a notice under paragraph (7) shall
23 pay the additional installments of the quality assurance fee that
24 are due, if any, in the amounts and at the times set forth in the
25 notice unless superseded by a subsequent notice from the
26 department.

27 (9) The department shall refund to a hospital paying the quality
28 assurance fee the amount, if any, by which the total quality
29 assurance fee payments that the hospital has made under this article
30 for all subject fiscal years exceed the total quality assurance fee
31 payments due from the hospital under this article within 30 days
32 of the date on which the notice is sent to the hospital under
33 paragraph (7).

34 (d) The quality assurance fee, as paid pursuant to this section,
35 shall be paid by each hospital subject to the fee to the department
36 for deposit in the Hospital Quality Assurance Revenue Fund.
37 Deposits may be accepted at any time and will be credited toward
38 the program period.

39 (e) This section shall become inoperative if the federal Centers
40 for Medicare and Medicaid Services denies approval for, or does

1 not approve before July 1, 2014, the implementation of the quality
2 assurance fee pursuant to this article or the supplemental payments
3 to private hospitals described in Sections 14169.2 and 14169.3,
4 and either or both provisions cannot be modified by the department
5 pursuant to subdivision (d) of Section 14169.33 in order to meet
6 the requirements of federal law or to obtain federal approval.

7 (f) In no case shall the aggregate fees collected in a federal fiscal
8 year pursuant to this section, ~~Section~~ and Sections 14167.32; and
9 Section 14168.32 exceed the maximum percentage of the annual
10 aggregate net patient revenue for hospitals subject to the fee that
11 is prescribed pursuant to federal law and regulations as necessary
12 to preclude a finding that an indirect guarantee has been created.

13 (g) (1) Interest shall be assessed on quality assurance fees not
14 paid on the date due at the greater of 10 percent per annum or the
15 rate at which the department assesses interest on Medi-Cal program
16 overpayments to hospitals that are not repaid when due. Interest
17 shall begin to accrue the day after the date the payment was due
18 and shall be deposited in the Hospital Quality Assurance Revenue
19 Fund.

20 (2) In the event that any fee payment is more than 60 days
21 overdue, a penalty equal to the interest charge described in
22 paragraph (1) shall be assessed and due for each month for which
23 the payment is not received after 60 days.

24 (h) When a hospital fails to pay all or part of the quality
25 assurance fee on or before the date that payment is due, the
26 department may immediately begin to deduct the unpaid assessment
27 and interest from any Medi-Cal payments owed to the hospital,
28 or, in accordance with Section 12419.5 of the Government Code,
29 from any other state payments owed to the hospital until the full
30 amount is recovered. All amounts, except penalties, deducted by
31 the department under this subdivision shall be deposited in the
32 Hospital Quality Assurance Revenue Fund. The remedy provided
33 to the department by this section is in addition to other remedies
34 available under law.

35 (i) The payment of the quality assurance fee shall not be
36 considered as an allowable cost for Medi-Cal cost reporting and
37 reimbursement purposes.

38 (j) The department shall work in consultation with the hospital
39 community to implement this article and Article 5.228
40 (commencing with Section 14169.1).

1 (k) This subdivision creates a contractually enforceable promise
2 on behalf of the state to use the proceeds of the quality assurance
3 fee, including any federal matching funds, solely and exclusively
4 for the purposes set forth in this article as they existed on
5 September 16, 2011, to limit the amount of the proceeds of the
6 quality assurance fee to be used to pay for the health care coverage
7 of children to the amounts specified in this article, to limit any
8 payments for the department's costs of administration to the
9 amounts set forth in this article on September 16, 2011, to maintain
10 and continue prior reimbursement levels as set forth in Section
11 14169.12 on September 16, 2011, and to otherwise comply with
12 all its obligations set forth in Article 5.228 (commencing with
13 Section 14169.1) and this article provided that amendments that
14 arise from, or have as a basis, a decision, advice, or determination
15 by the federal Centers for Medicare and Medicaid Services relating
16 to federal approval of the quality assurance fee or the payments
17 set forth in this article or Article 5.228 (commencing with Section
18 14169.1) shall control for the purposes of this subdivision.

19 (l) (1) Effective January 1, 2014, the rates payable to hospitals
20 and managed health care plans under Medi-Cal shall be the rates
21 then payable without the supplemental and increased capitation
22 payments set forth in Article 5.228 (commencing with Section
23 14169.1).

24 (2) The supplemental payments and other payments under
25 Article 5.228 (commencing with Section 14169.1) shall be regarded
26 as quality assurance payments, the implementation or suspension
27 of which does not affect a determination of the adequacy of any
28 rates under federal law.

29 (m) (1) Subject to paragraph (2), the director may waive any
30 or all interest and penalties assessed under this article in the event
31 that the director determines, in his or her sole discretion, that the
32 hospital has demonstrated that imposition of the full quality
33 assurance fee on the timelines applicable under this article has a
34 high likelihood of creating a financial hardship for the hospital or
35 a significant danger of reducing the provision of needed health
36 care services.

37 (2) Waiver of some or all of the interest or penalties under this
38 subdivision shall be conditioned on the hospital's agreement to
39 make fee payments, or to have the payments withheld from
40 payments otherwise due from the Medi-Cal program to the hospital,

1 on a schedule developed by the department that takes into account
2 the financial situation of the hospital and the potential impact on
3 services.

4 (3) A decision by the director under this subdivision is not
5 subject to judicial review.

6 (4) If fee payments are remitted to the department after the date
7 determined by the department to be the final date for calculating
8 the final supplemental payments under this article and Article
9 5.228 (commencing with Section 14169.1), the fee payments shall
10 be retained in the fund for purposes of funding supplemental
11 payments supported by a hospital quality assurance fee program
12 implemented under subsequent legislation, provided, however,
13 that if supplemental payments are not implemented under
14 subsequent legislation, then those fee payments shall be deposited
15 in the Distressed Hospital Fund.

16 (5) If during the implementation of this article, fee payments
17 that were due under Article 5.21 (commencing with Section
18 14167.1) and Article 5.22 (commencing with Section 14167.31),
19 or Article 5.227 (commencing with Section 14168.31), are remitted
20 to the department under a payment plan or for any other reason,
21 and the final date for calculating the final supplemental payments
22 under those articles has passed, those fee payments shall be
23 deposited in the fund to support the uses established by this article.

24 SEC. 221. Section 14182 of the Welfare and Institutions Code
25 is amended to read:

26 14182. (a) (1) In furtherance of the waiver or demonstration
27 project developed pursuant to Section 14180, the department may
28 require seniors and persons with disabilities who do not have other
29 health coverage to be assigned as mandatory enrollees into new
30 or existing managed care health plans. To the extent that enrollment
31 is required by the department, an enrollee's access to
32 fee-for-service Medi-Cal shall not be terminated until the enrollee
33 has been assigned to a managed care health plan.

34 (2) For purposes of this section:

35 (A) "Other health coverage" means health coverage providing
36 the same full or partial benefits as the Medi-Cal program, health
37 coverage under another state or federal medical care program, or
38 health coverage under contractual or legal entitlement, including,
39 but not limited to, a private group or indemnification insurance
40 program.

1 (B) “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),
5 Article 2.91 (commencing with Section 14089), or Chapter 8
6 (commencing with Section 14200).

7 (b) In exercising its authority pursuant to subdivision (a), the
8 department shall do all of the following:

9 (1) Assess and ensure the readiness of the managed care health
10 plans to address the unique needs of seniors or persons with
11 disabilities pursuant to the applicable readiness evaluation criteria
12 and requirements set forth in paragraphs (1) to (8), inclusive, of
13 subdivision (b) of Section 14087.48.

14 (2) Ensure the managed care health plans provide access to
15 providers that comply with applicable state and federal laws,
16 including, but not limited to, physical accessibility and the
17 provision of health plan information in alternative formats.

18 (3) Develop and implement an outreach and education program
19 for seniors and persons with disabilities, not currently enrolled in
20 Medi-Cal managed care, to inform them of their enrollment options
21 and rights under the demonstration project. Contingent upon
22 available private or public dollars other than moneys from the
23 General Fund, the department or its designated agent for enrollment
24 and outreach may partner or contract with community-based,
25 nonprofit consumer or health insurance assistance organizations
26 with expertise and experience in assisting seniors and persons with
27 disabilities in understanding their health care coverage options.
28 Contracts entered into or amended pursuant to this paragraph shall
29 be exempt from Chapter 2 (commencing with Section 10290) of
30 Part 2 of Division 2 of the Public Contract Code and any
31 implementing regulations or policy directives.

