

Memorandum 2021-7

**Recodification of Toxic Substance Statutes:
Hazardous Substance Account Recodification Act – Conforming Revisions
(Draft Recommendation)**

In January 2020, the Commission¹ prepared a tentative recommendation for the conforming revisions needed to reflect the proposed recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.² This tentative recommendation was circulated for public comment for several months, but received no comment.

This memorandum discusses issues that need to be decided in order to finalize the Commission's conforming revisions recommendation. **All of the matters in this memorandum are proposed consent, in line with the Commission's prior direction on addressing purely technical or uncontroversial matters.**³ The Commission will need to decide whether to approve the attached draft as a final recommendation, either with or without additional changes.

Unless otherwise indicated, all statutory citations are to the Health and Safety Code. References to proposed sections refer to the proposed sections in the draft final recommendation for the recodification of Chapter 6.8.⁴

Unless the context requires otherwise, "department" refers to the Department of Toxic Substances Control ("DTSC").

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Tentative Recommendation on *Hazardous Substance Account Recodification Act: Conforming Revisions* (January 2020) (hereafter, "Conforming Revisions TR").

3. Minutes (July 2019), p. 2.

When presenting proposed consent matters, the memorandum describes the issue using the same level of detail as if the issue would be up for discussion at the Commission's meeting, but the item will not be presented by staff at the meeting.

4. The draft final recommendation is attached to Memorandum 2021-6. The draft final recommendation for the recodification of Chapter 6.8 is referred to as "draft recodification recommendation."

MINOR CONFORMING CHANGES TO TENTATIVE RECOMMENDATION

Legislative Changes

The staff updated the code sections in this draft recommendation to reflect the changes made in legislation enacted this year.⁵

The staff does not plan to seek implementing legislation in 2021. For this reason, the staff made technical updates to the uncodified provisions to reflect that we anticipate seeking implementing legislation in 2022. Before doing so, the staff will update the provisions contained in this draft to reflect any legislative changes that are made in 2021.

Adjusted Section Numbering in Recodification

As indicated in Memorandum 2021-6, the section numbering for the recodification of Chapter 6.8 was adjusted. The references in the attached recommendation have been updated accordingly.

Inclusion of Conforming Revision in Recodification Act

The tentative recommendation discussed the fact that the conforming revisions would likely be introduced as separate legislation. Specifically, to ensure that the provisions about the nonsubstantive effect of this project apply to the conforming revisions, the tentative recommendation noted that the conforming revisions legislation would be defined as part of the “Hazardous Substance Account Recodification Act.”⁶

The staff has made that change to proposed Section 78000(b) in the draft recodification recommendation and the discussion of this issue in the attached draft has been updated accordingly.

NOTES IN CONFORMING REVISIONS TENTATIVE RECOMMENDATION

Informational Notes

For the most part, the Notes in the tentative recommendation were informational. They are intended to facilitate stakeholder review.⁷

5. See 2020 Cal. Stat. ch. 166, § 4 (amending Gov’t Code § 65941.1), 2020 Cal. Stat. ch. 194, § 1.5 (amending Gov’t Code § 65913.4), 2020 Cal. Stat. ch. 244, § 1 (amending Pen. Code § 803), 2020 Cal. Stat. ch. 264, § 11 (amending Health & Safety Code § 17021.8), 2020 Cal. Stat. ch. 276, § 1 (amending Health & Safety Code § 25215.1), 2020 Cal. Stat. ch. 312, § 57 (amending Bus. & Prof. Code § 7058.7).

6. See Conforming Revisions TR, *supra* note 2, at 2-3.

7. See, e.g., Notes to Civ. Code § 850 in Conforming Revisions TR.

In most cases, these Notes specify that, in the absence of comment, the proposed treatment of the cross-reference will be presumed correct.⁸ Given the fact that no comment was received on this document, the staff does not see a need to discuss these informational Notes further, with the exception of notes pertaining to cross-references to Section 25358.3 (which are discussed later in this memorandum).

Aside from the individual provisions discussed in this memorandum, the staff recommends that the provisions be left as proposed in the tentative recommendation.

Notes Welcoming Comment on Proposed Treatment for Cross-Reference

In a few cases, the appropriate treatment for a cross-reference was somewhat less clear. In these cases, the tentative recommendation offered a proposed treatment for the cross-reference, but a Note welcomed comment on that treatment.⁹

Given the lack of comment on these items, the staff reviewed them in more detail to determine whether any adjustment should be made. In one case, the staff proposes an adjustment, described later in this memorandum, to the treatment proposed in the tentative recommendation. **Except as discussed later in this memorandum, the staff recommends that the proposed treatment of the cross-references be left as presented in the tentative recommendation.**

For one provision, the tentative recommendation simply sought comment on how a cross-reference (to Section 25358.3) should be updated, without offering a proposed treatment.¹⁰ This memorandum discusses how to address that cross-reference.

8. See, e.g., Notes to Civ. Code §§ 850, 2079.7; Educ. Code § 17213.1; Fish & Game Code §§ 12015, 12017; Gov't Code § 53321.5, Health & Safety Code §§ 11374.5, 25117.13, 25173.6, 25174, 25178, 25220, 25224, 25225, 25226, 25227, 25250.54, 25262 (Note #2), 25279.1, 25299.50.6, 25403.1 (except the portion of Note #1 re Section 25358.3), 25404.1, 101483; Rev. & Tax Code § 402.3 in Conforming Revisions TR.

9. See Notes to Civ. Code § 853 and Health & Safety Code §§ 25174.7, 25262 (Note #1) in Conforming Revisions TR.

10. See Note to Health & Safety Code § 25403.1 (Note #1 re Section 25358.3) in Conforming Revisions TR.

Notes Identifying Potential Problem or Possible Improvement

A few Notes identified a potential problem in the existing section or a possible improvement, typically unrelated to the required conforming revision.¹¹ Later in this memorandum, the staff offers a proposal for how to address these matters.

CROSS-REFERENCES TO SECTION 25358.3

This section of the memorandum discusses cross-references to Section 25358.3. The proposed recodification would divide that existing provision into multiple sections. The division of this section raises questions about how to treat cross-references to Section 25358.3 as a whole. In general, for such cross-references, the proposed treatment is to refer only to the proposed sections that contain material that appears to be relevant to the purpose of the cross-reference.

In one case, discussed below, it was not entirely clear which of the proposed provisions recodifying Section 25358.3 were relevant to the cross-reference.

After having reviewed Section 25358.3 in detail, the staff re-evaluated the other cross-references to this provision.

A few adjustments to the tentative recommendation's proposed treatment of these cross-references are recommended below. Those changes have already been incorporated into the attached draft recommendation.

Health & Safety Code § 25403.1(a)(1)(B)(v)

Health and Safety Code Section 25403.1(a)(1)(B)(v) refers to "an agreement entered into by the department pursuant to Section 25187, 25355.5, or 25358.3, for the investigation or cleanup at a site." It is unclear which parts of Section 25358.3 might be relevant to that cross-reference (i.e., might give rise to "an agreement entered into by the department"). That issue was discussed in a Note in the tentative recommendation, but no comment was received.

Provisions of Section 25358.3 Related to Agreements

Section 25358.3 is proposed to be recodified as four sections.¹² The staff took a more in-depth look at the contents of those sections to determine which might give rise to a relevant "agreement."

11. See Notes to Gov't Code § 53313, Health & Safety Code §§ 25395.94, 25411 in Conforming Revisions TR.

12. Section 25358.3 is proposed for recodification as four sections: proposed Sections 78650, 78655, 78660, and 78870. The first three of these sections are all contained in the same article, but the final section is recodified in a different location. See Proposed Article 1 of Chapter 4 of, and Proposed Article 2 of Chapter 5 of, Part 2 of Division 45.

The staff concluded that any of the four proposed sections could relate to an agreement involving DTSC. Specifically, such agreements might include the following:

- A contract between DTSC and a service provider for cleanup actions, investigations, or studies under proposed Section 78655.¹³
- A settlement agreement between DTSC and a responsible party in a situation when the director has requested that the Attorney General seek necessary relief under proposed Sections 78660 and 78870.
- A negotiated agreement between DTSC and a responsible party, in lieu of an administrative order authorized by proposed Section 78870.

This list includes *all* of the proposed sections that would recodify Section 25358.3. While it is not clear that all of these kinds of agreements are actually relevant to the cross-reference,¹⁴ none of them are plainly irrelevant.

Proposed Treatment of Section 25358.3 Cross-Reference

In the absence of certainty about which provisions of Section 25358.3 pertain to the “agreements” specified in Section 25403.1(a)(1)(B)(v), the most conservative approach is to update the cross-reference to refer to all of the proposed sections that recodify portions of Section 25358.3.

For this reason, the staff recommends that Section 25403.1(a)(1)(B)(v) cross-refer to all of the provisions that recodify Section 25358.3 (i.e., proposed Article 1 (commencing with Section 78650)¹⁵ of Chapter 4 of Part 2 of Division 45 and proposed Section 78870).

Health & Safety Code § 25403.1(a)(1)(B)(vi)

The subsequent clause of Section 25403.1 also refers to Section 25358.3. This clause refers to specified orders or agreements issued pursuant to the referenced provisions, as follows:

- (vi) A remedial action order, an imminent or substantial endangerment order or agreement, a prospective purchase

13. Proposed Section 78655 grants authority to contract for actions authorized by proposed Section 78650, so both of these sections could be relevant authority for such a contract.

14. Although its not entirely clear, the context of Section 25403.1 suggests that the relevant “agreement” would be one between the department and a responsible party (i.e., *not* a contract with a non-liaible, third-party entity to undertake work on behalf of the department).

15. The proposed article also includes proposed Section 78665, related to penalties, that does not contain material from Section 25358.3. The inclusion of the penalty provision in the cross-reference would not appear to have a substantive effect. For this reason, the proposed cross-reference update would refer to the article as a whole (proposed Article 1 of Chapter 4 of Part 2 of Division 45).

agreement, or an order on consent issued pursuant to Section 25355.5, 25356.1.3, or 25358.3, as applicable.

The staff re-evaluated the proposed treatment to the cross-reference to Section 25358.3 in this clause.

Proposed Treatment of Cross-Reference in Tentative Recommendation

Clause (vi) refers to “an imminent or substantial endangerment order or agreement.” For this clause, the tentative recommendation proposes replacing the reference to Section 25358.3 with a reference to proposed Section 78870, which recodifies the portion of Section 25358.3 that authorizes action in a situation of imminent and substantial endangerment.

The staff believes that it would be appropriate to also refer to proposed Section 78660, which relates to seeking relief through the Attorney General. It seems possible that one of the specified orders or agreements could arise in litigation conducted pursuant to proposed Section 78660. For this reason, the conservative approach would be to refer to this (possibly relevant) proposed provision.

For this reason, the staff recommends that Section 25403.1(a)(1)(B)(vi) cross-refer to proposed Section 78660, as well as Section 78870.

Other Cross-References to Section 25358.3

The staff reviewed the other provisions that cross-refer to Section 25358.3, to determine whether the proposed treatment of those cross-references should be adjusted.¹⁶

For the most part, the proposed treatment of the cross-references appears to be appropriate. In some cases, the cross-references are updated to refer to all of the proposed provisions that recodify Section 25358.3.¹⁷ In other cases, the references are updated to refer only to the seemingly relevant subset of proposed sections recodifying Section 25358.3.¹⁸

16. See Health & Safety Code §§ 25262, 25299.50.6, and 101483 in Conforming Revisions TR and proposed Sections 78665, 79020, 79030, 79550, 79570, 79885, and 80040 in draft recodification recommendation.

17. See Health & Safety Code § 25262 in Conforming Revisions TR and proposed Section 78665 in draft recodification recommendation.

18. See Health & Safety Code § 25299.50.6 (department requires the responsible parties to undertake work pursuant to an [presumably administrative] order issued pursuant to proposed Section 78870) in Conforming Revisions TR and proposed Sections 79020 (department shall issue orders pursuant to proposed Section 78870), 79030 (related to a department’s authority to issue orders under proposed Section 79020), 79550 (orders issued pursuant to either proposed Section 78660 or 78870), 79570 (refers to “an order of the director, pursuant to Section 78870, or an order of the court, pursuant to Section 78660”), 79885 (refers to an order issued by the department pursuant to proposed Section 78870), and 80040 (department and responsible party have entered into an

For one provision in the attached draft, however, the staff recommends that the tentative recommendation's proposed treatment of a Section 25358.3 cross-reference be adjusted. The cross-reference is found in Health and Safety Code Section 101483, which, like one of the provisions discussed previously, references Section 25358.3 as authority for "an order or enforceable agreement."

As described above, it is unclear which of the provisions of Section 25358.3 authorize "agreements" and it may be that the "orders" relevant to Section 101483 would include court orders, pursuant to proposed Section 78660.

Consistent with conservative approach taken previously, the staff recommends that Section 101483 cross-refer to all of the provisions recodifying Section 25358.3 (i.e., proposed Article 1 (commencing with Section 78650)¹⁹ of Chapter 4 of Part 2 of Division 45 and proposed Section 78870).

MATTERS FOR POSSIBLE FUTURE STUDY

For each of the issues discussed below, the staff recommends that the issue be addressed, if at all, as a matter for future study. In each case, the issues are either potential problems or possible improvements to the existing law. These are not the type of matters that the Commission would typically address in a conforming revisions recommendation. Moreover, given the character of these issues, there is some question about either whether to address the issue at all or how best to resolve it.

The Commission appears to have authority to work on these matters, as they would all fall within the Commission's authority to address technical or minor substantive defects in the law.²⁰

In line with the recommendation that these issues be addressed as matters for future work, the staff recommends that the provisions discussed below remain as proposed in the tentative recommendation.

Gov't Code § 53313. Services Financed by Community Facilities District

Government Code Section 53313(f) requires that notice of a hazardous substance response action undertaken by a community facilities district be provided to the State Department of Health Care Services ("DHCS"). It appears

order embodied in a consent order pursuant to proposed Section 78870) in draft recodification recommendation.

19. See *supra* note 15.

20. Gov't Code § 8298.

that this notice should be provided to DTSC, either instead of or in addition to DHCS.

Both of these agencies were originally part of the same department. And, DTSC succeeded to the responsibilities related to the cleanup of hazardous substance releases. A Note explains:

The programs and services of the DTSC and DHCS were both formerly part of the State Department of Health Services. See 1991 Governor's Reorganization Plan No. 1 of 1991, § 146 (proposed Health and Safety Code § 58804); Health & Safety Code § 100100. Section 53313 formerly referred to the State Department of Health Services. See former Section 53313, as amended by 2013 Cal. Stat. ch. 219, § 2.

DHCS's work does not appear to relate to hazardous substances. The mission of the DHCS is "to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care." See <https://www.dhcs.ca.gov/Pages/AboutUs.aspx>. None of DHCS's programs and services appear to relate to hazardous substance contamination or pollution more generally. See <https://www.dhcs.ca.gov/services/Pages/AllServices.aspx>.