32 (4) At least three months prior to enrollment, inform
33 beneficiaries who are seniors or persons with disabilities, through
34 a notice written at no more than a sixth grade reading level, about
35 the forthcoming changes to their delivery of care, including, at a
36 minimum, how their system of care will change, when the changes
37 will occur, and who they can contact for assistance with choosing
38 a delivery system or with problems they encounter. In developing
39 this notice, the department shall consult with consumer
40 representatives and other stakeholders.

1 (5) Implement an appropriate cultural awareness and sensitivity
2 training program regarding serving seniors and persons with
3 disabilities for managed care health plans and plan providers and
4 staff in the Medi-Cal Managed Care Division of the department.

5 (6) Establish a process for assigning enrollees into an organized
6 delivery system for beneficiaries who do not make an affirmative
7 selection of a managed care health plan. The department shall
8 develop this process in consultation with stakeholders and in a
9 manner consistent with the waiver or demonstration project
10 developed pursuant to Section 14180. The department shall base
11 plan assignment on an enrollee's existing or recent utilization of
12 providers, to the extent possible. If the department is unable to
13 make an assignment based on the enrollee's affirmative selection
14 or utilization history, the department shall base plan assignment
15 on factors, including, but not limited to, plan quality and the
16 inclusion of local health care safety net system providers in the
17 plan's provider network.

18 (7) Review and approve the mechanism or algorithm that has
19 been developed by the managed care health plan, in consultation
20 with their stakeholders and consumers, to identify, within the
21 earliest possible timeframe, persons with higher risk and more
22 complex health care needs pursuant to paragraph (11) of
23 subdivision (c).

24 (8) Provide managed care health plans with historical utilization
25 data for beneficiaries upon enrollment in a managed care health
26 plan so that the plans participating in the demonstration project
27 are better able to assist beneficiaries and prioritize assessment and
28 care planning.

29 (9) Develop and provide managed care health plans participating
30 in the demonstration project with a facility site review tool for use
31 in assessing the physical accessibility of providers, including
32 specialists and ancillary service providers that provide care to a
33 high volume of seniors and persons with disabilities, at a clinic or
34 provider site, to ensure that there are sufficient physically
35 accessible providers. Every managed care health plan participating
36 in the demonstration project shall make the results of the facility
37 site review tool publicly available on their Internet Web site and
38 shall regularly update the results to the department's satisfaction.

39 (10) Develop a process to enforce legal sanctions, including,
40 but not limited to, financial penalties, withholding of Medi-Cal

1 payments, enrollment termination, and contract termination, in
2 order to sanction any managed care health plan in the
3 demonstration project that consistently or repeatedly fails to meet
4 performance standards provided in statute or contract.

5 (11) Ensure that managed care health plans provide a mechanism
6 for enrollees to request a specialist or clinic as a primary care
7 provider. A specialist or clinic may serve as a primary care provider
8 if the specialist or clinic agrees to serve in a primary care provider
9 role and is qualified to treat the required range of conditions of the
10 enrollee.

11 (12) Ensure that managed care health plans participating in the
12 demonstration project are able to provide communication access
13 to seniors and persons with disabilities in alternative formats or
14 through other methods that ensure communication, including
15 assistive listening systems, sign language interpreters, captioning,
16 written communication, plain language, or written translations and
17 oral interpreters, including for those who are limited
18 English-proficient, or non-English speaking, and that all managed
19 care health plans are in compliance with applicable cultural and
20 linguistic requirements.

21 (13) Ensure that managed care health plans participating in the
22 demonstration project provide access to out-of-network providers
23 for new individual members enrolled under this section who have
24 an ongoing relationship with a provider if the provider will accept
25 the health plan's rate for the service offered, or the applicable
26 Medi-Cal fee-for-service rate, whichever is higher, and the health
27 plan determines that the provider meets applicable professional
28 standards and has no disqualifying quality of care issues.

29 (14) Ensure that managed care health plans participating in the
30 demonstration project comply with continuity of care requirements
31 in Section 1373.96 of the Health and Safety Code.

32 (15) Ensure that the medical exemption criteria applied in
33 counties operating under Chapter 4.1 (commencing with Section
34 53800) or Chapter 4.5 (commencing with Section 53900) of
35 Subdivision 1 of Division 3 of Title 22 of the California Code of
36 Regulations are applied to seniors and persons with disabilities
37 served under this section.

38 (16) Ensure that managed care health plans participating in the
39 demonstration project take into account the behavioral health needs

1 of enrollees and include behavioral health services as part of the
2 enrollee’s care management plan when appropriate.

3 (17) Develop performance measures that are required as part
4 of the contract to provide quality indicators for the Medi-Cal
5 population enrolled in a managed care health plan and for the
6 subset of enrollees who are seniors and persons with disabilities.
7 These performance measures may include measures from the
8 Healthcare Effectiveness Data and Information Set (HEDIS) or
9 measures indicative of performance in serving special needs
10 populations, such as the National Committee for Quality Assurance
11 (NCQA) Structure and Process measures, or both.

12 (18) Conduct medical audit reviews of participating managed
13 care health plans that include elements specifically related to the
14 care of seniors and persons with disabilities. These medical audits
15 shall include, but not be limited to, evaluation of the delivery
16 model’s policies and procedures, performance in utilization
17 management, continuity of care, availability and accessibility,
18 member rights, and quality management.

19 (19) Conduct financial audit reviews to ensure that a financial
20 statement audit is performed on managed care health plans annually
21 pursuant to the Generally Accepted Auditing Standards, and
22 conduct other risk-based audits for the purpose of detecting fraud
23 and irregular transactions.

24 (20) Ensure that managed care health plans maintain a dedicated
25 liaison to coordinate with the department, affected providers, and
26 new individual members for all of the following purposes:

27 (A) To ensure a mechanism for new members to obtain
28 continuity of care as described in paragraph (13).

29 (B) To receive notice, including that a new member has been
30 denied a medical exemption as described in paragraph (15), which
31 is required to include the name or names of the requesting provider,
32 and ensure that the provider’s ability to treat the member is
33 continued as described in paragraphs (11) and (13), if applicable,
34 or, if not applicable, ensure the member is immediately referred
35 to a qualified provider or specialty care center.

36 (C) To assist new members in maintaining an ongoing
37 relationship with a specialist or specialty care center when the
38 specialist is contracting with the plan and the assigned primary
39 care provider has approved a standing referral pursuant to Section
40 1374.16 of the Health and Safety Code.

1 (21) Ensure that written notice is provided to the beneficiary
2 and the requesting provider if a request for exemption from plan
3 enrollment is denied. The notice shall set out with specificity the
4 reasons for the denial or failure to unconditionally approve the
5 request for exemption from plan enrollment. The notice shall
6 inform the beneficiary and the provider of the right to appeal the
7 decision, how to appeal the decision, and if the decision is not
8 appealed, that the beneficiary shall enroll in a Medi-Cal plan and
9 how that enrollment shall occur. The notice shall also include
10 information of the possibility of continued access to an
11 out-of-network provider pursuant to paragraph (13). A beneficiary
12 who has not been enrolled in a plan shall remain in fee-for-service
13 Medi-Cal if a request for an exemption from plan enrollment or
14 appeal is submitted, until the final resolution. The department shall
15 also require the plans to ensure that these beneficiaries receive
16 continuity of care.

17 (22) Develop a process to track a beneficiary who has been
18 denied a request for exemption from plan enrollment and to notify
19 the plan, if applicable, of the denial, including information
20 identifying the provider. Notwithstanding paragraph (12) of
21 subdivision (c), the plan shall immediately refer the beneficiary
22 for a risk assessment survey and an individual care plan shall be
23 developed within 10 days, including authorization for 30 days of
24 continuity of prescription drugs.

25 (c) Prior to exercising its authority under this section and Section
26 14180, the department shall ensure that each managed care health
27 plan participating in the demonstration project is able to do all of
28 the following:

29 (1) Comply with the applicable readiness evaluation criteria
30 and requirements set forth in paragraphs (1) to (8), inclusive, of
31 subdivision (b) of Section 14087.48.

32 (2) Ensure and monitor an appropriate provider network,
33 including primary care physicians, specialists, professional, allied,
34 and medical supportive personnel, and an adequate number of
35 accessible facilities within each service area. Managed care health
36 plans shall maintain an updated, accurate, and accessible listing
37 of a provider's ability to accept new patients and shall make it
38 available to enrollees, at a minimum, by phone, written material,
39 and Internet Web site.

- 1 (3) Assess the health care needs of beneficiaries who are seniors
2 or persons with disabilities and coordinate their care across all
3 settings, including coordination of necessary services within and,
4 where necessary, outside of the plan’s provider network.
- 5 (4) Ensure that the provider network and informational materials
6 meet the linguistic and other special needs of seniors and persons
7 with disabilities, including providing information in an
8 understandable manner in plain language, maintaining toll-free
9 telephone lines, and offering member or ombudsperson services.
- 10 (5) Provide clear, timely, and fair processes for accepting and
11 acting upon complaints, grievances, and disenrollment requests,
12 including procedures for appealing decisions regarding coverage
13 or benefits. Each managed care health plan participating in the
14 demonstration project shall have a grievance process that complies
15 with Section 14450, and Sections 1368 and 1368.01 of the Health
16 and Safety Code.
- 17 (6) Solicit stakeholder and member participation in advisory
18 groups for the planning and development activities related to the
19 provision of services for seniors and persons with disabilities.
- 20 (7) Contract with safety net and traditional providers as defined
21 in subdivisions (hh) and (jj) of Section 53810, of Title 22 of the
22 California Code of Regulations, to ensure access to care and
23 services. The managed care health plan shall establish participation
24 standards to ensure participation and broad representation of
25 traditional and safety net providers within a service area.
- 26 (8) Inform seniors and persons with disabilities of procedures
27 for obtaining transportation services to service sites that are offered
28 by the plan or are available through the Medi-Cal program.
- 29 (9) Monitor the quality and appropriateness of care for children
30 with special health care needs, including children eligible for, or
31 enrolled in, the California Children’s Services Program, and seniors
32 and persons with disabilities.
- 33 (10) Maintain a dedicated liaison to coordinate with each
34 regional center operating within the plan’s service area to assist
35 members with developmental disabilities in understanding and
36 accessing services and act as a central point of contact for
37 questions, access and care concerns, and problem resolution.
- 38 (11) At the time of enrollment apply the risk stratification
39 mechanism or algorithm described in paragraph (7) of subdivision

1 (b) approved by the department to determine the health risk level
2 of beneficiaries.

3 (12) (A) Managed care health plans shall assess an enrollee's
4 current health risk by administering a risk assessment survey tool
5 approved by the department. This risk assessment survey shall be
6 performed within the following timeframes:

7 (i) Within 45 days of plan enrollment for individuals determined
8 to be at higher risk pursuant to paragraph (11).

9 (ii) Within 105 days of plan enrollment for individuals
10 determined to be at lower risk pursuant to paragraph (11).

11 (B) Based on the results of the current health risk assessment,
12 managed care health plans shall develop individual care plans for
13 higher risk beneficiaries that shall include the following minimum
14 components:

15 (i) Identification of medical care needs, including primary care,
16 specialty care, durable medical equipment, medications, and other
17 needs with a plan for care coordination as needed.

18 (ii) Identification of needs and referral to appropriate community
19 resources and other agencies as needed for services outside the
20 scope of responsibility of the managed care health plan.

21 (iii) Appropriate involvement of caregivers.

22 (iv) Determination of timeframes for reassessment and, if
23 necessary, circumstances or conditions that require redetermination
24 of risk level.

25 (13) (A) Establish medical homes to which enrollees are
26 assigned that include, at a minimum, all of the following elements,
27 which shall be considered in the provider contracting process:

28 (i) A primary care physician who is the primary clinician for
29 the beneficiary and who provides core clinical management
30 functions.

31 (ii) Care management and care coordination for the beneficiary
32 across the health care system including transitions among levels
33 of care.

34 (iii) Provision of referrals to qualified professionals, community
35 resources, or other agencies for services or items outside the scope
36 of responsibility of the managed care health plan.

37 (iv) Use of clinical data to identify beneficiaries at the care site
38 with chronic illness or other significant health issues.

39 (v) Timely preventive, acute, and chronic illness treatment in
40 the appropriate setting.

1 (vi) Use of clinical guidelines or other evidence-based medicine
2 when applicable for treatment of beneficiaries' health care issues
3 or timing of clinical preventive services.

4 (B) In implementing this section, and the Special Terms and
5 Conditions of the demonstration project, the department may alter
6 the medical home elements described in this paragraph as necessary
7 to secure the increased federal financial participation associated
8 with the provision of medical assistance in conjunction with a
9 health home, as made available under the federal Patient Protection
10 and Affordable Care Act (Public Law 111-148), as amended by
11 the federal Health Care and Education Reconciliation Act of 2010
12 (Public Law 111-152), and codified in Section 1945 of Title XIX
13 of the federal Social Security Act. The department shall notify the
14 appropriate policy and fiscal committees of the Legislature of its
15 intent to alter medical home elements under this section at least
16 five days in advance of taking this action.

17 (14) Perform, at a minimum, the following care management
18 and care coordination functions and activities for enrollees who
19 are seniors or persons with disabilities:

20 (A) Assessment of each new enrollee's risk level and health
21 needs shall be conducted through a standardized risk assessment
22 survey by means such as telephonic, Web-based, or in-person
23 communication or by other means as determined by the department.

24 (B) Facilitation of timely access to primary care, specialty care,
25 durable medical equipment, medications, and other health services
26 needed by the enrollee, including referrals to address any physical
27 or cognitive barriers to access.

28 (C) Active referral to community resources or other agencies
29 for needed services or items outside the managed care health plans
30 responsibilities.

31 (D) Facilitating communication among the beneficiaries' health
32 care providers, including mental health and substance abuse
33 providers when appropriate.

34 (E) Other activities or services needed to assist beneficiaries in
35 optimizing their health status, including assisting with
36 self-management skills or techniques, health education, and other
37 modalities to improve health status.

38 (d) Except in a county where Medi-Cal services are provided
39 by a county-organized health system, and notwithstanding any
40 other provision of law, in any county in which fewer than two

1 existing managed care health plans contract with the department
2 to provide Medi-Cal services under this chapter, the department
3 may contract with additional managed care health plans to provide
4 Medi-Cal services for seniors and persons with disabilities and
5 other Medi-Cal beneficiaries.

6 (e) Beneficiaries enrolled in managed care health plans pursuant
7 to this section shall have the choice to continue an established
8 patient-provider relationship in a managed care health plan
9 participating in the demonstration project if his or her treating
10 provider is a primary care provider or clinic contracting with the
11 managed care health plan and agrees to continue to treat that
12 beneficiary.

13 (f) The department may contract with existing managed care
14 health plans to operate under the demonstration project to provide
15 or arrange for services under this section. Notwithstanding any
16 other provision of law, the department may enter into the contract
17 without the need for a competitive bid process or other contract
18 proposal process, provided the managed care health plan provides
19 written documentation that it meets all qualifications and
20 requirements of this section.

21 (g) This section shall be implemented only to the extent that
22 federal financial participation is available.

23 (h) (1) The development of capitation rates for managed care
24 health plan contracts shall include the analysis of data specific to
25 the seniors and persons with disabilities population. For the
26 purposes of developing capitation rates for payments to managed
27 care health plans, the director may require managed care health
28 plans, including existing managed care health plans, to submit
29 financial and utilization data in a form, time, and substance as
30 deemed necessary by the department.

31 (2) (A) Notwithstanding Section 14301, the department may
32 incorporate, on a one-time basis for a three-year period, a
33 risk-sharing mechanism in a contract with the local initiative health
34 plan in the county with the highest normalized fee-for-service risk
35 score over the normalized managed care risk score listed in Table
36 1.0 of the Medi-Cal Acuity Study Seniors and Persons with
37 Disabilities (SPD) report written by Mercer Government Human
38 Services Consulting and dated September 28, 2010, if the local
39 initiative health plan meets the requirements of subparagraph (B).
40 The Legislature finds and declares that this risk-sharing mechanism

1 will limit the risk of beneficial or adverse effects associated with
2 a contract to furnish services pursuant to this section on an at-risk
3 basis.