On the other hand, DTSC succeeded to "the duties, powers, purposes, responsibilities, and jurisdiction of the Toxic Substances Control Program of the State Department of Health Services." See 1991 Governor's Reorganization Plan No. 1 of 1991, § 146 (proposed Health and Safety Code § 58804). DTSC's charge expressly includes the powers and duties in Chapter 6.8 of Division 20, which relate to cleanup of hazardous substance releases. See *id.*²¹

The staff recommends that the Commission consider the following issue as a matter for possible future study:

Should the notice required in Government Code Section 53313(f) be provided to the Department of Toxic Substances Control, either instead of or in addition to the State Department of Health Care Services?

Health & Safety Code § 25395.94. Site Assessment Plan

Health and Safety Code Section 25395.94 contains a cross-reference that may be in need of updating. Section 25395.94 cross-references a provision of Chapter 6.8 that provides standards for health risk assessments. Specifically, Section 25395.94(a)(2) specifies that any health risk assessment "shall be prepared in accordance with subdivisions (b), (c), and (d) of Section 25356.1.5."

21. See Note to Gov't Code § 53313 in Conforming Revisions TR.

Section 25395.94 was added in 2004 and has not been amended.²² The cross-referenced provision, Section 25356.1.5, was amended in 2007 to add a subdivision (e).²³ Similar to the referenced subdivisions, subdivision (e) also contains standards for health risk assessments. It is unclear whether the cross-reference in Section 25395.94 should be expanded to include the standards for health risk assessments in subdivision (e), as well as those in subdivisions (b), (c), and (d).

The staff recommends that the Commission consider the following issue as a matter for possible future study:

Should the cross-reference identifying standards for the preparation of health risk assessments in Health and Safety Code Section 25395.94(a)(2) be revised to also refer to the standards in proposed Section 79275(b) (existing Section 25356.1.5(e))?

Health & Safety Code § 25411. Definitions

Health and Safety Code Section 25411 contains two obsolete, limited-application definitions. Those definitions are proposed for deletion. The relevant terms (“agency” and “secretary”) are not used in the chapter to which the definitions apply. Instead, two similar, but undefined terms are used in the chapter. A Note asks whether those similar, undefined terms should be defined:

Section 25411 defines “agency” and “secretary.” However, those terms are not used in the chapter and the obsolete definitions for those terms are proposed for deletion. However, the chapter uses similar undefined terms, “department” and “director.” See, e.g., Sections 25411 and 25416. Given the subject matter of this chapter (hazardous materials information), it seems likely that these terms are intended to refer to the Department of Toxic Substances Control and the Director of Toxic Substances Control. The Commission welcomes comment on the intended meaning of the terms, “department” and “director,” and whether these terms should be defined in Section 25411.²⁴

Upon taking a more detailed look, the staff is unsure whether the term “department” is intended to refer to DTSC or whether it is used consistently to refer to a single agency (i.e., it appears that different provisions may use “department” to refer to different agencies).²⁵ Regardless, this issue appears to be

22. See 2004 Cal. Stat. ch. 705, § 1.

23. See 2007 Cal. Stat. ch. 597, § 1.

24. See Note to Health & Safety Code § 25411 in Conforming Revisions TR.

25. Health and Safety Code Section 25416 relates to epidemiological studies related to hazardous materials exposure. References to “department” in this section may have been intended to refer to the California Department of Public Health, which contains an environmental epidemiology

one that should be resolved – either the terms should be defined or the appropriate agency names should be substituted.

To address this issue, the staff recommends that the Commission consider the following issue as a matter for possible future study:

Should Health and Safety Code Section 25411 be amended to add definitions of the terms “department” and “director”? Alternatively, should the full name of the relevant department or director be substituted where these terms are used in Chapter 6.91 (commencing with Section 25411) of Division 20 of the Health and Safety Code?

APPROVAL OF RECOMMENDATION

Does the Commission approve the attached draft as a final recommendation, either with or without changes, for publication and submission to the Governor and Legislature?

Respectfully submitted,

Kristin Burford
Staff Counsel

section. See <https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/EES/Pages/Program-Landing1.aspx>.

Health and Safety Code Sections 25417 and 25417.1 require the department to publish a consumer information booklet described in a section of the Business and Professions Code. In the Business and Professions Code section, the relevant agency appears to be the Department of Real Estate. See Bus. & Prof. Code §§ 10050(a), 10084.1.

#E-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Hazardous Substance Account Recodification Act:
Conforming Revisions

February 2021

California Law Revision Commission
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Davis, CA 95616
530-752-3620
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

At the request of the Legislature, the Law Revision Commission prepared a recommendation that proposes to recodify Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

The proposed recodification would relocate the substance of Chapter 6.8 to Part 2 of a new division (Division 45) of the Health and Safety Code. This change requires renumbering the provisions of Chapter 6.8.

Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents. If the recodification is enacted, these cross-references will need to be revised to reflect to the recodified numbering scheme.

This recommendation proposes the necessary conforming revisions.

This recommendation was prepared pursuant to Resolution Chapter 46 of the Statutes of 2020.

HAZARDOUS SUBSTANCE ACCOUNT RECODIFICATION ACT: CONFORMING REVISIONS

1 In 2018, the Legislature directed the Law Revision Commission to conduct a
2 strictly nonsubstantive clean-up of “Chapter 6.5 (commencing with Section 25100)
3 and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and
4 Safety Code, and related provisions, to improve the organization and expression of
5 the law.”¹

6 The Commission decided to proceed with this work in phases, first undertaking
7 work on Chapter 6.8. The Commission has prepared a separate recommendation
8 presenting a complete draft of a proposed recodification of the provisions of Chapter
9 6.8.

10 The proposed recodification would relocate the substance of Chapter 6.8 to Part
11 2 of a new division (Division 45) of the Health and Safety Code. This change
12 requires renumbering the provisions of Chapter 6.8. The numbers for all of the
13 sections within Chapter 6.8 will change,² some of the sections (particularly the long
14 ones) would be split into two or more sections (in some cases, a section would be
15 recodified as multiple sections within a single article), and substantively similar
16 provisions would be placed together in a logical order.

17 Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents.
18 If the recodification is enacted, these cross-references will need to be revised to
19 reflect to the recodified numbering scheme.

20 This recommendation proposes the necessary conforming revisions. In general,
21 they are quite straightforward. A few key points are explained below.

22 **Nonsubstantive Reform**

23 In directing the Commission to study Chapter 6.8, the Legislature specified that
24 the Commission’s recommended legislation “shall not make any substantive
25 changes to the law.”³ The Commission took care to adhere to that limitation in
26 preparing its proposed recodification of Chapter 6.8.⁴

1. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)); see also 2020 Cal. Stat. res. ch. 46 (ACR 173 (Gallagher)).

2. Chapter 6.8 would be recodified as Health and Safety Code Sections 78000-81050.

3. 2020 Cal. Stat. res. ch. 46.

4. For a description of specific measures the Commission took to prevent any substantive change, see Recommendation on *Hazardous Substance Account Recodification Act* (February 2021), pp. 2-6 (hereafter, “Recodification Recommendation.”).

Any California Law Revision Commission document referred to in this recommendation can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

1 The Commission took similar care in preparing the conforming revisions
2 presented in this recommendation. In particular, the proposed legislation would only
3 update the cross-references to Chapter 6.8 and its contents and make other minor
4 technical revisions, such as:

- 5 • Elimination of gendered pronouns.⁵
- 6 • Insertion of subdivision or paragraph labels (where this would not create any
7 ambiguity or necessitate additional conforming revisions).⁶
- 8 • Other revisions to conform to legislative drafting conventions.⁷
- 9 • Correction of obsolete or erroneous cross-references. Each such correction is
10 explained in the accompanying Comment or Note.⁸
- 11 • A few miscellaneous technical revisions.⁹

12 Consistent with the limited scope of its legislative mandate, the Commission did not
13 consider, and is not proposing, any other kinds of changes to the provisions affected
14 by this recommendation.¹⁰

15 Due to their bulk, the conforming revisions in this recommendation might be
16 introduced as a separate bill, instead of being included in the same bill as the
17 recodification of Chapter 6.8. For this reason, the conforming revisions are proposed
18 to be statutorily defined as part of the “Hazardous Substance Account
19 Recodification Act.”¹¹ Including these revisions in that term is important, because
20 the proposed recodification includes the following provision:

21 78010. Nothing in the Hazardous Substance Account Recodification Act is
22 intended to substantively change the law contained in former Chapter 6.8
23 (commencing with 25300) of Division 20. The act is intended to be entirely
24 nonsubstantive in effect. Every provision of this part and every other provision of

5. See, e.g., proposed amendment of Health & Safety Code § 25198.3 *infra* and proposed amendment of Penal Code § 803 *infra*.

6. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*. For an example of a situation where the Commission deliberately refrained from inserting labels, see proposed amendment of Gov’t Code § 53313 *infra*.

7. See, e.g., proposed amendments of Civ. Code §§ 851, 853 (eliminating uses of the word “such,” which is disfavored in legislative drafting except in certain phrases); proposed amendments of Health & Safety Code §§ 25220, 25250.54, 57010 *infra* (replacing “Internet Web site” with “internet website”).

8. See proposed amendment of Civil Code § 853 *infra*; proposed amendments of Health & Safety Code §§ 25178, 25404.1 *infra*.

9. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*; proposed amendment of Health & Safety Code § 25262 *infra*.

10. Accordingly, readers of this recommendation should not infer that the Commission has evaluated and approved language that would not be changed by this recommendation.

11. See proposed Health & Safety Code § 78000(b) (defining “Hazardous Substance Account Recodification Act”) in the Recodification Recommendation, *supra* note 4.

1 this act, *including, without limitation, every cross-reference in every provision of*
2 *the act*, shall be interpreted consistent with the nonsubstantive intent of the act.¹²

3 This provision underscores the nonsubstantive nature of the recodification as a
4 whole and the updated cross-references in particular. It will help to ensure that the
5 courts and others interpret the recodification accordingly.

6 **Contingent and Deferred Operation**

7 On the assumption that the conforming revisions will be introduced as a separate
8 bill, this recommendation includes an uncodified provision that would make the
9 conforming revisions operative only if the recodification bill is enacted and becomes
10 operative.¹³ The operation of this legislation is also deferred to match the deferred
11 operation date proposed for the recodification legislation.¹⁴

12 The Commission will insert the appropriate bill number in this uncodified
13 provision after the recodification bill is introduced.

14 **Subordination Clause**

15 This recommendation also includes a subordination clause, in case one or more
16 of the code provisions in this recommendation is also amended in a substantive
17 manner by another bill.¹⁵ The subordination clause would ensure that the substantive
18 reform overrides the conforming revision, regardless of which bill is chaptered first.
19 Although the conforming revision would be nullified by the substantive reform, it
20 could be reintroduced the following year. With the deferred operative date, the
21 conforming revision could still be enacted prior to the recodification taking effect.
22 Even if a conforming revision is not enacted prior to the recodification taking effect,
23 the proposed recodification includes a provision that ensures that the outdated cross-
24 reference would be understood as a cross-reference to the recodified provision until
25 the relevant conforming revision could be enacted.¹⁶

12. See proposed Health & Safety Code § 78010 in the Recodification Recommendation, *supra* note 4 (emphasis added).

13. See proposed uncodified provision on contingent operation (at the end of the proposed legislation) *infra*.

14. See proposed uncodified provision on operative date *infra* and proposed uncodified provision on operative date in the Recodification Recommendation, *supra* note 4.

15. See proposed uncodified subordination clause (at the end of the proposed legislation) *infra*.

16. See proposed Health & Safety Code § 78015(b) in the Recodification Recommendation, *supra* note 4 (“A reference in a statute or regulation to a previously existing provision that is restated and continued in this part shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.”).

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TECHNICAL AND CONFORMING REVISIONS

1

BUSINESS AND PROFESSIONS CODE

2 **Bus. & Prof. Code § 7058.7 (amended). Hazardous substance certification examination**

3 SEC. __. Section 7058.7 of the Business and Professions Code is amended to read:

4 7058.7. (a) No contractor may engage in a removal or remedial action, as defined
5 in subdivision (d), unless the qualifier for the license has passed an approved
6 hazardous substance certification examination.

7 (b)(1) The Contractors State License Board, the Division of Occupational Safety
8 and Health of the Department of Industrial Relations, and the Department of Toxic
9 Substances Control shall jointly select an advisory committee, which shall be
10 composed of two representatives of hazardous substance removal workers in
11 California, two general engineering contractors in California, and two
12 representatives of insurance companies in California who shall be selected by the
13 Insurance Commissioner.

14 (2) The Contractors State License Board shall develop a written test for the
15 certification of contractors engaged in hazardous substance removal or remedial
16 action, in consultation with the Division of Occupational Safety and Health, the
17 State Water Resources Control Board, the Department of Toxic Substances Control,
18 and the advisory committee.

19 (c) The Contractors State License Board may require additional updated approved
20 hazardous substance certification examinations of licensees currently certified
21 based on new public or occupational health and safety information. The Contractors
22 State License Board, in consultation with the Department of Toxic Substances
23 Control and the State Water Resources Control Board, shall approve other initial
24 and updated hazardous substance certification examinations and determine whether
25 to require an updated certification examination of all current certificate holders.

26 (d) For purposes of this section “removal or remedial action” has the same
27 meaning as found in ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~
28 Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety
29 Code, if the action requires the contractor to dig into the surface of the earth and
30 remove the dug material and the action is at a site listed pursuant to ~~Section 25356~~
31 Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45
32 of the Health and Safety Code or any other site listed as a hazardous substance
33 release site by the Department of Toxic Substances Control or a site listed on the
34 National Priorities List compiled pursuant to the Comprehensive Environmental
35 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).
36 “Removal or remedial action” does not include asbestos-related work, as defined in
37 Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on
38 a highway.

1 (e)(1) A contractor may not install or remove an underground storage tank, unless
2 the contractor has passed the hazardous substance certification examination
3 developed pursuant to this section.

4 (2) A contractor who is not certified may bid on or contract for the installation or
5 removal of an underground tank, if the work is performed by a contractor who is
6 certified pursuant to this section.

7 (3) For purposes of this subdivision, “underground storage tank” has the same
8 meaning as defined in subdivision (y) of Section 25281 of the Health and Safety
9 Code.

10 **Comment.** Section 7058.7 is amended to update cross-references in accordance with the
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
12 the Health and Safety Code.

13 CIVIL CODE

14 **Civ. Code § 850 (amended). Definitions**

15 SEC. __. Section 850 of the Civil Code is amended to read:

16 850. The definitions set forth in Section 25260 of the Health and Safety Code
17 govern the construction of this chapter. In addition, the following definitions apply
18 for purposes of this chapter only:

19 (a) “Actual awareness” means actual knowledge of a fact pertaining to an
20 obligation under this chapter, including actual knowledge of a release exceeding the
21 notification threshold. Only actual awareness possessed by those employees or
22 representatives of an owner of a site who are responsible for monitoring, responding
23 to or otherwise addressing the release shall be attributable to the owner. Only actual
24 awareness possessed by those employees or representatives of a potentially
25 responsible party who are responsible for monitoring, responding to, or otherwise
26 addressing, the release shall be attributable to the potentially responsible party.