4 (B) The local initiative health plan shall pay the nonfederal
5 share of all costs associated with the development, implementation,
6 and monitoring of the risk-sharing mechanism established pursuant
7 to subparagraph (A) by means of intergovernmental transfers. The
8 nonfederal share includes the state costs of staffing, state
9 contractors, or administrative costs directly attributable to
10 implementing subparagraph (A).

11 (C) This subdivision shall be implemented only to the extent
12 federal financial participation is not jeopardized.

13 (i) Persons meeting participation requirements for the Program
14 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
15 8.75 (commencing with Section 14591), may select a PACE plan
16 if one is available in that county.

17 (j) Persons meeting the participation requirements in effect on
18 January 1, 2010, for a Medi-Cal primary care case management
19 (PCCM) plan in operation on that date, may select that PCCM
20 plan or a successor health care plan that is licensed pursuant to the
21 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
22 (commencing with Section 1340) of Division 2 of the Health and
23 Safety Code) to provide services within the same geographic area
24 that the PCCM plan served on January 1, 2010.

25 (k) 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 may implement, interpret, or make specific this
28 section and any applicable federal waivers and state plan
29 amendments by means of all-county letters, plan letters, plan or
30 provider bulletins, or similar instructions, without taking regulatory
31 action. Prior to issuing any letter or similar instrument authorized
32 pursuant to this section, the department shall notify and consult
33 with stakeholders, including advocates, providers, and
34 beneficiaries. The department shall notify the appropriate policy
35 and fiscal committees of the Legislature of its intent to issue
36 instructions under this section at least five days in advance of the
37 issuance.

38 (l) Consistent with state law that exempts Medi-Cal managed
39 care contracts from Chapter 2 (commencing with Section 10290)
40 of Part 2 of Division 2 of the Public Contract Code, and in order

1 to achieve maximum cost savings, the Legislature hereby
2 determines that an expedited contract process is necessary for
3 contracts entered into or amended pursuant to this section. The
4 contracts and amendments entered into or amended pursuant to
5 this section shall be exempt from Chapter 2 (commencing with
6 Section 10290) of Part 2 of Division 2 of the Public Contract Code
7 and the requirements of State Administrative Management Manual
8 Memo 03-10. The department shall make the terms of a contract
9 available to the public within 30 days of the contract's effective
10 date.

11 (m) In the event of a conflict between the Special Terms and
12 Conditions of the approved demonstration project, including any
13 attachment thereto, and any provision of this part, the Special
14 Terms and Conditions shall control. If the department identifies a
15 specific provision of this article that conflicts with a term or
16 condition of the approved waiver or demonstration project, or an
17 attachment thereto, the term or condition shall control, and the
18 department shall so notify the appropriate fiscal and policy
19 committees of the Legislature within 15 business days.

20 (n) In the event of a conflict between the provisions of this
21 article and any other provision of this part, the provisions of this
22 article shall control.

23 (o) Any otherwise applicable provisions of this chapter, Chapter
24 8 (commencing with Section 14200), or Chapter 8.75 (commencing
25 with Section 14591) not in conflict with this article or with the
26 terms and conditions of the demonstration project shall apply to
27 this section.

28 (p) To the extent that the director utilizes state plan amendments
29 or waivers to accomplish the purposes of this article in addition
30 to waivers granted under the demonstration project, the terms of
31 the state plan amendments or waivers shall control in the event of
32 a conflict with any provision of this part.

33 (q) (1) Enrollment of seniors and persons with disabilities into
34 a managed care health plan under this section shall be accomplished
35 using a phased-in process to be determined by the department and
36 shall not commence until necessary federal approvals have been
37 acquired or until June 1, 2011, whichever is later.

38 (2) Notwithstanding paragraph (1), and at the director's
39 discretion, enrollment in Los Angeles County of seniors and
40 persons with disabilities may be phased-in over a 12-month period

1 using a geographic region method that is proposed by Los Angeles
2 County subject to approval by the department.

3 (r) A managed care health plan established pursuant to this
4 section, or under the Special Terms and Conditions of the
5 demonstration project pursuant to Section 14180, shall be subject
6 to, and comply with, the requirement for submission of encounter
7 data specified in Section 14182.1.

8 (s) (1) Commencing January 1, 2011, and until January 1, 2014,
9 the department shall provide the fiscal and policy committees of
10 the Legislature with semiannual updates regarding core activities
11 for the enrollment of seniors and persons with disabilities into
12 managed care health plans pursuant to the pilot program. The
13 semiannual updates shall include key milestones, progress toward
14 the objectives of the pilot program, relevant or necessary changes
15 to the program, submittal of state plan amendments to the federal
16 Centers for Medicare and Medicaid Services, submittal of any
17 federal waiver documents, and other key activities related to the
18 mandatory enrollment of seniors and persons with disabilities into
19 managed care health plans. The department shall also include
20 updates on the transition of individuals into managed care health
21 plans, the health outcomes of enrollees, the care management and
22 coordination process, and other information concerning the success
23 or overall status of the pilot program.

24 (2) (A) The requirement for submitting a report imposed under
25 paragraph (1) is inoperative on January 1, 2015, pursuant to Section
26 10231.5 of the Government Code.

27 (B) A report to be submitted pursuant to paragraph (1) shall be
28 submitted in compliance with Section 9795 of the Government
29 Code.

30 (t) The department, in collaboration with the State Department
31 of Social Services and county welfare departments, shall monitor
32 the utilization and caseload of the In-Home Supportive Services
33 (IHSS) program before and during the implementation of the pilot
34 program. This information shall be monitored in order to identify
35 the impact of the pilot program on the IHSS program for the
36 affected population.

37 (u) Services under Section 14132.95 or 14132.952, or Article
38 7 (commencing with Section 12300) of Chapter 3 that are provided
39 to individuals assigned to managed care health plans under this
40 section shall be provided through direct hiring of personnel,

1 contract, or establishment of a public authority or nonprofit
2 consortium, in accordance with and subject to the requirements of
3 Section 12302 or 12301.6, as applicable.

4 (v) The department shall, at a minimum, monitor on a quarterly
5 basis the adequacy of provider networks of the managed care health
6 plans.

7 (w) The department shall suspend new enrollment of seniors
8 and persons with disabilities into a managed care health plan if it
9 determines that the managed care health plan does not have
10 sufficient primary or specialty providers to meet the needs of their
11 enrollees.

12 SEC. 222. Section 14182.16 of the Welfare and Institutions
13 Code is amended to read:

14 14182.16. (a) The department shall require Medi-Cal
15 beneficiaries who have dual eligibility in Medi-Cal and the
16 Medicare Program to be assigned as mandatory enrollees into new
17 or existing Medi-Cal managed care health plans for their Medi-Cal
18 benefits in counties participating in the demonstration project
19 pursuant to Section 14132.275.

20 (b) For the purposes of this section and Section 14182.17, the
21 following definitions shall apply:

22 (1) “Dual eligible beneficiary” means an individual 21 years of
23 age or older who is enrolled for benefits under Medicare Part A
24 (42 U.S.C. Sec. 1395c et seq.) or Medicare Part B (42 U.S.C. Sec.
25 1395j et seq.), or both, and is eligible for medical assistance under
26 the Medi-Cal State Plan.

27 (2) “Full-benefit dual eligible beneficiary” means an individual
28 21 years of age or older who is eligible for benefits under Medicare
29 Part A (42 U.S.C. Sec. 1395c et seq.), Medicare Part B (42 U.S.C.
30 Sec. 1395j et seq.), and Medicare Part D (42 U.S.C. Sec.
31 1395w-101), and is eligible for medical assistance under the
32 Medi-Cal State Plan.

33 (3) “Managed care health plan” means an individual,
34 organization, or entity that enters into a contract with the
35 department pursuant to Article 2.7 (commencing with Section
36 14087.3), Article 2.81 (commencing with Section 14087.96), or
37 Article 2.91 (commencing with Section 14089), of this chapter,
38 or Chapter 8 (commencing with Section 14200).

39 (4) “Other health coverage” means health coverage providing
40 the same full or partial benefits as the Medi-Cal program, health

1 coverage under another state or federal medical care program
2 except for the Medicare Program (Title XVIII of the federal Social
3 Security Act (42 U.S.C. Sec. 1395 et seq.)), or health coverage
4 under a contractual or legal entitlement, including, but not limited
5 to, a private group or indemnification insurance program.

6 (5) “Out-of-network Medi-Cal provider” means a health care
7 provider that does not have an existing contract with the
8 beneficiary’s managed care health plan or its subcontractors.