27 (b) “Commitment statement” means a written statement executed by the notice
28 recipient which recites expressly the language specified in Section 854.

29 (c) “Mediation” means an informal process in which the disputing parties select a
30 neutral third party to assist them in reaching a negotiated settlement in which the
31 neutral third party has no power to impose a solution on the parties, but rather has
32 the power only to assist the parties in shaping solutions to meet their interests and
33 objectives.

34 (d) “Negative response” means a written response by the recipient of a notice of
35 potential liability indicating that the recipient will not undertake any response
36 action, or a deemed negative response pursuant to subdivision (c) of Section 851 in
37 the event of the recipient’s failure to respond.

38 (e) “Neutral third party” means an experienced professional, such as an attorney,
39 engineer, environmentalist, hydrologist, or retired judge, who has served as a
40 mediator.

1 (f) “Notice of potential liability” means a notice, sent by the owner of the site,
2 stating that a release that exceeds the notification threshold has occurred at the site
3 and that the owner believes that the recipient of the notice is a responsible party with
4 respect to the release. The notice of potential liability shall describe the location of
5 the site and the nature of the release.

6 (g) “Notice recipient” means any one of the following:

7 (1) A person who receives a notice of potential liability pursuant to subdivision
8 (a) of Section 851.

9 (2) A person who provides a release report pursuant to subdivision (b) of Section
10 851.

11 (3) A person who offers a commitment statement to the owner of a site pursuant
12 to subdivision (c) of Section 851.

13 (h) “Notification threshold” means any release of such a magnitude that:

14 (1) The release is the subject of a response action which has been ordered by, or
15 is being performed by, an oversight agency; or

16 (2) The release is impeding the ability of the owner of the site to sell, lease, or
17 otherwise use the site.

18 (i) “Operation and maintenance” means any activity as defined in ~~subdivision (a)~~
19 ~~of Section 25318.5~~ Section 78080 of the Health and Safety Code.

20 (j) “Oversight agency” means any agency, as defined in subdivision (c) of Section
21 25260 of the Health and Safety Code, that has jurisdiction over a response action
22 performed in connection with a release that is the subject of a notice of potential
23 liability. Subject to any other limitation imposed by law, an oversight agency retains
24 full discretion as to when it exercises jurisdiction over a site.

25 (k) “Reasonable steps,” as used in subdivision (a) of Section 851, means the least
26 expensive means available to ascertain the potentially responsible parties. If the
27 owner cannot otherwise identify any apparent, potentially responsible parties, then
28 “reasonable steps” includes:

29 (1) Conducting a title search; and

30 (2) Reviewing all environmental reports in the owner’s possession of which the
31 owner has actual awareness pertaining to the site.

32 (l) “Release” means the release, as defined in ~~Sections 25320 and 25321~~ Section
33 78105 of the Health and Safety Code, of a hazardous material or hazardous
34 materials.

35 (m) “Release report” means a notice sent by a responsible party to the owner of
36 the site stating that a release has occurred on the site which is likely to exceed the
37 notification threshold. The release report shall describe the location of the site and
38 the nature of the release.

39 (n) “Remedial action” means any action as defined in ~~Section 25322~~ 78125 of the
40 Health and Safety Code.

41 (o) “Removal action” means any action as defined in ~~subdivision (a) of Section~~
42 ~~25323~~ Section 78135 of the Health and Safety Code.

1 (p) “Response action” means any removal actions, including, but not limited to,
2 site investigations and remedial actions, including, but not limited to, operation and
3 maintenance measures.

4 (q) “Responsible party” means any person who is liable under state or local law
5 for taking action in response to a release.

6 (r) “Site” means any parcel of commercial, industrial, or agricultural real property
7 where a hazardous materials release has occurred.

8 (s) “Written action” means any official action by any oversight agency where the
9 oversight agency has expressly exercised its cleanup authority in writing, pursuant
10 to the oversight agency’s procedures, directing a response action at the site.

11 **Comment.** Subdivisions (i), (l), (n), and (o) of Section 850 are amended to update cross-
12 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
13 Section 25300) of Division 20 of the Health and Safety Code.

14 **Civ. Code § 851 (amended). Obligations and notices for release**

15 SEC. __. Section 851 of the Civil Code is amended to read:

16 851. (a) An owner of a site who has actual awareness of a release exceeding the
17 notification threshold shall take all reasonable steps as defined in subdivision (j) of
18 Section 850 to expeditiously identify the potentially responsible parties. The owner
19 shall, as soon as reasonably possible after obtaining actual awareness of the
20 potentially responsible parties, send a notice of potential liability to the identified
21 potentially responsible parties and the agency, as defined in subdivision (c) of
22 Section 25260 of the Health and Safety Code, that the owner believes to be the
23 appropriate oversight agency. For any release exceeding the notification threshold
24 of which the owner has actual awareness that occurred prior to, but within three
25 years of, the effective date of this section, the notice shall be given on or before
26 December 31, 1998.

27 (b) A potentially responsible party who has actual awareness of a release which
28 is likely to exceed the notification threshold shall as soon as reasonably possible
29 after obtaining actual awareness of the release provide the owner of the site where
30 the release occurred with a release report. For any release exceeding the notification
31 threshold of which the potentially responsible party has actual awareness that
32 occurred prior to, but within three years of, the effective date of this section, the
33 release report shall be given on or before December 31, 1998. A potentially
34 responsible party may issue, at the potentially responsible party’s option, a
35 commitment statement to the owner of the site within 120 days of the potentially
36 responsible party’s issuance of a release report. The fact that a release report is
37 issued shall not constitute an admission of liability and may not be admitted as
38 evidence against a potentially responsible party in any litigation.

39 (c) When a notice of potential liability is issued, a notice recipient shall respond
40 to the owner, in writing, and by certified mail, return receipt requested, within 120
41 days from the date that the notice of potential liability was mailed. The notice
42 recipient’s response shall be either a commitment statement or a negative response.

1 The notice recipient's failure to submit the written response within the 120-day
2 period, or failure to strictly comply with the form of the written response, as
3 provided in Section 854, shall be deemed a negative response. The owner may agree
4 in writing to extend the period during which the notice recipient may respond to the
5 notice of potential liability. An extension of up to 120 days shall be provided if the
6 notice recipient commits to do a site investigation, the results of which shall be
7 provided to the owner and the oversight agency.

8 (d)(1) The common law duty to mitigate damages shall apply to any failure of the
9 owner of a site to give a timely notice of potential liability when the owner is
10 required to give this notice pursuant to this chapter. Where an owner fails to mitigate
11 damages by not giving a timely notice of potential liability, the owner's damage
12 claim shall be reduced in accordance with common law principles by the amount
13 that the potentially responsible party proves would have likely been mitigated had
14 a timely notice of potential liability been given.

15 (2) Common law principles shall apply to the failure of the potentially responsible
16 party to issue a timely release report. Where a potentially responsible party fails to
17 give a timely release report, the potentially responsible party, in accordance with
18 common law principles, shall be responsible to the owner of the site, for damages
19 that the owner proves are likely caused by ~~such~~ the failure to provide a release
20 report.

21 (3) Any party who argues the applicability of this subdivision carries the burden
22 of proof in that regard.

23 (4) Nothing in this section is intended to create a new cause of action or defense
24 beyond that which already exists under common law.

25 (5) Subdivisions (a) and (b), and paragraphs (1) and (2) of this subdivision, shall
26 not apply when the party to whom a notice of potential liability or release report is
27 owed already possesses actual awareness of the information required to be
28 transmitted in ~~such~~ the notice of potential liability or release report.

29 (e)(1) Except as provided in paragraph (2), the requirements of this chapter shall
30 not apply to a site listed pursuant to ~~Section 25356~~ Article 5 (commencing with
31 Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code
32 for response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ of
33 ~~Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health
34 and Safety Code or to a site where an oversight agency has issued an order or entered
35 into an enforceable agreement pursuant to any authority, including, but not limited
36 to, an order or enforceable agreement entered into by a local agency, the Department
37 of Toxic Substance Control, the State Water Resources Control Board, or a regional
38 water quality control board pursuant to Chapter 6.5 (commencing with Section
39 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing
40 with Section 25299.10), ~~Chapter 6.8 (commencing with Section 25300)~~, Chapter
41 6.85 (commencing with Section 25396), or Chapter 6.11 (commencing with Section
42 25404) of Division 20 of, or Part 2 (commencing with Section 78000) of Division

1 45 of, the Health and Safety Code, or pursuant to Division 7 (commencing with
2 Section 13000) of the Water Code.

3 (2) The requirements of this chapter shall apply if either of the following applies:

4 (A) The order or enforceable agreement is issued or entered into after the owner
5 accepts a commitment statement.

6 (B) The Department of Toxic Substance Control, State Water Resources Control
7 Board, or regional water quality control board that issued the order or entered into
8 an enforceable agreement consents in writing to the applicability of this chapter to
9 the site.

10 (f) It is the intent of the Legislature for this chapter to resolve disputes between,
11 and affect the rights of, private parties only. Nothing in this chapter shall affect the
12 authority of the Department of Toxic Substance Control, the State Water Resources
13 Control Board, a regional water quality control board, or any other oversight agency.

14 (g) Notwithstanding any other provision of this chapter, any time prior to
15 accepting a commitment statement, the owner may provide the notice to the notice
16 recipient that the provisions of subdivision (c), paragraph (2) of subdivision (e), and
17 Sections 852 and 854, shall not apply to the site, in which case the provisions of
18 subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854 shall not
19 apply to the site and the owner and notice recipient shall be entitled to pursue all
20 other legal remedies and defenses authorized by law.

21 **Comment.** Section 851(e) is amended to update cross-references in accordance with the
22 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
23 the Health and Safety Code.

24 This section is also amended to make technical changes.

25 **Civ. Code § 853 (amended). Construction of chapter**

26 SEC. __. Section 853 of the Civil Code is amended to read:

27 853. (a) Neither the failure to issue a commitment statement nor its issuance shall
28 be construed as an admission that the recipient of the notice of potential liability is
29 liable under any federal, state, or local law, including common law, for the release
30 that the party agrees to investigate or respond. Neither the failure to issue a
31 commitment statement nor the contents of the commitment statement shall be
32 admissible evidence in any proceeding, as defined in Section 901 of the Evidence
33 Code, except that the contents of the commitment statement shall be admissible
34 evidence in an action to enforce the commitment statement to the extent that ~~such~~
35 the contents would be admissible under other applicable law.

36 (b) Nothing in this chapter shall subject a notice recipient to any damages, fines,
37 or penalties for a failure to make a written response, either positive or negative, to a
38 notice of potential liability.

39 (c) Nothing in this chapter shall subject the owner of a site to any damages, fines,
40 or penalties for a failure to send a notice of potential liability pursuant to Section
41 851. Failure by the owner of a site to send a notice of potential liability of a release

1 in a timely fashion shall not be deemed to create any liability for the owner under a
2 theory of negligence per se.

3 (d) Nothing in this chapter imposes an affirmative duty on the owner of a site, or
4 any potentially responsible party, to discover, or determine the nature or extent of,
5 a hazardous materials release at the site. This chapter does not affect ~~such~~
6 affirmative duty described in this subdivision to the extent ~~it~~ that duty is imposed
7 by any other law.

8 (e) Subject to the defenses specified in ~~Section~~ Sections 101(35) and 107(b) of the
9 federal Comprehensive Environmental Response, Compensation, and Liability Act
10 of 1980, as amended (42 U.S.C. Secs. 9601(35) and 9607(b)), a cause of action is
11 hereby established whereby a notice recipient may recover from any responsible
12 party any reasonable response costs for conducting a response action as may be
13 approved or overseen by an oversight agency or as incurred pursuant to a
14 commitment statement. Liability among responsible parties shall be allocated based
15 upon the equitable factors specified in former subdivision (c) of former Section
16 25356.3 of the Health and Safety Code, as it existed prior to its repeal by Chapter
17 39 of the Statutes of 2012. No third-party beneficiary rights are created by a
18 commitment statement, except as provided in subdivision (b) of Section 854. This
19 cause of action applies to costs incurred prior to enactment of this subdivision.
20 However, no recovery may be obtained under this subdivision for costs incurred
21 more than three years prior to the filing of litigation to recover those costs. The
22 cause of action established pursuant to this subdivision shall not apply against a
23 current or former owner of a site unless that owner operated a business that caused
24 a release being addressed by a response action at the site and the costs incurred by
25 the notice recipient were in response to a release caused by the owner.

26 (f) Nothing in this chapter shall affect or limit the rights of an owner under
27 preexisting contract. Nothing in this chapter shall affect or limit the right of a notice
28 recipient and owner to agree to an allocation of liability or to an assignment of rights
29 and obligations that is different from or inconsistent with this chapter. ~~Such~~
30 ~~agreements~~ Agreements allocating liability or assigning rights and obligations shall
31 supersede the terms of this chapter.

32 (g) Nothing in this chapter shall make a notice recipient a responsible party,
33 beyond the obligations the notice recipient undertakes pursuant to this chapter.

34 (h) Nothing in this chapter shall apply to causes of action for wrongful death or
35 personal injury. However, the pleading of a cause of action for wrongful death or
36 personal injury shall not affect the applicability of this chapter to other causes of
37 action in the same civil action.

38 **Comment.** Section 853(e) is amended to update cross-references in accordance with the repeal
39 of Health and Safety Code Section 25356.3 in 2012. See 2012 Cal. Stat. ch. 39, § 63.

40 This section is also amended to make technical changes.

41 **Civ. Code § 2079.7 (amended). Disclosure obligation of seller or broker**

42 SEC. __. Section 2079.7 of the Civil Code is amended to read:

1 2079.7. (a) If a consumer information booklet described in Section 10084.1 of the
2 Business and Professions Code is delivered to a buyer in connection with the sale
3 of real property, including property specified in Section 1102 of the Civil Code, or
4 manufactured housing, as defined in Section 18007 of the Health and Safety Code,
5 a seller or broker is not required to provide additional information concerning, and
6 the information shall be deemed to be adequate to inform the buyer regarding,
7 common environmental hazards, as described in the booklet, that can affect real
8 property.

9 (b) Notwithstanding subdivision (a), nothing in this section either increases or
10 decreases the duties, if any, of sellers or brokers, including, but not limited to, the
11 duties of a seller or broker under this article, Article 1.5 (commencing with Section
12 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or ~~Section 25359.7~~ Section
13 78700 of the Health and Safety Code, or alters the duty of a seller or broker to
14 disclose the existence of known environmental hazards on or affecting the real
15 property.

16 **Comment.** Section 2079.7 is amended to update cross-references in accordance with the
17 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
18 the Health and Safety Code.

19 **Civ. Code § 2782.6 (amended). Indemnification for hazardous materials services**

20 SEC. __. Section 2782.6 of the Civil Code is amended to read:

21 2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to
22 indemnify a professional engineer or geologist or the agents, servants, independent
23 contractors, subsidiaries, or employees of that engineer or geologist from liability
24 as described in Section 2782 in providing hazardous materials identification,
25 evaluation, preliminary assessment, design, remediation services, or other services
26 of the types described in Sections ~~25322 and 25323~~ 78125 and 78135 of the Health
27 and Safety Code or the federal National Oil and Hazardous Substances Pollution
28 Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are
29 satisfied:

30 (1) The services in whole or in part address subterranean contamination or other
31 concealed conditions caused by the hazardous materials.

32 (2) The promisor is responsible, or potentially responsible, for all or part of the
33 contamination.

34 (b) The indemnification described in this section is valid only for damages arising
35 from, or related to, subterranean contamination or concealed conditions, and is not
36 applicable to the first two hundred fifty thousand dollars (\$250,000) of liability or a
37 greater amount as is agreed to by the parties.

38 (c) This section does not authorize contracts for indemnification, by promisors
39 specified in paragraph (2) of subdivision (a), of any liability of a promisee arising
40 from the gross negligence or willful misconduct of the promisee.

41 (d) “Hazardous materials,” as used in this section, means any hazardous or toxic
42 substance, material, or waste that is or becomes subject to regulation by any agency

1 of the state, any municipality or political subdivision of the state, or the United
2 States. “Hazardous materials” includes, but is not limited to, any material or
3 substance that is any of the following:

4 (1) A hazardous substance, as defined in ~~Section 25316~~ subdivision (a) of Section
5 78075 of the Health and Safety Code.

6 (2) Hazardous material, as defined in subdivision (j) of Section 25501 of the
7 Health and Safety Code.

8 (3) A regulated substance, as defined in subdivision (j) of Section 25532 of the
9 Health and Safety Code.

10 (4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

11 (5) Extremely hazardous waste, as defined in Section 25115 of the Health and
12 Safety Code.

13 (6) Petroleum.

14 (7) Asbestos.

15 (8) Designated as a hazardous substance for purposes of Section 311 of the
16 Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

17 (9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal
18 Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec.
19 6903).

20 (10) A hazardous substance, as defined by subsection (14) of Section 101 of the
21 federal Comprehensive Environmental Response, Compensation, and Liability Act
22 of 1980, as amended (42 U.S.C. Sec. 9601).

23 (11) A regulated substance, as defined by subsection (2) of Section 9001 of the
24 federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

25 (e) Nothing in this section shall be construed to alter, modify, or otherwise affect
26 the liability of the promisor or promisee, under an indemnity agreement meeting the
27 criteria of this section, to third parties for damages for death or bodily injury to
28 persons, injury to property, or any other loss, damage, or expense.

29 (f) This section does not apply to public entities, as defined by Section 811.2 of
30 the Government Code.

31 **Comment.** Subdivisions (a) and (d) of Section 2782.6 are amended to update cross-references
32 in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
33 25300) of Division 20 of the Health and Safety Code.

34 CODE OF CIVIL PROCEDURE

35 **Code Civ. Proc. § 338.1 (amended). Statute of limitations**

36 SEC. __. Section 338.1 of the Code of Civil Procedure is amended to read:

37 338.1. An action for civil penalties or punitive damages authorized under Chapter
38 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section
39 25270), Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8 (commencing~~
40 ~~with Section 25300)~~, or Chapter 6.95 (commencing with Section 25500) of Division
41 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and

1 Safety Code shall be commenced within five years after the discovery by the agency
2 bringing the action of the facts constituting the grounds for commencing the action.

3 **Comment.** Section 338.1 is amended to update cross-references in accordance with the
4 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
5 the Health and Safety Code.

6 **Code Civ. Proc. § 726.5 (amended). Election of secured lender regarding environmentally**
7 **impaired real property security**

8 SEC. __. Section 726.5 of the Code of Civil Procedure is amended to read:

9 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision
10 of law, except subdivision (d) of this section, a secured lender may elect between
11 the following where the real property security is environmentally impaired and the
12 borrower's obligations to the secured lender are in default:

13 (1)(A) Waiver of its lien against (i) any parcel of real property security that is
14 environmentally impaired or is an affected parcel, and (ii) all or any portion of the
15 fixtures and personal property attached to the parcels; and

16 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including
17 reduction of its claim against the borrower to judgment, and (ii) any other rights and
18 remedies permitted by law.

19 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust
20 or mortgage and, if applicable, a lien against fixtures or personal property attached
21 to the real property security, and (ii) any other rights and remedies permitted by law.

22 (b) Before the secured lender may waive its lien against any parcel of real property
23 security pursuant to paragraph (1) of subdivision (a) on the basis of the
24 environmental impairment contemplated by paragraph (3) of subdivision (e), (i) the
25 secured lender shall provide written notice of the default to the borrower, and (ii)
26 the value of the subject real property security shall be established and its
27 environmentally impaired status shall be confirmed by an order of a court of
28 competent jurisdiction in an action brought by the secured lender against the
29 borrower. The complaint for a valuation and confirmation action may include causes
30 of action for a money judgment for all or part of the secured obligation, in which
31 case the waiver of the secured lender's liens under paragraph (1) of subdivision (a)
32 shall result only if and when a final money judgment is obtained against the
33 borrower.

34 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)
35 of subdivision (a) and the borrower's obligations are also secured by other real
36 property security, fixtures, or personal property, the secured lender shall first
37 foreclose against the additional collateral to the extent required by applicable law in
38 which case the amount of the judgment of the secured lender pursuant to paragraph
39 (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or
40 subdivision (b) of Section 726 apply to the foreclosures of additional real property
41 security. The borrower may waive or modify the foreclosure requirements of this

1 subdivision provided that the waiver or modification is in writing and signed by the
2 borrower after default.

3 (d) Subdivision (a) shall be inapplicable if all of the following are true:

4 (1) The release or threatened release was not knowingly or negligently caused or
5 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the
6 following:

7 (A) The borrower or any related party.

8 (B) Any affiliate or agent of the borrower or any related party.

9 (2) In conjunction with the making, renewal, or modification of the loan,
10 extension of credit, guaranty, or other obligation secured by the real property
11 security, neither the borrower, any related party, nor any affiliate or agent of either
12 the borrower or any related party had actual knowledge or notice of the release or
13 threatened release, or if a person had knowledge or notice of the release or
14 threatened release, the borrower made written disclosure thereof to the secured
15 lender after the secured lender's written request for information concerning the
16 environmental condition of the real property security, or the secured lender
17 otherwise obtained actual knowledge thereof, prior to the making, renewal, or
18 modification of the obligation.

19 (e) For purposes of this section:

20 (1) "Affected parcel" means any portion of a parcel of real property security that
21 is (A) contiguous to the environmentally impaired parcel, even if separated by roads,
22 streets, utility easements, or railroad rights-of-way, (B) part of an approved or
23 proposed subdivision within the meaning of Section 66424 of the Government
24 Code, of which the environmentally impaired parcel is also a part, or (C) within
25 2,000 feet of the environmentally impaired parcel.

26 (2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
27 mortgage, where the deed of trust or mortgage encumbers real property security and
28 secures the performance of the trustor or mortgagor under a loan, extension of credit,
29 guaranty, or other obligation. The term includes any successor-in-interest of the
30 trustor or mortgagor to the real property security before the deed of trust or mortgage
31 has been discharged, reconveyed, or foreclosed upon.

32 (3) "Environmentally impaired" means that the estimated costs to clean up and
33 remediate a past or present release or threatened release of any hazardous substance
34 into, onto, beneath, or from the real property security, not disclosed in writing to, or
35 otherwise actually known by, the secured lender prior to the making of the loan or
36 extension of credit secured by the real property security, exceeds 25 percent of the
37 higher of the aggregate fair market value of all security for the loan or extension of
38 credit (A) at the time of the making of the loan or extension of credit, or (B) at the
39 time of the discovery of the release or threatened release by the secured lender. For
40 the purposes of this definition, the estimated cost to clean up and remediate the
41 contamination caused by the release or threatened release shall include only those
42 costs that would be incurred reasonably and in good faith, and fair market value
43 shall be determined without giving consideration to the release or threatened release,

1 and shall be exclusive of the amount of all liens and encumbrances against the
2 security that are senior in priority to the lien of the secured lender. Notwithstanding
3 the foregoing, the real property security for any loan or extension of credit secured
4 by a single parcel of real property which is included in the National Priorities List
5 pursuant to Section 9605 of Title 42 of the United States Code, or in any list
6 published by the Department of Toxic Substances Control pursuant to ~~subdivision~~
7 ~~(b) of Section 25356~~ Section 78760 of the Health and Safety Code, shall be deemed
8 to be environmentally impaired.

9 (4) “Hazardous substance” means any of the following:

10 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of
11 the Health and Safety Code.

12 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
13 Code.

14 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas
15 liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

16 (5) “Real property security” means any real property and improvements, other
17 than a separate interest and any related interest in the common area of a residential
18 common interest development, as the terms “separate interest,” “common area,” and
19 “common interest development” are defined in Sections 4095, 4100, and 4185 of
20 the Civil Code, or real property which contains only 1 to 15 dwelling units, which
21 in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably
22 contemplated by the parties to the deed of trust or mortgage, for residential purposes
23 as well as limited agricultural or commercial purposes incidental thereto, and (B) is
24 the subject of an issued certificate of occupancy unless the dwelling is to be owned
25 and occupied by the borrower.

26 (6) “Related party” means any person who shares an ownership interest with the
27 borrower in the real property security, or is a partner or joint venturer with the
28 borrower in a partnership or joint venture, the business of which includes the
29 acquisition, development, use, lease, or sale of the real property security.

30 (7) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,
31 discharging, injecting, escaping, leaching, dumping, or disposing into the
32 environment, including continuing migration, of hazardous substances into, onto, or
33 through soil, surface water, or groundwater. The term does not include actions
34 directly relating to the incorporation in a lawful manner of building materials into a
35 permanent improvement to the real property security.

36 (8) “Secured lender” means the beneficiary under a deed of trust against the real
37 property security, or the mortgagee under a mortgage against the real property
38 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
39 of trust or mortgage.

40 (f) This section shall not be construed to invalidate or otherwise affect in any
41 manner any rights or obligations arising under contract in connection with a loan or
42 extension of credit, including, without limitation, provisions limiting recourse.

1 (g) This section shall only apply to loans, extensions of credit, guaranties, or other
2 obligations secured by real property security made, renewed, or modified on or after
3 January 1, 1992.

4 **Comment.** Section 726.5(e)(3) is amended to update cross-references in accordance with the
5 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
6 the Health and Safety Code.

7 **Code Civ. Proc. § 917.15 (amended). Exceptions to stay of enforcement for appeals**

8 SEC. __. Section 917.15 of the Code of Civil Procedure is amended to read:

9 917.15. The perfecting of an appeal shall not stay enforcement of the judgment or
10 order in the trial court if the judgment or order appealed from, or the administrative
11 order which is the subject of the trial court proceeding, was issued pursuant to either
12 of the following:

13 (a) ~~Subdivision (a) of Section 25358.3~~ Section 78870 of the Health and Safety
14 Code and ordered a responsible party to take appropriate removal or remedial
15 actions in response to a release or a threatened release of a hazardous substance.

16 (b) Section 25181 of the Health and Safety Code and ordered the party to comply
17 with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health
18 and Safety Code or any rule, regulation, permit, covenant, standard, requirement, or
19 order issued, adopted or executed pursuant to that Chapter 6.5.

20 **Comment.** Section 917.15 is amended to update cross-references in accordance with the
21 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
22 the Health and Safety Code.

23 **Code Civ. Proc. § 1263.710 (amended). Definitions**

24 SEC. __. Section 1263.710 of the Code of Civil Procedure is amended to read:

25 1263.710. (a) As used in this article, “remedial action” and “removal” shall have
26 the meanings accorded to those terms in Sections ~~25322 and 25323~~, 78125 and
27 78135, respectively, of the Health and Safety Code.

28 (b) As used in this article, “required action” means any removal or other remedial
29 action with regard to hazardous materials that is necessary to comply with any
30 requirement of federal, state, or local law.

31 **Comment.** Section 1263.710 is amended to update cross-references in accordance with the
32 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
33 the Health and Safety Code.

34 EDUCATION CODE

35 **Educ. Code § 17210 (amended). Definitions**

36 SEC. __. Section 17210 of the Education Code is amended to read:

37 17210. As used in this article, the following terms have the following meanings:

38 (a) “Administering agency” means any agency designated pursuant to Section
39 25502 of the Health and Safety Code.

1 (b) “Environmental assessor” means an environmental professional as defined in
2 Section 312.10 of Title 40 of the Code of Federal Regulations.

3 (c) “Handle” has the meaning the term is given in Article 1 (commencing with
4 Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

5 (d) “Hazardous air emissions” means emissions into the ambient air of air
6 contaminants that have been identified as a toxic air contaminant by the State Air
7 Resources Board or by the air pollution control officer for the jurisdiction in which
8 the project is located. As determined by the air pollution control officer, hazardous
9 air emissions also means emissions into the ambient air from any substance
10 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and
11 Safety Code.

12 (e) “Hazardous material” has the meaning the term is given in subdivision (d) of
13 Section 25260 of the Health and Safety Code.

14 (f) “Operation and maintenance,” “removal action work plan,” “respond,”
15 “response,” “response action,” and “site” have the meanings those terms are given
16 in ~~Article 2 (commencing with Section 25310) of the state act. Article 3~~
17 (commencing with Section 78035) of Chapter 1 of Part 2 of Division 45 of the
18 Health and Safety Code.

19 (g) “Phase I environmental assessment” means a preliminary assessment of a
20 property to determine whether there has been or may have been a release of a
21 hazardous material, or whether a naturally occurring hazardous material is present,
22 based on reasonably available information about the property and the area in its
23 vicinity. A phase I environmental assessment shall meet the most current
24 requirements adopted by the American Society for Testing and Materials (ASTM)
25 for Standard Practice for Environmental Site Assessments: Phase I Environmental
26 Site Assessment Process or meet the requirements of Part 312 (commencing with
27 Section 312.1) of Title 40 of the Code of Federal Regulations. That ASTM Standard
28 Practice for Environmental Site Assessments or the requirements of Part 312
29 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations
30 shall satisfy the requirements of this article for conducting a phase I environmental
31 assessment unless and until the Department of Toxic Substances Control adopts
32 final regulations that establish guidelines for a phase I environmental assessment
33 for purposes of schoolsites that impose different requirements.