9 (6) “Partial-benefit dual eligible beneficiary” means an
10 individual 21 years of age or older who is enrolled for benefits
11 under Medicare Part A (42 U.S.C. Sec. 1395c et seq.), but not
12 Medicare Part B (42 U.S.C. Sec. 1395j et seq.), or who is eligible
13 for Medicare Part B (42 U.S.C. Sec. 1395j et seq.), but not
14 Medicare Part A (42 U.S.C. Sec. 1395c et seq.), and is eligible for
15 medical assistance under the Medi-Cal State Plan.

16 (c) (1) Notwithstanding subdivision (a), a dual eligible
17 beneficiary is exempt from mandatory enrollment in a managed
18 care health plan if the dual eligible beneficiary meets any of the
19 following:

20 (A) Except in counties with county-organized health systems
21 operating pursuant to Article 2.8 (commencing with Section
22 14087.5), the beneficiary has other health coverage.

23 (B) The beneficiary receives services through a foster care
24 program, including the program described in Article 5
25 (commencing with Section 11400) of Chapter 2.

26 (C) The beneficiary is under 21 years of age.

27 (D) The beneficiary is not eligible for enrollment in managed
28 care health plans for medically necessary reasons determined by
29 the department.

30 (E) The beneficiary resides in one of the Veterans’ Homes of
31 California, as described in Chapter 1 (commencing with Section
32 1010) of Division 5 of the Military and Veterans Code.

33 (F) The beneficiary is enrolled in any entity with a contract with
34 the department pursuant to Chapter 8.75 (commencing with Section
35 14591).

36 (G) The beneficiary is enrolled in a managed care organization
37 licensed under the Knox-Keene Health Care Service Plan Act of
38 1975 (Chapter 2.2 (commencing with Section 1340) of Division
39 2 of the Health and Safety Code) that has previously contracted

1 with the department as a primary care case management plan
2 pursuant to Article 2.9 (commencing with Section 14088).

3 (2) A beneficiary who has been diagnosed with HIV/AIDS is
4 not exempt from mandatory enrollment, but may opt out of
5 managed care enrollment at the beginning of any month.

6 (d) Implementation of this section shall incorporate the
7 provisions of Section 14182.17 that are applicable to beneficiaries
8 eligible for benefits under Medi-Cal and the Medicare Program.

9 (e) At the director's sole discretion, in consultation with
10 stakeholders, the department may determine and implement a
11 phased-in enrollment approach that may include Medi-Cal
12 beneficiary enrollment into managed care health plans immediately
13 upon implementation of this section in a specific county, over a
14 12-month period, or other phased approach. The phased-in
15 enrollment shall commence no sooner than March 1, 2013, and
16 not until all necessary federal approvals have been obtained.

17 (f) To the extent that mandatory enrollment is required by the
18 department, an enrollee's access to fee-for-service Medi-Cal shall
19 not be terminated until the enrollee has selected or been assigned
20 to a managed care health plan.

21 (g) Except in a county where Medi-Cal services are provided
22 by a county organized health system, and notwithstanding any
23 other law, in any county in which fewer than two existing managed
24 health care plans contract with the department to provide Medi-Cal
25 services under this chapter that are available to dual eligible
26 beneficiaries, including long-term services and supports, the
27 department may contract with additional managed care health plans
28 to provide Medi-Cal services.

29 (h) For partial-benefit dual eligible beneficiaries, the department
30 shall inform these beneficiaries of their rights to continuity of care
31 from out-of-network Medi-Cal providers pursuant to subparagraph
32 (G) of paragraph (5) of subdivision (d) of Section 14182.17, and
33 that the need for medical exemption criteria applied to counties
34 operating under Chapter 4.1 (commencing with Section 53800) of
35 Subdivision 1 of Division 3 of Title 22 of the California Code of
36 Regulations may not be necessary to continue receiving Medi-Cal
37 services from an out-of-network provider.

38 (i) The department may contract with existing managed care
39 health plans to provide or arrange for services under this section.
40 Notwithstanding any other law, the department may enter into the

1 contract without the need for a competitive bid process or other
2 contract proposal process, provided that the managed care health
3 plan provides written documentation that it meets all of the
4 qualifications and requirements of this section and Section
5 14182.17.

6 (j) The development of capitation rates for managed care health
7 plan contracts shall include the analysis of data specific to the dual
8 eligible population. For the purposes of developing capitation rates
9 for payments to managed care health plans, the department shall
10 require all managed care health plans, including existing managed
11 care health plans, to submit financial, encounter, and utilization
12 data in a form, at a time, and including substance as deemed
13 necessary by the department. Failure to submit the required data
14 shall result in the imposition of penalties pursuant to Section
15 14182.1.

16 (k) Persons meeting participation requirements for the Program
17 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
18 8.75 (commencing with Section 14591) may select a PACE plan
19 if one is available in that county.

20 (l) Except for dual eligible beneficiaries participating in the
21 demonstration project pursuant to Section 14132.275, persons
22 meeting the participation requirements in effect on January 1,
23 2010, for a Medi-Cal primary case management plan in operation
24 on that date, may select that primary care case management plan
25 or a successor health care plan that is licensed pursuant to the
26 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
27 (commencing with Section 1340) of Division 2 of the Health and
28 Safety Code) to provide services within the same geographic area
29 that the primary care case management plan served on January 1,
30 2010.

31 (m) The department may implement an intergovernmental
32 transfer arrangement with a public entity that elects to transfer
33 public funds to the state to be used solely as the nonfederal share
34 of Medi-Cal payments to managed care health plans for the
35 provision of services to dual eligible beneficiaries pursuant to
36 Section 14182.15.

37 (n) To implement this section, the department may contract with
38 public or private entities. Contracts or amendments entered into
39 under this section may be on an exclusive or nonexclusive basis

1 and on a noncompetitive bid basis and shall be exempt from all of
2 the following:

3 (1) Part 2 (commencing with Section 10100) of Division 2 of
4 the Public Contract Code and any policies, procedures, or
5 regulations authorized by that part.

6 (2) Article 4 (commencing with Section 19130) of Chapter 5
7 of Part 2 of Division 5 of Title 2 of the Government Code.

8 (3) Review or approval of contracts by the Department of
9 General Services.

10 (o) Any otherwise applicable provisions of this chapter, Chapter
11 8 (commencing with Section 14200), or Chapter 8.75 (commencing
12 with Section 14591) not in conflict with this section or with the
13 Special Terms and Conditions of the waiver shall apply to this
14 section.

15 (p) The department shall, in coordination with and consistent
16 with an interagency agreement with the Department of Managed
17 Health Care, at a minimum, monitor on a quarterly basis the
18 adequacy of provider networks of the managed care health plans.

19 (q) The department shall suspend new enrollment of dual eligible
20 beneficiaries into a managed care health plan if it determines that
21 the managed care health plan does not have sufficient primary or
22 specialty care providers and long-term services and supports to
23 meet the needs of its enrollees.

24 (r) Managed care health plans shall pay providers in accordance
25 with Medicare and Medi-Cal coordination of benefits.

26 (s) This section shall be implemented only to the extent that all
27 federal approvals and waivers are obtained and only if and to the
28 extent that federal financial participation is available.

29 (t) Notwithstanding Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
31 the department may implement, interpret, or make specific this
32 section and any applicable federal waivers and state plan
33 amendments by means of all-county letters, plan letters, plan or
34 provider bulletins, or similar instructions, without taking regulatory
35 action. Prior to issuing any letter or similar instrument authorized
36 pursuant to this section, the department shall notify and consult
37 with stakeholders, including advocates, providers, and
38 beneficiaries. The department shall notify the appropriate policy
39 and fiscal committees of the Legislature of its intent to issue

1 instructions under this section at least five days in advance of the
2 issuance.

3 (u) A managed care health plan that contracts with the
4 department for the provision of services under this section shall
5 ensure that beneficiaries have access to the same categories of
6 licensed providers that are available under fee-for-service
7 Medicare. Nothing in this section shall prevent a managed care
8 health plan from contracting with selected providers within a
9 category of licensure.

10 SEC. 223. Section 15630 of the Welfare and Institutions Code
11 is amended to read:

12 15630. (a) Any person who has assumed full or intermittent
13 responsibility for the care or custody of an elder or dependent
14 adult, whether or not he or she receives compensation, including
15 administrators, supervisors, and any licensed staff of a public or
16 private facility that provides care or services for elder or dependent
17 adults, or any elder or dependent adult care custodian, health
18 practitioner, clergy member, or employee of a county adult
19 protective services agency or a local law enforcement agency, is
20 a mandated reporter.