34 (h) “Preliminary endangerment assessment” means an activity that is performed
35 to determine whether current or past hazardous material management practices or
36 waste management practices have resulted in a release or threatened release of
37 hazardous materials, or whether naturally occurring hazardous materials are present,
38 which pose a threat to children’s health, children’s learning abilities, public health
39 or the environment. A preliminary endangerment assessment requires sampling and
40 analysis of a site, a preliminary determination of the type and extent of hazardous
41 material contamination of the site, and a preliminary evaluation of the risks that the
42 hazardous material contamination of a site may pose to children’s health, public
43 health, or the environment, and shall be conducted in a manner that complies with

1 the guidelines published by the Department of Toxic Substances Control entitled
2 “Preliminary Endangerment Assessment: Guidance Manual,” including any
3 amendments that are determined by the Department of Toxic Substances Control to
4 be appropriate to address issues that are unique to schoolsites.

5 (i) “Proposed schoolsite” means real property acquired or to be acquired or
6 proposed for use as a schoolsite, prior to its occupancy as a school.

7 (j) “Regulated substance” means any material defined in subdivision (g) of
8 Section 25532 of the Health and Safety Code.

9 (k) “Release” has the same meaning the term is given in ~~Article 2 (commencing~~
10 ~~with Section 25310) of Chapter 6.8 of Division 20~~ Article 3 (commencing with
11 Section 78035) of Chapter 1 of Part 2 of Division 45 of the Health and Safety Code,
12 and includes a release described in ~~subdivision (d) of Section 25321~~ paragraph (5)
13 of subdivision (b) of Section 78105 of the Health and Safety Code.

14 (l) “Remedial action plan” means a plan approved by the Department of Toxic
15 Substances Control pursuant to ~~Section 25356.1~~ Article 12 (commencing with
16 Section 79190) of Chapter 5 of Part 2 of Division 45 of the Health and Safety Code.

17 (m) “State act” means the Carpenter-Presley-Tanner Hazardous Substance
18 Account Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2
19 (commencing with Section 78000) of Division 45 of the Health and Safety Code).

20 **Comment.** Subdivisions (f), (k), (l), and (m) of Section 17210 are amended to update cross-
21 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
22 Section 25300) of Division 20 of the Health and Safety Code.

23 **Educ. Code § 17213 (amended). Schoolsite acquisition**

24 SEC. __. Section 17213 of the Education Code is amended to read:

25 17213. The governing board of a school district may not approve a project
26 involving the acquisition of a schoolsite by a school district, unless all of the
27 following occur:

28 (a) The school district, as the lead agency, as defined in Section 21067 of the
29 Public Resources Code, determines that the property purchased or to be built upon
30 is not any of the following:

31 (1) The site of a current or former hazardous waste disposal site or solid waste
32 disposal site, unless if the site was a former solid waste disposal site, the governing
33 board of the school district concludes that the wastes have been removed.

34 (2) A hazardous substance release site identified by the Department of Toxic
35 Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5
36 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
37 Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8~~
38 ~~(commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section
39 78000) of Division 45 of the Health and Safety Code.

40 (3) A site that contains one or more pipelines, situated underground or
41 aboveground, that carries hazardous substances, extremely hazardous substances,

1 or hazardous wastes, unless the pipeline is a natural gas line that is used only to
2 supply natural gas to that school or neighborhood.

3 (b) The school district, as the lead agency, as defined in Section 21067 of the
4 Public Resources Code, in preparing the environmental impact report or negative
5 declaration has consulted with the administering agency in which the proposed
6 schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code
7 of Regulations, and with any air pollution control district or air quality management
8 district having jurisdiction in the area, to identify both permitted and nonpermitted
9 facilities within that district’s authority, including, but not limited to, freeways and
10 other busy traffic corridors, large agricultural operations, and railyards, within one-
11 fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to
12 emit hazardous air emissions, or to handle hazardous or extremely hazardous
13 materials, substances, or waste. The school district, as the lead agency, shall include
14 a list of the locations for which information is sought.

15 (c) The governing board of the school district makes one of the following written
16 findings:

17 (1) Consultation identified none of the facilities or significant pollution sources
18 specified in subdivision (b).

19 (2) The facilities or other pollution sources specified in subdivision (b) exist, but
20 one of the following conditions applies:

21 (A) The health risks from the facilities or other pollution sources do not and will
22 not constitute an actual or potential endangerment of public health to persons who
23 would attend or be employed at the school.

24 (B) The governing board finds that corrective measures required under an existing
25 order by another governmental entity that has jurisdiction over the facilities or other
26 pollution sources will, before the school is occupied, result in the mitigation of all
27 chronic or accidental hazardous air emissions to levels that do not constitute an
28 actual or potential endangerment of public health to persons who would attend or
29 be employed at the proposed school. If the governing board makes this finding, the
30 governing board shall also make a subsequent finding, prior to the occupancy of the
31 school, that the emissions have been mitigated to these levels.

32 (C) For a schoolsite with a boundary that is within 500 feet of the edge of the
33 closest traffic lane of a freeway or other busy traffic corridor, the governing board
34 of the school district determines, through analysis pursuant to paragraph (2) of
35 subdivision (b) of Section 44360 of the Health and Safety Code, based on
36 appropriate air dispersion modeling, and after considering any potential mitigation
37 measures, that the air quality at the proposed site is such that neither short-term nor
38 long-term exposure poses significant health risks to pupils.

39 (D) The governing board finds that neither of the conditions set forth in
40 subparagraph (B) or (C) can be met, and the school district is unable to locate an
41 alternative site that is suitable due to a severe shortage of sites that meet the
42 requirements in subdivision (a) of Section 17213. If the governing board makes this

1 finding, the governing board shall adopt a statement of Overriding Considerations
2 pursuant to Section 15093 of Title 14 of the California Code of Regulations.

3 (d) As used in this section:

4 (1) “Hazardous air emissions” means emissions into the ambient air of air
5 contaminants that have been identified as a toxic air contaminant by the State Air
6 Resources Board or by the air pollution control officer for the jurisdiction in which
7 the project is located. As determined by the air pollution control officer, hazardous
8 air emissions also means emissions into the ambient air from any substance
9 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and
10 Safety Code.

11 (2) “Hazardous substance” means any substance defined in ~~Section 25316~~
12 subdivision (a) of Section 78075 of the Health and Safety Code.

13 (3) “Extremely hazardous substances” means any material defined pursuant to
14 paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

15 (4) “Hazardous waste” means any waste defined in Section 25117 of the Health
16 and Safety Code.

17 (5) “Hazardous waste disposal site” means any site defined in Section 25114 of
18 the Health and Safety Code.

19 (6) “Administering agency” means any agency designated pursuant to Section
20 25502 of the Health and Safety Code.

21 (7) “Handle” means handle as defined in Article 1 (commencing with Section
22 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

23 (8) “Facilities” means any source with a potential to use, generate, emit or
24 discharge hazardous air pollutants, including, but not limited to, pollutants that meet
25 the definition of a hazardous substance, and whose process or operation is identified
26 as an emission source pursuant to the most recent list of source categories published
27 by the State Air Resources Board.

28 (9) “Freeway or other busy traffic corridors” means those roadways that, on an
29 average day, have traffic in excess of 50,000 vehicles in a rural area as defined in
30 Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area,
31 as defined in Section 50104.7 of the Health and Safety Code.

32 **Comment.** Section 17213(a)(2) and (d)(2) are amended to update cross-references in accordance
33 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
34 Division 20 of the Health and Safety Code.

35 **Educ. Code § 17213.1 (amended). Requirement for schoolsite acquisition for receipt of state**
36 **funding**

37 SEC. __. Section 17213.1 of the Education Code is amended to read:

38 17213.1. As a condition of receiving state funding pursuant to Chapter 12.5
39 (commencing with Section 17070.10), the governing board of a school district shall
40 comply with subdivision (a), and is not required to comply with subdivision (a) of
41 Section 17213, prior to the acquisition of a schoolsite, or if the school district owns
42 or leases a schoolsite, prior to the construction of a project.

1 (a) Prior to acquiring a schoolsite, the governing board shall contract with an
2 environmental assessor to supervise the preparation of, and sign, a Phase I
3 environmental assessment of the proposed schoolsite unless the governing board
4 decides to proceed directly to a preliminary endangerment assessment, in which
5 case it shall comply with paragraph (4).

6 (1) The Phase I environmental assessment shall contain one of the following
7 recommendations:

8 (A) A further investigation of the site is not required.

9 (B) A preliminary endangerment assessment is needed, including sampling or
10 testing, to determine the following:

11 (i) If a release of hazardous material has occurred and, if so, the extent of the
12 release.

13 (ii) If there is the threat of a release of hazardous materials.

14 (iii) If a naturally occurring hazardous material is present.

15 (2) If the Phase I environmental assessment concludes that further investigation
16 of the site is not required, the signed assessment, proof that the environmental
17 assessor meets the qualifications specified in subdivision (b) of Section 17210, and
18 the renewal fee shall be submitted to the Department of Toxic Substances Control.
19 The Department of Toxic Substances Control shall conduct its review and approval,
20 within 30 calendar days of its receipt of that assessment, proof of qualifications, and
21 the renewal fee. In those instances in which the Department of Toxic Substances
22 Control requests additional information after receipt of the Phase I environmental
23 assessment pursuant to paragraph (3), the Department of Toxic Substances Control
24 shall conduct its review and approval within 30 calendar days of its receipt of the
25 requested additional information. If the Department of Toxic Substances Control
26 concurs with the conclusion of the Phase I environmental assessment that a further
27 investigation of the site is not required, the Department of Toxic Substances Control
28 shall approve the Phase I environmental assessment and shall notify, in writing, the
29 State Department of Education and the governing board of the school district of the
30 approval.

31 (3) If the Department of Toxic Substances Control determines that the Phase I
32 environmental assessment is not complete or disapproves the Phase I environmental
33 assessment, the department shall inform the school district of the decision, the basis
34 for the decision, and actions necessary to secure department approval of the Phase I
35 environmental assessment. The school district shall take actions necessary to secure
36 the approval of the Phase I environmental assessment, elect to conduct a preliminary
37 endangerment assessment, or elect not to pursue the acquisition or the construction
38 project. To facilitate completion of the Phase I environmental assessment, the
39 information required by this paragraph may be provided by telephonic or electronic
40 means.

41 (4)(A) If the Department of Toxic Substances Control concludes after its review
42 of a Phase I environmental assessment pursuant to this section that a preliminary
43 endangerment assessment is needed, the Department of Toxic Substances Control

1 shall notify, in writing, the State Department of Education and the governing board
2 of the school district of that decision and the basis for that decision. The school
3 district shall submit to the State Department of Education the Phase I environmental
4 assessment and requested additional information, if any, that was reviewed by the
5 Department of Toxic Substances Control pursuant to that subparagraph. Submittal
6 of the Phase I assessment and additional information, if any, to the State Department
7 of Education shall be prior to the State Department of Education issuance of final
8 site or plan approvals ~~affected~~ affected by that Phase I assessment.

9 (B) If the Phase I environmental assessment concludes that a preliminary
10 endangerment assessment is needed, or if the Department of Toxic Substances
11 Control concludes after it reviews a Phase I environmental assessment pursuant to
12 this section that a preliminary endangerment assessment is needed, the school
13 district shall either contract with an environmental assessor to supervise the
14 preparation of, and sign, a preliminary endangerment assessment of the proposed
15 schoolsite and enter into an agreement with the Department of Toxic Substances
16 Control to oversee the preparation of the preliminary endangerment assessment or
17 elect not to pursue the acquisition or construction project. The agreement entered
18 into with the Department of Toxic Substances Control may be entitled an
19 “Environmental Oversight Agreement” and shall reference this paragraph. A school
20 district may, with the concurrence of the Department of Toxic Substances Control,
21 enter into an agreement with the Department of Toxic Substances Control to oversee
22 the preparation of a preliminary endangerment assessment without first having
23 prepared a Phase I environmental assessment. Upon request from the school district,
24 the Director of ~~the Department~~ of Toxic Substances Control shall exercise its
25 authority to designate a person to enter the site and inspect and obtain samples
26 pursuant to ~~Section 25358.1~~ Article 4 (commencing with Section 78435) of Chapter
27 3 of Part 2 of Division 45 of the Health and Safety Code, if the director determines
28 that the exercise of that authority will assist in expeditiously completing the
29 preliminary endangerment assessment. The preliminary endangerment assessment
30 shall contain one of the following conclusions:

31 (i) A further investigation of the site is not required.

32 (ii) A release of hazardous materials has occurred, and if so, the extent of the
33 release, that there is the threat of a release of hazardous materials, or that a naturally
34 occurring hazardous material is present, or any combination thereof.

35 (5) The school district shall submit the preliminary endangerment assessment to
36 the Department of Toxic Substances Control for its review and approval and to the
37 State Department of Education for its files. The school district may entitle a
38 document that is meant to fulfill the requirements of a preliminary endangerment
39 assessment a “preliminary environmental assessment” and that document shall be
40 deemed to be a preliminary endangerment assessment if it specifically refers to the
41 statutory provisions whose requirements it intends to meet and the document meets
42 the requirements of a preliminary endangerment assessment.

1 (6) At the same time a school district submits a preliminary endangerment
2 assessment to the Department of Toxic Substances Control pursuant to paragraph
3 (5), the school district shall publish a notice that the assessment has been submitted
4 to the department in a local newspaper of general circulation, and shall post the
5 notice in a prominent manner at the proposed schoolsite that is the subject of that
6 notice. The notice shall state the school district's determination to make the
7 preliminary endangerment assessment available for public review and comment
8 pursuant to subparagraph (A) or ~~(B)~~: (C):

9 (A) If the school district chooses to make the assessment available for public
10 review and comment pursuant to this subparagraph, it shall offer to receive written
11 comments for a period of at least 30 calendar days after the assessment is submitted
12 to the Department of Toxic Substances Control, commencing on the date the notice
13 is originally published, and shall hold a public hearing to receive further comments.
14 The school district shall make all of the following documents available to the public
15 upon request through the time of the public hearing:

16 (i) The preliminary endangerment assessment.

17 (ii) The changes requested by the Department of Toxic Substances Control for the
18 preliminary endangerment assessment, if any.

19 (iii) Any correspondence between the school district and the Department of Toxic
20 Substances Control that relates to the preliminary endangerment assessment.

21 ~~(B)~~ (C) For the purposes of ~~this~~ subparagraph (A), the notice of the public hearing
22 shall include the date and location of the public hearing, and the location where the
23 public may review the documents described in clauses (i) to (iii), inclusive, of
24 subparagraph (A). If the preliminary endangerment assessment is revised or altered
25 following the public hearing, the school district shall make those revisions or
26 alterations available to the public. The school district shall transmit a copy of all
27 public comments received by the school district on the preliminary endangerment
28 assessment to the Department of Toxic Substances Control. The Department of
29 Toxic Substances Control shall complete its review of the preliminary
30 endangerment assessment and public comments received thereon and shall either
31 approve or disapprove the assessment within 30 calendar days of the close of the
32 public review period. If the Department of Toxic Substances Control determines
33 that it is likely to disapprove the assessment prior to its receipt of the public
34 comments, it shall inform the school district of that determination and of any action
35 that the school district is required to take for the Department of Toxic Substances
36 Control to approve the assessment.