21 (b) (1) Any mandated reporter who, in his or her professional
22 capacity, or within the scope of his or her employment, has
23 observed or has knowledge of an incident that reasonably appears
24 to be physical abuse, as defined in Section 15610.63, abandonment,
25 abduction, isolation, financial abuse, or neglect, or is told by an
26 elder or dependent adult that he or she has experienced behavior,
27 including an act or omission, constituting physical abuse, as defined
28 in Section 15610.63, abandonment, abduction, isolation, financial
29 abuse, or neglect, or reasonably suspects that abuse, shall report
30 the known or suspected instance of abuse by telephone or through
31 a confidential Internet reporting tool, as authorized by Section
32 15658, immediately or as soon as practicably possible. If reported
33 by telephone, a written report shall be sent, or an Internet report
34 shall be made through the confidential Internet reporting tool
35 established in Section 15658, within two working days:

36 (A) If the suspected or alleged abuse is physical abuse, as
37 defined in Section 15610.63, and the abuse occurred in a long-term
38 care facility, except a state mental health hospital or a state
39 developmental center, the following shall occur:

1 (i) If the suspected abuse results in serious bodily injury, a
2 telephone report shall be made to the local law enforcement agency
3 immediately, and no later than within two hours of the mandated
4 reporter observing, obtaining knowledge of, or suspecting the
5 physical abuse, and a written report shall be made to the local
6 ombudsman, the corresponding licensing agency, and the local
7 law enforcement agency within two hours of the mandated reporter
8 observing, obtaining knowledge of, or suspecting the physical
9 abuse.

10 (ii) If the suspected abuse does not result in serious bodily injury,
11 a telephone report shall be made to the local law enforcement
12 agency within 24 hours of the mandated reporter observing,
13 obtaining knowledge of, or suspecting the physical abuse, and a
14 written report shall be made to the local ombudsman, the
15 corresponding licensing agency, and the local law enforcement
16 agency within 24 hours of the mandated reporter observing,
17 obtaining knowledge of, or suspecting the physical abuse.

18 (iii) When the suspected abuse is allegedly caused by a resident
19 with a physician's diagnosis of dementia, and there is no serious
20 bodily injury, as reasonably determined by the mandated reporter,
21 drawing upon his or her training or experience, the reporter shall
22 report to the local ombudsman or law enforcement agency by
23 telephone, immediately or as soon as practicably possible, and by
24 written report, within 24 hours.

25 (iv) When applicable, reports made pursuant to clauses (i) and
26 (ii) shall be deemed to satisfy the reporting requirements of the
27 federal Elder Justice Act of 2009, as set out in Subtitle H of Title
28 VI of the federal Patient Protection and Affordable Care Act
29 (Public Law 111-148), Section 1418.91 of the Health and Safety
30 Code, and Section 72541 of Title 22 of *the* California Code of
31 Regulations. When a local law enforcement agency receives an
32 initial report of suspected abuse in a long-term care facility
33 pursuant to this subparagraph, the local law enforcement agency
34 may coordinate efforts with the local ombudsman to provide the
35 most immediate and appropriate response warranted to investigate
36 the mandated report. The local ombudsman and local law
37 enforcement agencies may collaborate to develop protocols to
38 implement this subparagraph.

39 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
40 (commencing with Section 11340) of Part 1 of Division 3 of Title

1 2 of the Government Code, or any other law, the department may
2 implement subparagraph (A), in whole or in part, by means of
3 all-county letters, provider bulletins, or other similar instructions
4 without taking regulatory action.

5 (C) If the suspected or alleged abuse is abuse other than physical
6 abuse, and the abuse occurred in a long-term care facility, except
7 a state mental health hospital or a state developmental center, a
8 telephone report and a written report shall be made to the local
9 ombudsman or the local law enforcement agency.

10 (D) With regard to abuse reported pursuant to subparagraphs
11 (A) and (C), the local ombudsman and the local law enforcement
12 agency shall, as soon as practicable, except in the case of an
13 emergency or pursuant to a report required to be made pursuant
14 to clause (v), in which case these actions shall be taken
15 immediately, do all of the following:

16 (i) Report to the State Department of Public Health any case of
17 known or suspected abuse occurring in a long-term health care
18 facility, as defined in subdivision (a) of Section 1418 of the Health
19 and Safety Code.

20 (ii) Report to the State Department of Social Services any case
21 of known or suspected abuse occurring in a residential care facility
22 for the elderly, as defined in Section 1569.2 of the Health and
23 Safety Code, or in an adult day program, as defined in paragraph
24 (2) of subdivision (a) of Section 1502 of the Health and Safety
25 Code.

26 (iii) Report to the State Department of Public Health and the
27 California Department of Aging any case of known or suspected
28 abuse occurring in an adult day health care center, as defined in
29 subdivision (b) of Section 1570.7 of the Health and Safety Code.

30 (iv) Report to the Bureau of Medi-Cal Fraud any case of known
31 or suspected criminal activity.

32 (v) Report all cases of known or suspected physical abuse and
33 financial abuse to the local district attorney's office in the county
34 where the abuse occurred.

35 (E) If the suspected or alleged abuse occurred in a state mental
36 hospital or a state developmental center, the report shall be made
37 to designated investigators of the State Department of State
38 Hospitals or the State Department of Developmental Services, or
39 to the local law enforcement agency.

1 (i) Except in an emergency, the local law enforcement agency
2 shall, as soon as practicable, report any case of known or suspected
3 criminal activity to the Bureau of Medi-Cal Fraud.

4 (ii) Mandated reporters of the State Department of
5 Developmental Services shall immediately report suspected abuse
6 to the Office of Protective Services or to the local law enforcement
7 agency.

8 (F) If the abuse has occurred any place other than one described
9 in subparagraph (A), the report shall be made to the adult protective
10 services agency or the local law enforcement agency.

11 (2) (A) A mandated reporter who is a clergy member who
12 acquires knowledge or reasonable suspicion of elder or dependent
13 adult abuse during a penitential communication is not subject to
14 paragraph (1). For purposes of this subdivision, “penitential
15 communication” means a communication that is intended to be in
16 confidence, including, but not limited to, a sacramental confession
17 made to a clergy member who, in the course of the discipline or
18 practice of his or her church, denomination, or organization is
19 authorized or accustomed to hear those communications and under
20 the discipline tenets, customs, or practices of his or her church,
21 denomination, or organization, has a duty to keep those
22 communications secret.

23 (B) This subdivision shall not be construed to modify or limit
24 a clergy member’s duty to report known or suspected elder and
25 dependent adult abuse if he or she is acting in the capacity of a
26 care custodian, health practitioner, or employee of an adult
27 protective services agency.

28 (C) Notwithstanding any other provision in this section, a clergy
29 member who is not regularly employed on either a full-time or
30 part-time basis in a long-term care facility or does not have care
31 or custody of an elder or dependent adult shall not be responsible
32 for reporting abuse or neglect that is not reasonably observable or
33 discernible to a reasonably prudent person having no specialized
34 training or experience in elder or dependent care.

35 (3) (A) A mandated reporter who is a physician and surgeon,
36 a registered nurse, or a psychotherapist, as defined in Section 1010
37 of the Evidence Code, shall not be required to report, pursuant to
38 paragraph (1), an incident if all of the following conditions exist:

39 (i) The mandated reporter has been told by an elder or dependent
40 adult that he or she has experienced behavior constituting physical

1 abuse, as defined in Section 15610.63, abandonment, abduction,
2 isolation, financial abuse, or neglect.

3 (ii) The mandated reporter is not aware of any independent
4 evidence that corroborates the statement that the abuse has
5 occurred.

6 (iii) The elder or dependent adult has been diagnosed with a
7 mental illness or dementia, or is the subject of a court-ordered
8 conservatorship because of a mental illness or dementia.

9 (iv) In the exercise of clinical judgment, the physician and
10 surgeon, the registered nurse, or the psychotherapist, as defined
11 in Section 1010 of the Evidence Code, reasonably believes that
12 the abuse did not occur.

13 (B) This paragraph shall not be construed to impose upon
14 mandated reporters a duty to investigate a known or suspected
15 incident of abuse and shall not be construed to lessen or restrict
16 any existing duty of mandated reporters.