37 ~~(B)~~ (C) If the school district chooses to make the preliminary endangerment
38 assessment available for public review and comment pursuant to this subparagraph,
39 the Department of Toxic Substances Control shall complete its review of the
40 assessment within 60 calendar days of receipt of the assessment and shall either
41 return the assessment to the school district with comments and requested
42 modifications or requested further assessment or concur with the adequacy of the
43 assessment pending review of public comment. If the Department of Toxic

1 Substances Control concurs with the adequacy of the assessment, and the school
2 district proposes to proceed with site acquisition or a construction project, the school
3 district shall make the assessment available to the public on the same basis and at
4 the same time it makes available the draft environmental impact report or negative
5 declaration pursuant to the California Environmental Quality Act (Division 13
6 (commencing with Section 21000) of the Public Resources Code) for the site, unless
7 the document developed pursuant to the California Environmental Quality Act
8 (Division 13 (commencing with Section 21000) of the Public Resources Code) will
9 not be made available until more than 90 days after the assessment is approved, in
10 which case the school district shall, within 60 days of the approval of the assessment,
11 separately publish a notice of the availability of the assessment for public review in
12 a local newspaper of general circulation. The school district shall hold a public
13 hearing on the preliminary endangerment assessment and the draft environmental
14 impact report or negative declaration at the same time, pursuant to the California
15 Environmental Quality Act (Division 13 (commencing with Section 21000) of the
16 Public Resources Code). All public comments pertaining to the preliminary
17 endangerment assessment shall be forwarded to the Department of Toxic
18 Substances Control immediately. The Department of Toxic Substances Control
19 shall review the public comments forwarded by the school district and shall approve
20 or disapprove the preliminary endangerment assessment within 30 days of the
21 district's approval action of the environmental impact report or the negative
22 declaration.

23 (7) The school district shall comply with the public participation requirements of
24 Sections ~~25358.7 and 25358.7.1~~ 78930, 78935, and 78950 to 78970, inclusive, of
25 the Health and Safety Code and other applicable provisions of the state act with
26 respect to those response actions only if further response actions beyond a
27 preliminary endangerment assessment are required and the district determines that
28 it will proceed with the acquisition or construction project.

29 (8) If the Department of Toxic Substances Control disapproves the preliminary
30 endangerment assessment, it shall inform the district of the decision, the basis for
31 the decision, and actions necessary to secure the Department of Toxic Substances
32 Control approval of the assessment. The school district shall take actions necessary
33 to secure the approval of the Department of Toxic Substances Control of the
34 preliminary endangerment assessment or elect not to pursue the acquisition or
35 construction project.

36 (9) If the preliminary endangerment assessment determines that a further
37 investigation of the site is not required and the Department of Toxic Substances
38 Control approves this determination, it shall notify the State Department of
39 Education and the school district of its approval. The school district may then
40 proceed with the acquisition or construction project.

41 (10) If the preliminary endangerment assessment determines that a release of
42 hazardous material has occurred, that there is the threat of a release of hazardous
43 materials, that a naturally occurring hazardous material is present, or any

1 combination thereof, that requires further investigation, and the Department of
2 Toxic Substances Control approves this determination, the school district may elect
3 not to pursue the acquisition or construction project. If the school district elects to
4 pursue the acquisition or construction project, it shall do all of the following:

5 (A) Prepare a financial analysis that estimates the cost of response action that will
6 be required at the proposed schoolsite.

7 (B) Assess the benefits that accrue from using the proposed schoolsite when
8 compared to the use of alternative schoolsites, if any.

9 (C) Obtain the approval of the State Department of Education that the proposed
10 schoolsite meets the schoolsite selection standards adopted by the State Department
11 of Education pursuant to subdivision (b) of Section 17251.

12 (D) Evaluate the suitability of the proposed schoolsite in light of the
13 recommended alternative schoolsite locations in order of merit if the school district
14 has requested the assistance of the State Department of Education, based upon the
15 standards of the State Department of Education, pursuant to subdivision (a) of
16 Section 17251.

17 (11) The school district shall reimburse the Department of Toxic Substances
18 Control for all of the department’s response costs.

19 (b) The costs incurred by the school districts when complying with this section
20 are allowable costs for purposes of an applicant under Chapter 12.5 (commencing
21 with Section 17070.10) of Part 10 and may be reimbursed in accordance with
22 Section 17072.13.

23 (c) A school district that releases a Phase I environmental assessment, a
24 preliminary endangerment assessment, or information concerning either of these
25 assessments, any of which is required by this section, may not be held liable in any
26 action filed against the school district for making either of these assessments
27 available for public review.

28 (d) The changes made to this section by the act amending this section during the
29 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition
30 project or a school construction project, if either of the following occurred on or
31 before the effective date of the act amending this section during the 2001 portion of
32 the 2001–02 Regular Session:

33 (1) The final preliminary endangerment assessment for the project was approved
34 by the Department of Toxic Substances Control pursuant to this section as this
35 section read on the date of the approval.

36 (2) The school district seeking state funding for the project completed a public
37 hearing for the project pursuant to this section, as this section read on the date of the
38 hearing.

39 **Comment.** Section 17213.1(a)(4)(B) and (a)(7) are amended to update cross-references in
40 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
41 25300) of Division 20 of the Health and Safety Code.

42 This section is also amended to correct a reference to the “Director of the Department of Toxic
43 Substances Control” to refer instead to the “Director of Toxic Substances Control.” See 1991
44 Governor’s Reorganization Plan No. 1 of 1991 § 146 (proposed Health & Safety Code § 58002).

1 This section is also amended to label an undesignated subparagraph and make a technical change.

2 **Educ. Code § 51881.5 (amended). Findings and declarations**

3 SEC. __. Section 51881.5 of the Education Code is amended to read:

4 51881.5. (a) The Legislature finds and declares that hazardous substances, as
5 defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety
6 Code, are an integral part of daily life, and that some substances, which are routinely
7 found in and around homes, present potential hazards to the public and to the
8 environment because of the lack of public awareness and education on the hazards
9 of these substances and because of the lack of safe disposal options for hazardous
10 substances from households.

11 (b) The Legislature, therefore, finds that hazardous substances education
12 programs in the public schools would serve a beneficial purpose by fostering in
13 students an understanding of their role in protecting the environment, and in
14 safeguarding themselves from other health and safety dangers which may be posed
15 by hazardous substances.

16 (c) It is the intent of the Legislature that the department provide school districts
17 with information concerning the availability of educational materials and curricula
18 on hazardous substances.

19 **Comment.** Section 51881.5 is amended to update cross-references in accordance with the
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
21 the Health and Safety Code.

22 **FISH AND GAME CODE**

23 **Fish & Game Code § 12015 (amended). Responsible party obligations**

24 SEC. __. Section 12015 of the Fish and Game Code is amended to read:

25 12015. (a) It is the intent of the Legislature that expeditious cleanup is the primary
26 interest of the people of the State of California in order to protect the people and the
27 environment of the state.

28 (b) In addition to any other penalty, anyone responsible for polluting,
29 contaminating, or obstructing waters of this state, or depositing or discharging
30 materials threatening to pollute, contaminate, or obstruct waters of this state, to the
31 detriment of fish, plant, bird, or animal life in those waters, shall be required to
32 remove any substance placed in the waters, or to remove any material threatening
33 to pollute, contaminate, or obstruct waters of this state, which can be removed, that
34 caused the prohibited condition, or to pay the costs of the removal by the
35 department.

36 (c) Prior to taking any action committing the use of state funds pursuant to this
37 section or Section 5655, the department shall first make a reasonable effort to have
38 the person responsible, when that person is known and readily available, remove, or
39 agree to pay for the removal of, the substance causing the prohibited condition, if
40 the responsible person acts expeditiously and does not cause the prohibited

1 condition to be prolonged to the detriment of fish, plant, animal, or bird life in the
2 affected waters. When the responsible party is unknown or is not providing adequate
3 and timely cleanup, the emergency reserve account of the Toxic Substances Control
4 Account in the General Fund shall be used to provide funding for the cleanup
5 pursuant to Section ~~25354~~ 78875 of the Health and Safety Code. When those or
6 other funds are not available, moneys in the Fish and Wildlife Pollution Account
7 shall be available, in accordance with subdivision (b) of Section 12017, for funding
8 the cleanup expenses.

9 **Comment.** Section 12015 is amended to update cross-references in accordance with the
10 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
11 the Health and Safety Code.

12 **Fish & Game Code § 12017 (amended). Fish and Wildlife Pollution Account**

13 SEC. __. Section 12017 of the Fish and Game Code is amended to read:

14 12017. (a) Notwithstanding Section 13001, any recovery or settlement of money
15 received pursuant to the following sections shall be deposited in the Fish and
16 Wildlife Pollution Account:

17 (1) Section 2014.

18 (2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division
19 6.

20 (3) Section 12015 or 12016.

21 (4) Chapter 4 (commencing with Section 151) of Division 1.5 of the Harbors and
22 Navigation Code.

23 (5) Section 13442 of the Water Code.

24 (6) Proceeds or recoveries from pollution and abatement actions.

25 (b) Moneys in the account are continuously appropriated to the department, except
26 as provided in Section 13230.

27 (c) Funds in the account shall be expended for the following purposes:

28 (1) Abatement, cleanup, and removal of pollutants from the environment.

29 (2) Response coordination, planning, and program management.

30 (3) Resource injury determination.

31 (4) Resource damage assessment.

32 (5) Economic valuation of resources.

33 (6) Restoration or rehabilitation at sites damaged by pollution.

34 (d) Notwithstanding subdivision (c), funds in the account in excess of one million
35 dollars (\$1,000,000) as of July 1 of each year may also be expended for the
36 preservation of California plants, wildlife, and fisheries.

37 (e) Funds in the account may be expended for cleanup and abatement if a
38 reasonable effort has been made to have the responsible party pay cleanup and
39 abatement costs and funds are not available for disbursement from the emergency
40 reserve account of the Toxic Substances Control Account in the General Fund
41 pursuant to Section ~~25354~~ 78875 of the Health and Safety Code.

1 (f) The department may use funds in the account to pay the costs of consultant
2 contracts for resource injury determination or damage assessment during hazardous
3 material or oil spill emergencies. These contracts are not subject to Part 2
4 (commencing with Section 10100) of Division 2 of the Public Contract Code.

5 **Comment.** Section 12017 is amended to update cross-references in accordance with the
6 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
7 the Health and Safety Code.

8 GOVERNMENT CODE

9 **Gov't Code § 6103.10 (amended). Application of Section 6103**

10 SEC. __. Section 6103.10 of the Government Code is amended to read:

11 6103.10. Section 6103 does not apply to any fee or charges required to be paid to
12 the State Director of Health Services or to the State Board of Equalization pursuant
13 to Chapter 6.5 (commencing with Section 25100) of, ~~and Chapter 6.8 (commencing~~
14 ~~with Section 25300) of~~, Division 20 of, and Part 2 (commencing with Section
15 78000) of Division 45 of, the Health and Safety Code, except as otherwise provided
16 in paragraph (1) of subdivision (a) of Section 25174.7, subdivision (b) of Section
17 25205.1, subdivision (n) of Section 25205.7, subdivision (d) of Section 25205.8,
18 and subdivision (e) of Section 25205.9.

19 **Comment.** Section 6103.10 is amended to update cross-references in accordance with the
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
21 the Health and Safety Code.

22 **Gov't Code § 6276.24 (amended). Exemptions from disclosure, Hazardous substance tax**
23 **information to housing authority tenant application**

24 SEC. __. Section 6276.24 of the Government Code is amended to read:

25 6276.42. Hazardous substance tax information, prohibition against disclosure,
26 Section 43651, Revenue and Taxation Code.

27 Hazardous waste control, business plans, public inspection, Section 25506, Health
28 and Safety Code.

29 Hazardous waste control, notice of unlawful hazardous waste disposal, Section
30 25180.5, Health and Safety Code.

31 Hazardous waste control, trade secrets, disclosure of information, Sections 25511
32 and 25538, Health and Safety Code.

33 Hazardous waste control, trade secrets, procedures for release of information,
34 ~~Section 25358.2, Article 5 (commencing with Section 78480) of Chapter 2 of Part~~
35 2 of Division 45 of the Health and Safety Code.

36 Hazardous waste generator report, protection of trade secrets, Sections 25244.21
37 and 25244.23, Health and Safety Code.

38 Hazardous waste licenseholder disclosure statement, confidentiality of, Section
39 25186.5, Health and Safety Code.

40 Hazardous waste recycling, information clearing house, confidentiality of trade
41 secrets, Section 25170, Health and Safety Code.

1 Hazardous waste recycling, list of specified hazardous wastes, trade secrets,
2 Section 25175, Health and Safety Code.

3 Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and
4 25180.5, Health and Safety Code.

5 Healing arts licensees, central files, confidentiality, Section 800, Business and
6 Professions Code.

7 Health authorities, special county, confidentiality of records, Sections 14087.35,
8 14087.36, and 14087.38, Welfare and Institutions Code.

9 Health care provider disciplinary proceeding, confidentiality of documents,
10 Section 805.1, Business and Professions Code.

11 Health care service plans, review of quality of care, privileged communications,
12 Sections 1370 and 1380, Health and Safety Code.

13 Health commissions, special county, confidentiality of peer review proceedings,
14 rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions
15 Code.

16 Health facilities, patient's rights of confidentiality, subdivision (c) of Section
17 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and
18 Safety Code.

19 Health personnel, data collection by the Office of Statewide Health Planning and
20 Development, confidentiality of information on individual licentiates, Section
21 127780, Health and Safety Code.

22 Health plan governed by a county board of supervisors, exemption from
23 disclosure for records relating to provider rates or payments for a three-year period
24 after execution of the provider contract, Sections 6254.22 and 54956.87.

25 Hereditary Disorders Act, legislative finding and declaration, confidential
26 information, Sections 124975 and 124980, Health and Safety Code.

27 Hereditary Disorders Act, rules, regulations, and standards, breach of
28 confidentiality, Section 124980, Health and Safety Code.

29 HIV, disclosures to blood banks by department or county health officers, Section
30 1603.1, Health and Safety Code.

31 Home address of public employees and officers in Department of Motor Vehicles,
32 records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

33 Horse racing, horses, blood or urine test sample, confidentiality, Section 19577,
34 Business and Professions Code.

35 Hospital district and municipal hospital records relating to contracts with insurers
36 and service plans, subdivision (t), Section 6254.

37 Hospital final accreditation report, subdivision (s), Section 6254.

38 Housing authorities, confidentiality of rosters of tenants, Section 34283, Health
39 and Safety Code.

40 Housing authorities, confidentiality of applications by prospective or current
41 tenants, Section 34332, Health and Safety Code.

1 **Comment.** Section 6276.24 is amended to update cross-references in accordance with the
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
3 the Health and Safety Code.

4 **Gov't Code § 6276.44 (amended). Exemptions from disclosure, Taxpayer information to**
5 **trust company disclosure of confidential information of private trust**

6 SEC. __. Section 6276.44 of the Government Code is amended to read:

7 6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i),
8 Section 6254.

9 Tax preparer, disclosure of information obtained in business of preparing tax
10 returns, Section 17530.5, Business and Professions Code.

11 Teacher, credential holder or applicant, information provided to Commission on
12 Teacher Credentialing, confidentiality of, Section 44341, Education Code.

13 Teacher, certified school personnel examination results, confidentiality of,
14 Section 44289, Education Code.

15 Telephone answering service customer list, trade secret, Section 16606, Business
16 and Professions Code.

17 Timber yield tax, disclosure to county assessor, Section 38706, Revenue and
18 Taxation Code.

19 Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation
20 Code.

21 Title insurers, confidentiality of notice of noncompliance, Section 12414.14,
22 Insurance Code.

23 Tobacco products, exemption from disclosure for distribution information
24 provided to the State Department of Public Health, Section 22954, Business and
25 Professions Code.

26 Tow truck driver, information in records of California Highway Patrol,
27 Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431
28 and 2432.3, Vehicle Code.

29 Toxic substances, Department of, inspection of records of, Section 25152.5,
30 Health and Safety Code.

31 Trade secrets, Section 1060, Evidence Code.

32 Trade secrets, confidentiality of, occupational safety and health inspections,
33 Section 6322, Labor Code.

34 Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

35 Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and
36 110370, Health and Safety Code.

37 Trade secrets, protection by Director of the Department of Pesticide Regulation,
38 Section 6254.2.

39 Trade secrets and proprietary information relating to pesticides, confidentiality of,
40 Sections 14022 and 14023, Food and Agricultural Code.

41 Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor
42 Code.

1 Trade secrets relating to hazardous substances, disclosure of, ~~Sections 25358.2~~
2 ~~and 25358.7~~, Section 78930 of, and Article 5 (commencing with Section 78480) of
3 Chapter 2 of Part 2 of Division 45 of, the Health and Safety Code.

4 Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle
5 Code.

6 Traffic offense, dismissed for participation in driving school or program, record
7 of, confidentiality of, Section 1808.7, Vehicle Code.

8 Transit districts, questionnaire and financial statement information in bids,
9 Section 99154, Public Utilities Code.

10 Tribal-state gaming contracts, exemption from disclosure for records of an Indian
11 tribe relating to securitization of annual payments, Section 63048.63.

12 Trust companies, disclosure of private trust confidential information, Section
13 1582, Financial Code.

14 **Comment.** Section 6276.44 is amended to update cross-references in accordance with the
15 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
16 the Health and Safety Code.

17 **Gov't Code § 53313 (amended). Services financed by community facilities district**

18 SEC. __. Section 53313 of the Government Code is amended to read:

19 53313. A community facilities district may be established under this chapter to
20 finance any one or more of the following types of services within an area:

21 (a) Police protection services, including, but not limited to, criminal justice
22 services. However, criminal justice services shall be limited to providing services
23 for jails, detention facilities, and juvenile halls.

24 (b) Fire protection and suppression services, and ambulance and paramedic
25 services.

26 (c) Recreation program services, library services, maintenance services for
27 elementary and secondary schoolsites and structures, and the operation and
28 maintenance of museums and cultural facilities. A special tax may be levied for any
29 of the services specified in this subdivision only upon approval of the registered
30 voters as specified in subdivision (b) of Section 53326. An election to enact a special
31 tax for recreation program services, library services, and the operation and
32 maintenance of museums and cultural facilities may be conducted pursuant to
33 subdivision (c) of Section 53326.

34 (d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

35 (e) Flood and storm protection services, including, but not limited to, the operation
36 and maintenance of storm drainage systems, plowing and removal of snow, and
37 sandstorm protection systems.

38 (f) Services with respect to removal or remedial action for the cleanup of any
39 hazardous substance released or threatened to be released into the environment. As
40 used in this subdivision, the terms “remedial action” and “removal” shall have the
41 meanings set forth in Sections ~~25322 and 25323~~, 78125 and 78135, respectively, of
42 the Health and Safety Code, and the term “hazardous substance” shall have the

1 meaning set forth in Section 25281 of the Health and Safety Code. Community
2 facilities districts shall provide the State Department of Health Care Services and
3 local health and building departments with notification of any cleanup activity
4 pursuant to this subdivision at least 30 days prior to commencement of the activity.

5 (g) Maintenance and operation of any real property or other tangible property with
6 an estimated useful life of five or more years that is owned by the local agency or
7 by another local agency pursuant to an agreement entered into under Section
8 53316.2.

9 A community facilities district tax approved by vote of the landowners of the
10 district may only finance the services authorized in this section to the extent that
11 they are in addition to those provided in the territory of the district before the district
12 was created. The additional services shall not supplant services already available
13 within that territory when the district was created.

14 Bonds shall not be issued pursuant to this chapter to fund any of the services
15 specified in this section, although bonds may be issued to fund capital facilities to
16 be used in providing these services.

17 **Comment.** Section 53313 is amended to update cross-references in accordance with the
18 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
19 the Health and Safety Code.

20 **Gov't Code § 53313.5, as amended by Section 4 of Chapter 837 of the Statutes of 2018**
21 **(amended). Purchase of property by community facilities district (effective until**
22 **January 1, 2029)**

23 SEC. __. Section 53313.5 of the Government Code, as amended by Section 4 of
24 Chapter 837 of the Statutes of 2018, is amended to read:

25 53313.5. A community facilities district may also finance the purchase,
26 construction, expansion, improvement, or rehabilitation of any real or other tangible
27 property with an estimated useful life of five years or longer or may finance planning
28 and design work that is directly related to the purchase, construction, expansion, or
29 rehabilitation of any real or tangible property. The facilities need not be physically
30 located within the district. A district may not lease out facilities that it has financed
31 except pursuant to a lease agreement or annexation agreement entered into prior to
32 January 1, 1988. A district may only finance the purchase of facilities whose
33 construction has been completed, as determined by the legislative body, before the
34 resolution of formation to establish the district is adopted pursuant to Section
35 53325.1, except that a district may finance the purchase of facilities completed after
36 the adoption of the resolution of formation if the facility was constructed as if it had
37 been constructed under the direction and supervision, or under the authority of, the
38 local agency that will own or operate the facility. For example, a community
39 facilities district may finance facilities, including, but not limited to, the following:

- 40 (a) Local park, recreation, parkway, and open-space facilities.

1 (b) Elementary and secondary schoolsites and structures provided that the
2 facilities meet the building area and cost standards established by the State
3 Allocation Board.

4 (c) Libraries.

5 (d) Child care facilities, including costs of insuring the facilities against loss,
6 liability insurance in connection with the operation of the facility, and other
7 insurance costs relating to the operation of the facilities, but excluding all other
8 operational costs. However, the proceeds of bonds issued pursuant to this chapter
9 shall not be used to pay these insurance costs.

10 (e) The district may also finance the construction or undergrounding of water
11 transmission and distribution facilities, natural gas pipeline facilities, telephone
12 lines, facilities for the transmission or distribution of electrical energy, and cable
13 television lines to provide access to those services to customers who do not have
14 access to those services or to mitigate existing visual blight. The district may enter
15 into an agreement with a public utility to utilize those facilities to provide a
16 particular service and for the conveyance of those facilities to the public utility.
17 “Public utility” shall include all utilities, whether public and regulated by the Public
18 Utilities Commission, or municipal. If the facilities are conveyed to the public
19 utility, the agreement shall provide that the cost or a portion of the cost of the
20 facilities that are the responsibility of the utility shall be refunded by the public
21 utility to the district or improvement area thereof, to the extent that refunds are
22 applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities
23 Commission, as to utilities regulated by the commission, or (2) other laws regulating
24 public utilities. Any reimbursement made to the district shall be utilized to reduce
25 or minimize the special tax levied within the district or improvement area, or to
26 construct or acquire additional facilities within the district or improvement area, as
27 specified in the resolution of formation.

28 (f) The district may also finance the acquisition, improvement, rehabilitation, or
29 maintenance of any real or other tangible property, whether privately or publicly
30 owned, for flood and storm protection services, including, but not limited to, storm
31 drainage and treatment systems and sandstorm protection systems.

32 (g) The district may also pay in full all amounts necessary to eliminate any fixed
33 special assessment liens or to pay, repay, or defease any obligation to pay or any
34 indebtedness secured by any tax, fee, charge, or assessment levied within the area
35 of a community facilities district or may pay debt service on that indebtedness.
36 When the amount financed by the district is to pay a tax, fee, charge, or assessment
37 imposed by a public agency other than the one conducting the proceedings, and if
38 the amount provided to the other public agency will not be entirely used to pay off
39 or prepay an assessment lien or special tax obligation pursuant to the property
40 owner’s legal right to do so, the written consent of the other public agency is
41 required. In addition, tax revenues of a district may be used to make lease or debt
42 service payments on any lease, lease-purchase contract, or certificate of
43 participation used to finance facilities authorized to be financed by the district.

1 (h) Any other governmental facilities that the legislative body creating the
2 community facilities district is authorized by law to contribute revenue to, or
3 construct, own, or operate. However, the district shall not operate or maintain or,
4 except as otherwise provided in subdivisions (e) and (k), have any ownership
5 interest in any facilities for the transmission or distribution of natural gas, telephone
6 service, or electrical energy.

7 (i)(1) A district may also pay for the following:

8 (A) Work deemed necessary to bring buildings or real property, including
9 privately owned buildings or real property, into compliance with seismic safety
10 standards or regulations. Only work certified as necessary to comply with seismic
11 safety standards or regulations by local building officials may be financed. No
12 project involving the dismantling of an existing building and its replacement by a
13 new building, nor the construction of a new or substantially new building may be
14 financed pursuant to this subparagraph. Work on qualified historical buildings or
15 structures shall be done in accordance with the State Historical Building Code (Part
16 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety
17 Code).

18 (B) In addition, within any county or area designated by the President of the
19 United States or by the Governor as a disaster area or for which the Governor has
20 proclaimed the existence of a state of emergency because of earthquake damage, a
21 district may also pay for any work deemed necessary to repair any damage to real
22 property directly or indirectly caused by the occurrence of an earthquake cited in
23 the President's or the Governor's designation or proclamation, or by aftershocks
24 associated with that earthquake, including work to reconstruct, repair, shore up, or
25 replace any building damaged or destroyed by the earthquake, and specifically
26 including, but not limited to, work on any building damaged or destroyed in the
27 Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks.
28 Work may be financed pursuant to this subparagraph only on property or buildings
29 identified in a resolution of intention to establish a community facilities district
30 adopted within seven years of the date on which the county or area is designated as
31 a disaster area by the President or by the Governor or on which the Governor
32 proclaims for the area the existence of a state of emergency.

33 (2) Work on privately owned property, including reconstruction or replacement
34 of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may
35 only be financed by a tax levy if all of the votes cast on the question of levying the
36 tax, vote in favor of levying the tax, or with the prior written consent to the tax of
37 the owners of all property that may be subject to the tax, in that case the prior written
38 consent shall be deemed to constitute a vote in favor of the tax and any associated
39 bond issue. Any district created to finance seismic safety work on privately owned
40 buildings, including repair, reconstruction, or replacement of privately owned
41 buildings pursuant to this subdivision, shall consist only of lots or parcels that the
42 legislative body finds have buildings that were damaged or destroyed by the

1 earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks
2 of that earthquake.

3 (j) A district may also pay for the following:

4 (1) Work deemed necessary to repair and abate damage caused to privately owned
5 buildings and structures by soil deterioration. “Soil deterioration” means a chemical
6 reaction by soils that causes structural damage or defects in construction materials
7 including concrete, steel, and ductile or cast iron. Only work certified as necessary
8 by local building officials may be financed. No project involving the dismantling of
9 an existing building or structure and its replacement by a new building or structure,
10 nor the construction of a new or substantially new building or structure may be
11 financed pursuant to this paragraph.

12 (2) Work on privately owned buildings and structures pursuant to this subdivision,
13 including reconstruction, repair, and abatement of damage caused by soil
14 deterioration, may only be financed by a tax levy if all of the votes cast on the
15 question of levying the tax vote in favor of levying the tax. Any district created to
16 finance the work on privately owned buildings or structures, including
17 reconstruction, repair, and abatement of damage caused by soil deterioration, shall
18 consist only of lots or parcels on which the legislative body finds that the buildings
19 or structures to be worked on pursuant to this subdivision suffer from soil
20 deterioration.

21 (k) A district may also finance the acquisition, improvement, rehabilitation, or
22 maintenance of any real or other tangible property, whether privately or publicly
23 owned, for the purposes of removal or remedial action for the cleanup of any
24 hazardous substance released or threatened to be released into the environment. As
25 used in this subdivision, “remedial action” and “removal” shall have the meaning
26 set forth in Sections ~~25322 and 25323~~, 78125 and 78135, respectively, of the Health
27 and Safety Code, and “hazardous substance” shall have the meaning set forth in
28 Section 25281 of the Health and Safety Code.

29 (l) A district may also finance and refinance the acquisition, installation, and
30 improvement of energy efficiency, water conservation, wildfire safety
31 improvements as defined in Section 5899.4 of the Streets and Highways Code, and
32 renewable energy improvements that are affixed, as specified in Section 660 of the
33 Civil Code, to or on real property and in buildings, whether the real property or
34 buildings are privately or publicly owned. Energy efficiency, water conservation,
35 wildfire safety improvements as defined in Section 5899.4 of the Streets and
36 Highways Code, and renewable energy improvements financed by a district may
37 only be installed on a privately owned building and on privately owned real property
38 with the prior written consent of the owner or owners of the building or real
39 property. This chapter shall not be used to finance installation of energy efficiency,
40 water conservation, wildfire safety improvements as defined in Section 5899.4 of
41 the Streets and Highways Code, and renewable energy improvements on a privately
42 owned building or on privately owned real property in connection with the initial

1 construction of a residential building unless the initial construction is undertaken by
2 the intended owner or occupant.

3 (m) Any improvement on private property authorized to be financed by this
4 section shall constitute a “public facility” for purposes of this chapter and a “public
5 improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2
6 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code,
7 whether the improvement is owned by a private entity, if the legislative body has
8 determined that the improvement provides a public benefit, or the improvement is
9 owned by a public agency.

10 (n) This section shall remain in effect only until January 1, 2029, and as of that
11 date is repealed.

12 **Comment.** Section 53313.5(k) is amended to update cross-references in accordance with the
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
14 the Health and Safety Code.