17 (4) (A) In a long-term care facility, a mandated reporter shall
18 not be required to report as a suspected incident of abuse, as defined
19 in Section 15610.07, an incident if all of the following conditions
20 exist:

21 (i) The mandated reporter is aware that there is a proper plan
22 of care.

23 (ii) The mandated reporter is aware that the plan of care was
24 properly provided or executed.

25 (iii) A physical, mental, or medical injury occurred as a result
26 of care provided pursuant to clause (i) or (ii).

27 (iv) The mandated reporter reasonably believes that the injury
28 was not the result of abuse.

29 (B) This paragraph shall not be construed to require a mandated
30 reporter to seek, nor to preclude a mandated reporter from seeking,
31 information regarding a known or suspected incident of abuse prior
32 to reporting. This paragraph shall apply only to those categories
33 of mandated reporters that the State Department of Public Health
34 determines, upon approval by the Bureau of Medi-Cal Fraud and
35 the state long-term care ombudsman, have access to plans of care
36 and have the training and experience necessary to determine
37 whether the conditions specified in this section have been met.

38 (c) (1) Any mandated reporter who has knowledge, or
39 reasonably suspects, that types of elder or dependent adult abuse
40 for which reports are not mandated have been inflicted upon an

1 elder or dependent adult, or that his or her emotional well-being
2 is endangered in any other way, may report the known or suspected
3 instance of abuse.

4 (2) If the suspected or alleged abuse occurred in a long-term
5 care facility other than a state mental health hospital or a state
6 developmental center, the report may be made to the long-term
7 care ombudsman program. Except in an emergency, the local
8 ombudsman shall report any case of known or suspected abuse to
9 the State Department of Public Health and any case of known or
10 suspected criminal activity to the Bureau of Medi-Cal Fraud, as
11 soon as is practicable.

12 (3) If the suspected or alleged abuse occurred in a state mental
13 health hospital or a state developmental center, the report may be
14 made to the designated investigator of the State Department of
15 State Hospitals or the State Department of Developmental Services
16 or to a local law enforcement agency. Except in an emergency,
17 the local law enforcement agency shall report any case of known
18 or suspected criminal activity to the Bureau of Medi-Cal Fraud,
19 as soon as is practicable.

20 (4) If the suspected or alleged abuse occurred in a place other
21 than a place described in paragraph (2) or (3), the report may be
22 made to the county adult protective services agency.

23 (5) If the conduct involves criminal activity not covered in
24 subdivision (b), it may be immediately reported to the appropriate
25 law enforcement agency.

26 (d) If two or more mandated reporters are present and jointly
27 have knowledge or reasonably suspect that types of abuse of an
28 elder or a dependent adult for which a report is or is not mandated
29 have occurred, and there is agreement among them, the telephone
30 report or Internet report, as authorized by Section 15658, may be
31 made by a member of the team selected by mutual agreement, and
32 a single report may be made and signed by the selected member
33 of the reporting team. Any member who has knowledge that the
34 member designated to report has failed to do so shall thereafter
35 make the report.

36 (e) A telephone report or Internet report, as authorized by
37 Section 15658, of a known or suspected instance of elder or
38 dependent adult abuse shall include, if known, the name of the
39 person making the report, the name and age of the elder or
40 dependent adult, the present location of the elder or dependent

1 adult, the names and addresses of family members or any other
2 adult responsible for the elder's or dependent adult's care, the
3 nature and extent of the elder's or dependent adult's condition, the
4 date of the incident, and any other information, including
5 information that led that person to suspect elder or dependent adult
6 abuse, as requested by the agency receiving the report.

7 (f) The reporting duties under this section are individual, and
8 no supervisor or administrator shall impede or inhibit the reporting
9 duties, and no person making the report shall be subject to any
10 sanction for making the report. However, internal procedures to
11 facilitate reporting, ensure confidentiality, and apprise supervisors
12 and administrators of reports may be established, provided they
13 are not inconsistent with this chapter.

14 (g) (1) Whenever this section requires a county adult protective
15 services agency to report to a law enforcement agency, the law
16 enforcement agency shall, immediately upon request, provide a
17 copy of its investigative report concerning the reported matter to
18 that county adult protective services agency.

19 (2) Whenever this section requires a law enforcement agency
20 to report to a county adult protective services agency, the county
21 adult protective services agency shall, immediately upon request,
22 provide to that law enforcement agency a copy of its investigative
23 report concerning the reported matter.

24 (3) The requirement to disclose investigative reports pursuant
25 to this subdivision shall not include the disclosure of social services
26 records or case files that are confidential, nor shall this subdivision
27 be construed to allow disclosure of any reports or records if the
28 disclosure would be prohibited by any other provision of state or
29 federal law.

30 (h) Failure to report, or impeding or inhibiting a report of,
31 physical abuse, as defined in Section 15610.63, abandonment,
32 abduction, isolation, financial abuse, or neglect of an elder or
33 dependent adult, in violation of this section, is a misdemeanor,
34 punishable by not more than six months in ~~the~~ a county jail, by a
35 fine of not more than one thousand dollars (\$1,000), or by both
36 that fine and imprisonment. Any mandated reporter who willfully
37 fails to report, or impedes or inhibits a report of, physical abuse,
38 as defined in Section 15610.63, abandonment, abduction, isolation,
39 financial abuse, or neglect of an elder or dependent adult, in
40 violation of this section, if that abuse results in death or great bodily

1 injury, shall be punished by not more than one year in a county
 2 jail, by a fine of not more than five thousand dollars (\$5,000), or
 3 by both that fine and imprisonment. If a mandated reporter
 4 intentionally conceals his or her failure to report an incident known
 5 by the mandated reporter to be abuse or severe neglect under this
 6 section, the failure to report is a continuing offense until a law
 7 enforcement agency specified in paragraph (1) of subdivision (b)
 8 discovers the offense.

9 (i) For purposes of this section, “dependent adult” shall have
 10 the same meaning as in Section 15610.23.

11 SEC. 224. Section 15650 of the Welfare and Institutions Code
 12 is amended to read:

13 15650. (a) Investigation of reports of known or suspected
 14 instances of abuse in long-term care facilities shall be the
 15 responsibility of the bureau, the local law enforcement agency,
 16 and the long-term care ombudsman program.

17 (b) Investigations of known or suspected instances of abuse
 18 outside of long-term care facilities shall be the responsibility of
 19 the county adult protective services agency, unless another public
 20 agency is given responsibility for investigation in that jurisdiction,
 21 and the local law enforcement agency.

22 (c) The investigative responsibilities set forth in this section are
 23 in addition to, and not in derogation of or substitution for, the
 24 investigative and regulatory responsibilities of licensing agencies,
 25 such as the State Department of Social Services Community Care
 26 Licensing Division and the State Department of Public Health
 27 Licensing and Certification Division and their authorized
 28 representatives.

29 (d) Other public agencies involved in the investigation of abuse
 30 or advocacy of respective client populations, or both, include, but
 31 shall not be limited to, the State Department of State Hospitals and
 32 the State Department of Developmental Services. Other public
 33 agencies shall conduct or assist in, or both, the investigation of
 34 reports of abuse of elder and dependent adults within their
 35 jurisdiction in conjunction with county adult protective services,
 36 local ombudsman programs, and local law enforcement agencies.

37 (e) Each county adult protective services agency shall maintain
 38 an inventory of all public and private service agencies available
 39 to assist victims of abuse, as defined by Section 15610.07. This
 40 inventory shall be used to refer victims in the event that the county

1 adult protective services agency cannot resolve the immediate
2 needs of the victim, and to serve the victim on a long-term,
3 followup basis. The intent of this section is to acknowledge that
4 limited funds are available to resolve all suspected cases of abuse
5 reported to a county adult protective services agency.

6 (f) Each local ombudsman program shall maintain an inventory
7 of all public and private agencies available to assist long-term care
8 residents who are victims of abuse, as defined by Section 15610.07.
9 This inventory shall be used to refer cases of abuse in the event
10 that another agency has jurisdiction over the resident, the abuse is
11 verified and further investigation is needed by a law enforcement
12 or licensing agency, or the program does not have sufficient
13 resources to provide immediate assistance. The intent of this section
14 is to acknowledge that ombudsman responsibility in abuse cases
15 is to receive reports, determine the validity of reports, refer verified
16 abuse cases to appropriate agencies for further action as necessary,
17 and follow up to complete the required report information. Other
18 ombudsman services shall be provided to the resident, as
19 appropriate.

20 SEC. 225. Section 18969 of the Welfare and Institutions Code
21 is amended to read:

22 18969. (a) There is hereby created in the State Treasury a fund
23 which shall be known as the State Children's Trust Fund. The fund
24 shall consist of funds received from a county pursuant to Section
25 18968, funds collected by the state and transferred to the fund
26 pursuant to subdivision (b) of Section 103625 of the Health and
27 Safety Code and Article 2 (commencing with Section 18711) of
28 Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation
29 Code, grants, gifts, or bequests made to the state from private
30 sources to be used for innovative and distinctive child abuse and
31 neglect prevention and intervention projects, and money
32 appropriated to the fund for this purpose by the Legislature. The
33 State Registrar may retain a percentage of the fees collected
34 pursuant to Section 103625 of the Health and Safety Code, not to
35 exceed 10 percent, in order to defray the costs of collection.

36 (b) Money in the State Children's Trust Fund, upon
37 appropriation by the Legislature, shall be allocated to the State
38 Department of Social Services for the purpose of funding child
39 abuse and neglect prevention and intervention programs. The
40 department may not supplant any federal, state, or county funds

1 with any funds made available through the State Children’s Trust
 2 Fund.

3 (c) The department may establish positions as needed for the
 4 purpose of implementing and administering child abuse and neglect
 5 prevention and intervention programs that are funded by the State
 6 Children’s Trust Fund. However, the department shall use no more
 7 than 5 percent of the funds appropriated pursuant to this section
 8 for administrative costs.

9 (d) No State Children’s Trust Fund money shall be used to
 10 supplant state General Fund money for any purpose.

11 (e) It is the intent of the Legislature that the State Children’s
 12 Trust Fund provide for all of the following:

13 (1) The development of a public-private partnership by
 14 encouraging consistent outreach to the private foundation and
 15 corporate community.

16 (2) Funds for large-scale dissemination of information that will
 17 promote public awareness regarding the nature and incidence of
 18 child abuse and the availability of services for intervention. These
 19 public awareness activities shall include, but not be limited to, the
 20 production of public service announcements, well-designed posters,
 21 pamphlets, booklets, videos, and other media tools.

22 (3) Research and demonstration projects that explore the nature
 23 and incidence and the development of long-term solutions to the
 24 problem of child abuse.

25 (4) The development of a mechanism to provide ongoing public
 26 awareness through activities that will promote the charitable tax
 27 deduction for the trust fund and seek continued contributions.
 28 These activities may include convening a philanthropic roundtable,
 29 developing literature for use by the State Bar for dissemination,
 30 and whatever other activities are deemed necessary and appropriate
 31 to promote the trust fund.

32 SEC. 226. Section 1 of Chapter 357 of the Statutes of 2012 is
 33 amended to read:

34 SECTION 1. (a) The sum of six hundred twenty-four thousand
 35 six hundred seventy-one dollars and eighty-six cents (\$624,671.86)
 36 is hereby appropriated from the fund specified in subdivision (b)
 37 to the Executive Officer of the California Victim Compensation
 38 and Government Claims Board for the payment of claims accepted
 39 by the board pursuant to the schedule set forth in subdivision (b).

1 (b) Pursuant to subdivision (a), claims accepted by the California
2 Victim Compensation and Government Claims Board shall be paid
3 pursuant to the following schedule:

4		
5	Total for Fund: General Fund (0001)	
6		\$593,372.28
7	Total for Fund: Item 2660-001-0042	\$9,330.35
8	Budget Act of 2012, Program 20.10	
9	Total for Fund: Item 2740-001-0044	\$3,055.15
10	Budget Act of 2012, Program 11	
11	Total for Fund: Item 4260-001-0001	\$6,131.34
12	Budget Act of 2012, Program 20	
13	Total for Fund: Item 5180-111-0001	\$3,117.59
14	Budget Act of 2012, Program 25.15	
15	Total for Fund: Item 7100-001-0185	\$9,665.15
16	Budget Act of 2012, Program 21	

17
18 SEC. 227. Section 1 of Chapter 513 of the Statutes of 2012 is
19 amended to read:

20 SECTION 1. This act shall be known and may be cited as
21 Kathy’s Law.

22 SEC. 228. Section 1 of Chapter 541 of the Statutes of 2012 is
23 amended to read:

24 SECTION 1. The Legislature finds and declares all of the
25 following:

26 (a) The coho salmon (*Oncorhynchus kisutch*) is a fish native to
27 many northern California coastal streams and consists of two
28 distinct Evolutionary Significant Units (ESU), the Southern
29 Oregon/Northern California Coast (SONCC) and the Central
30 California Coast (CCC) ESUs. The historical range of the SONCC
31 ESU includes coastal rivers and tributaries in Del Norte, Siskiyou,
32 Humboldt, Trinity, Mendocino, and Lake Counties. The historical
33 range for the CCC ESU includes coastal rivers and tributaries in
34 parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano,
35 Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara,
36 and Santa Cruz Counties.

37 (b) All coho salmon runs in California have declined
38 dramatically over the past 40 to 50 years. Population numbers,
39 including hatchery stocks, were estimated at 6 to 15 percent of
40 1940 levels in 2004. Since 2004, populations in all monitored

1 streams have continued to decline with an estimated 1 percent
2 remaining of the original population. While a few coastal rivers,
3 such as the Russian River, did show an increase in population for
4 2011, it is not yet known whether the increase is sustainable, and
5 the species remains at critical risk of extinction.

6 (c) Both the SONCC and the CCC ESUs are listed pursuant to
7 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
8 et seq.) and the California Endangered Species Act (Chapter 1.5
9 (commencing with Section 2050) of Division 3 of the Fish and
10 Game Code). The populations south of the San Francisco Bay are
11 listed as endangered and considered to be virtually extinct. The
12 populations between San Francisco Bay and Punta Gorda to the
13 north are listed as endangered, and the populations from Punta
14 Gorda to the Oregon border are listed as threatened.

15 (d) California's salmon populations need freshwater habitat that
16 includes cold and clean water, appropriate water depth, quantity,
17 and flow velocities, upland and riparian vegetation to stabilize soil
18 and shade, clean gravel for spawning and egg rearing, large woody
19 debris to provide resting and hiding places, adequate food, and
20 varied channel forms.

21 (e) An urgency exists due to the extraordinarily small numbers
22 of coho salmon remaining in California. In order to prevent their
23 extinction from northern California waters, it is imperative that
24 habitat restoration efforts be expedited and increased as soon as
25 possible.

26 (f) Therefore, it is the intent of the Legislature in enacting this
27 policy that the Department of Fish and Wildlife seek agreements
28 and partnerships with state and federal agencies to efficiently and
29 effectively permit habitat enhancement projects necessary to
30 prevent the extinction of coho salmon populations in California
31 coastal watersheds and that the Department of Fish and Wildlife
32 expedite and streamline the permitting and approval of coho salmon
33 habitat enhancement projects, including, in particular, large woody
34 debris restoration projects, in northern California streams.

35 (g) By eliminating barriers to fish passage, stabilizing banks,
36 increasing stream channel complexity, and otherwise restoring and
37 enhancing habitat, these projects will result in a net benefit to coho
38 salmon and other species.

39 SEC. 229. Section 2 of Chapter 719 of the Statutes of 2012 is
40 amended to read:

1 SEC. 2. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 This authorization is required to begin construction on the
6 memorial as quickly as possible to coincide with ~~the~~ Portuguese
7 Heritage Month, established by Resolution Chapter 24 of the
8 Statutes of 2010.

9 SEC. 230. Any section of any act enacted by the Legislature
10 during the 2013 calendar year that takes effect on or before January
11 1, 2014, and that amends, amends and renumbers, adds, repeals
12 and adds, or repeals a section that is amended, amended and
13 renumbered, added, repealed and added, or repealed by this act,
14 shall prevail over this act, whether that act is enacted prior to, or
15 subsequent to, the enactment of this act. The repeal, or repeal and
16 addition, of any article, chapter, part, title, or division of any code
17 by this act shall not become operative if any section of any other
18 act that is enacted by the Legislature during the 2013 calendar year
19 and takes effect on or before January 1, 2014, amends, amends
20 and renumbers, adds, repeals and adds, or repeals any section
21 contained in that article, chapter, part, title, or division.