15 **Gov’t Code § 53313.5, as repealed and added by Section 5 of Chapter 837 of the Statutes of**
16 **2018 (amended). Purchase of property by community facilities district (operative on**
17 **January 1, 2029)**

18 SEC. __. Section 53313.5 of the Government Code, as repealed and added by
19 Section 5 of Chapter 837 of the Statutes of 2018, is amended to read:

20 53313.5. A community facilities district may also finance the purchase,
21 construction, expansion, improvement, or rehabilitation of any real or other tangible
22 property with an estimated useful life of five years or longer or may finance planning
23 and design work that is directly related to the purchase, construction, expansion, or
24 rehabilitation of any real or tangible property. The facilities need not be physically
25 located within the district. A district may not lease out facilities that it has financed
26 except pursuant to a lease agreement or annexation agreement entered into prior to
27 January 1, 1988. A district may only finance the purchase of facilities whose
28 construction has been completed, as determined by the legislative body, before the
29 resolution of formation to establish the district is adopted pursuant to Section
30 53325.1, except that a district may finance the purchase of facilities completed after
31 the adoption of the resolution of formation if the facility was constructed as if it had
32 been constructed under the direction and supervision, or under the authority of, the
33 local agency that will own or operate the facility. For example, a community
34 facilities district may finance facilities, including, but not limited to, the following:

35 (a) Local park, recreation, parkway, and open-space facilities.

36 (b) Elementary and secondary schoolsites and structures provided that the
37 facilities meet the building area and cost standards established by the State
38 Allocation Board.

39 (c) Libraries.

40 (d) Child care facilities, including costs of insuring the facilities against loss,
41 liability insurance in connection with the operation of the facility, and other
42 insurance costs relating to the operation of the facilities, but excluding all other

1 operational costs. However, the proceeds of bonds issued pursuant to this chapter
2 shall not be used to pay these insurance costs.

3 (e) The district may also finance the construction or undergrounding of water
4 transmission and distribution facilities, natural gas pipeline facilities, telephone
5 lines, facilities for the transmission or distribution of electrical energy, and cable
6 television lines to provide access to those services to customers who do not have
7 access to those services or to mitigate existing visual blight. The district may enter
8 into an agreement with a public utility to utilize those facilities to provide a
9 particular service and for the conveyance of those facilities to the public utility.
10 “Public utility” shall include all utilities, whether public and regulated by the Public
11 Utilities Commission, or municipal. If the facilities are conveyed to the public
12 utility, the agreement shall provide that the cost or a portion of the cost of the
13 facilities that are the responsibility of the utility shall be refunded by the public
14 utility to the district or improvement area thereof, to the extent that refunds are
15 applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities
16 Commission, as to utilities regulated by the commission, or (2) other laws regulating
17 public utilities. Any reimbursement made to the district shall be utilized to reduce
18 or minimize the special tax levied within the district or improvement area, or to
19 construct or acquire additional facilities within the district or improvement area, as
20 specified in the resolution of formation.

21 (f) The district may also finance the acquisition, improvement, rehabilitation, or
22 maintenance of any real or other tangible property, whether privately or publicly
23 owned, for flood and storm protection services, including, but not limited to, storm
24 drainage and treatment systems and sandstorm protection systems.

25 (g) The district may also pay in full all amounts necessary to eliminate any fixed
26 special assessment liens or to pay, repay, or defease any obligation to pay or any
27 indebtedness secured by any tax, fee, charge, or assessment levied within the area
28 of a community facilities district or may pay debt service on that indebtedness.
29 When the amount financed by the district is to pay a tax, fee, charge, or assessment
30 imposed by a public agency other than the one conducting the proceedings, and if
31 the amount provided to the other public agency will not be entirely used to pay off
32 or prepay an assessment lien or special tax obligation pursuant to the property
33 owner’s legal right to do so, the written consent of the other public agency is
34 required. In addition, tax revenues of a district may be used to make lease or debt
35 service payments on any lease, lease-purchase contract, or certificate of
36 participation used to finance facilities authorized to be financed by the district.

37 (h) Any other governmental facilities that the legislative body creating the
38 community facilities district is authorized by law to contribute revenue to, or
39 construct, own, or operate. However, the district shall not operate or maintain or,
40 except as otherwise provided in subdivisions (e) and (k), have any ownership
41 interest in any facilities for the transmission or distribution of natural gas, telephone
42 service, or electrical energy.

43 (i)(1) A district may also pay for the following:

1 (A) Work deemed necessary to bring buildings or real property, including
2 privately owned buildings or real property, into compliance with seismic safety
3 standards or regulations. Only work certified as necessary to comply with seismic
4 safety standards or regulations by local building officials may be financed. No
5 project involving the dismantling of an existing building and its replacement by a
6 new building, nor the construction of a new or substantially new building may be
7 financed pursuant to this subparagraph. Work on qualified historical buildings or
8 structures shall be done in accordance with the State Historical Building Code (Part
9 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety
10 Code).

11 (B) In addition, within any county or area designated by the President of the
12 United States or by the Governor as a disaster area or for which the Governor has
13 proclaimed the existence of a state of emergency because of earthquake damage, a
14 district may also pay for any work deemed necessary to repair any damage to real
15 property directly or indirectly caused by the occurrence of an earthquake cited in
16 the President's or the Governor's designation or proclamation, or by aftershocks
17 associated with that earthquake, including work to reconstruct, repair, shore up, or
18 replace any building damaged or destroyed by the earthquake, and specifically
19 including, but not limited to, work on any building damaged or destroyed in the
20 Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks.
21 Work may be financed pursuant to this subparagraph only on property or buildings
22 identified in a resolution of intention to establish a community facilities district
23 adopted within seven years of the date on which the county or area is designated as
24 a disaster area by the President or by the Governor or on which the Governor
25 proclaims for the area the existence of a state of emergency.

26 (2) Work on privately owned property, including reconstruction or replacement
27 of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may
28 only be financed by a tax levy if all of the votes cast on the question of levying the
29 tax, vote in favor of levying the tax, or with the prior written consent to the tax of
30 the owners of all property that may be subject to the tax, in that case the prior written
31 consent shall be deemed to constitute a vote in favor of the tax and any associated
32 bond issue. Any district created to finance seismic safety work on privately owned
33 buildings, including repair, reconstruction, or replacement of privately owned
34 buildings pursuant to this subdivision, shall consist only of lots or parcels that the
35 legislative body finds have buildings that were damaged or destroyed by the
36 earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks
37 of that earthquake.

38 (j) A district may also pay for the following:

39 (1) Work deemed necessary to repair and abate damage caused to privately owned
40 buildings and structures by soil deterioration. "Soil deterioration" means a chemical
41 reaction by soils that causes structural damage or defects in construction materials
42 including concrete, steel, and ductile or cast iron. Only work certified as necessary
43 by local building officials may be financed. No project involving the dismantling of

1 an existing building or structure and its replacement by a new building or structure,
2 nor the construction of a new or substantially new building or structure may be
3 financed pursuant to this paragraph.

4 (2) Work on privately owned buildings and structures pursuant to this subdivision,
5 including reconstruction, repair, and abatement of damage caused by soil
6 deterioration, may only be financed by a tax levy if all of the votes cast on the
7 question of levying the tax vote in favor of levying the tax. Any district created to
8 finance the work on privately owned buildings or structures, including
9 reconstruction, repair, and abatement of damage caused by soil deterioration, shall
10 consist only of lots or parcels on which the legislative body finds that the buildings
11 or structures to be worked on pursuant to this subdivision suffer from soil
12 deterioration.

13 (k) A district may also finance the acquisition, improvement, rehabilitation, or
14 maintenance of any real or other tangible property, whether privately or publicly
15 owned, for the purposes of removal or remedial action for the cleanup of any
16 hazardous substance released or threatened to be released into the environment. As
17 used in this subdivision, “remedial action” and “removal” shall have the meaning
18 set forth in Sections ~~25322 and 25323~~, 78125 and 78135, respectively, of the Health
19 and Safety Code, and “hazardous substance” shall have the meaning set forth in
20 Section 25281 of the Health and Safety Code.

21 (l) A district may also finance and refinance the acquisition, installation, and
22 improvement of energy efficiency, water conservation, and renewable energy
23 improvements that are affixed, as specified in Section 660 of the Civil Code, to or
24 on real property and in buildings, whether the real property or buildings are privately
25 or publicly owned. Energy efficiency, water conservation, and renewable energy
26 improvements financed by a district may only be installed on a privately owned
27 building and on privately owned real property with the prior written consent of the
28 owner or owners of the building or real property. This chapter shall not be used to
29 finance installation of energy efficiency, water conservation, and renewable energy
30 improvements on a privately owned building or on privately owned real property in
31 connection with the initial construction of a residential building unless the initial
32 construction is undertaken by the intended owner or occupant.

33 (m) Any improvement on private property authorized to be financed by this
34 section shall constitute a “public facility” for purposes of this chapter and a “public
35 improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2
36 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code,
37 whether the improvement is owned by a private entity, if the legislative body has
38 determined that the improvement provides a public benefit, or the improvement is
39 owned by a public agency.

40 (n) This section shall become operative on January 1, 2029.

41 **Comment.** Section 53313.5(k) is amended to update cross-references in accordance with the
42 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
43 the Health and Safety Code.

1 **Gov't Code § 53314.7 (amended). Cost recovery and expenditures for hazardous substance**
2 **cleanup by community facilities district**

3 SEC. __. Section 53314.7 of the Government Code is amended to read:

4 53314.7. (a) Any responsible party as defined by subdivision (a) of Section
5 ~~25323.5~~ 78145 of the Health and Safety Code shall be liable to the district for the
6 costs incurred in the removal or remedial action for the cleanup of any hazardous
7 substance released or threatened to be released into the environment. The amount
8 of the costs shall include interest on the costs accrued from the date of expenditure.
9 The interest shall be calculated based on the average annual rate of return on the
10 district's investment of surplus funds for the fiscal year in which the district incurred
11 the costs. Recovery of costs by a community facilities district under this section
12 shall be commenced before or immediately upon completion of the removal or
13 remedial action, and payments received hereunder by the district shall be deposited
14 in the revolving fund in accordance with Section 53314.6.

15 (b) To expedite cleanup, this section is intended to provide local jurisdictions an
16 alternative method of financing the cost of removal or remedial action for the
17 cleanup of any hazardous substance through the issuance of voter-approved limited
18 obligation bonds. The provisions of this section shall not affect or limit the
19 provisions of any other law establishing the liability of any person for, or otherwise
20 regulating, the generation, transportation, storage, treatment, or disposal of
21 hazardous substances. The scope and standard of liability for any costs recoverable
22 pursuant to Section 53314.7 shall be the scope and standard of liability set forth in
23 the Comprehensive Environmental Response, Compensation, and Liability Act of
24 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any other provision of state or
25 federal law establishing responsibility for cleanup of hazardous waste sites.

26 **Comment.** Section 53314.7 is amended to update cross-references in accordance with the
27 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
28 the Health and Safety Code.

29 **Gov't Code § 53321.5 (amended). Required reports**

30 SEC. __. Section 53321.5 of the Government Code is amended to read:

31 53321.5. At the time of the adoption of the resolution of intention to establish a
32 community facilities district, the legislative body shall direct each of its officers who
33 is or will be responsible for providing one or more of the proposed types of public
34 facilities or services to be financed by the district, if it is established, to study the
35 proposed district and, at or before the time of the hearing, file a report with the
36 legislative body containing a brief description of the public facilities and services
37 by type that will in ~~his or her~~ the officer's opinion be required to adequately meet
38 the needs of the district and ~~his or her~~ the officer's estimate of the cost of providing
39 those public facilities and services. If the purchase of completed public facilities or
40 the payment of incidental expenses is proposed, the legislative body shall direct its
41 appropriate officer to estimate the fair and reasonable cost of those facilities or
42 incidental expenses. If removal or remedial action for the cleanup of any hazardous

1 substance is proposed, the legislative body shall (a) direct its responsible officer to
2 prepare or cause to be prepared, a remedial action plan based upon factors
3 comparable to those described in ~~subdivision (d) of Section 25356.1~~ Section 79205
4 of the Health and Safety Code or (b) determine, on the basis of the particular facts
5 and circumstances, that shall be comparable to those described in ~~subdivision (h) of~~
6 ~~Section 25356.1~~ Section 79225 of the Health and Safety Code, that the remedial
7 action plan is not required or (c) condition financing of the removal or remedial
8 action upon approval of a remedial action plan pursuant to ~~Section 25356.1~~ Article
9 12 (commencing with Section 79190) of Chapter 5 of Part 2 of Division 45 of the
10 Health and Safety Code. All of those reports shall be made a part of the record of
11 the hearing on the resolution of intention to establish the district.

12 **Comment.** Section 53321.5 is amended to update cross-references in accordance with the
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
14 the Health and Safety Code.

15 This section is also amended to eliminate gendered pronouns.

16 **Gov't Code § 65913.4 (amended). Streamlined approval process for multifamily housing**
17 **development**

18 SEC. __. Section 65913.4 of the Government Code is amended to read:

19 65913.4. (a) A development proponent may submit an application for a
20 development that is subject to the streamlined, ministerial approval process
21 provided by subdivision (c) and is not subject to a conditional use permit if the
22 development complies with subdivision (b) and satisfies all of the following
23 objective planning standards:

24 (1) The development is a multifamily housing development that contains two or
25 more residential units.

26 (2) The development and the site on which it is located satisfy all of the following:

27 (A) It is a legal parcel or parcels located in a city if, and only if, the city boundaries
28 include some portion of either an urbanized area or urban cluster, as designated by
29 the United States Census Bureau, or, for unincorporated areas, a legal parcel or
30 parcels wholly within the boundaries of an urbanized area or urban cluster, as
31 designated by the United States Census Bureau.

32 (B) At least 75 percent of the perimeter of the site adjoins parcels that are
33 developed with urban uses. For the purposes of this section, parcels that are only
34 separated by a street or highway shall be considered to be adjoined.

35 (C) It is zoned for residential use or residential mixed-use development, or has a
36 general plan designation that allows residential use or a mix of residential and
37 nonresidential uses, and at least two-thirds of the square footage of the development
38 is designated for residential use. Additional density, floor area, and units, and any
39 other concession, incentive, or waiver of development standards granted pursuant
40 to the Density Bonus Law in Section 65915 shall be included in the square footage
41 calculation. The square footage of the development shall not include underground
42 space, such as basements or underground parking garages.

1 (3)(A) The development proponent has committed to record, prior to the issuance
2 of the first building permit, a land use restriction or covenant providing that any
3 lower or moderate income housing units required pursuant to subparagraph (B) of
4 paragraph (4) shall remain available at affordable housing costs or rent to persons
5 and families of lower or moderate income for no less than the following periods of
6 time:

- 7 (i) Fifty-five years for units that are rented.
- 8 (ii) Forty-five years for units that are owned.

9 (B) The city or county shall require the recording of covenants or restrictions
10 implementing this paragraph for each parcel or unit of real property included in the
11 development.

12 (4) The development satisfies subparagraphs (A) and (B) below:

13 (A) Is located in a locality that the department has determined is subject to this
14 subparagraph on the basis that the number of units that have been issued building
15 permits, as shown on the most recent production report received by the department,
16 is less than the locality's share of the regional housing needs, by income category,
17 for that reporting period. A locality shall remain eligible under this subparagraph
18 until the department's determination for the next reporting period.

19 (B) The development is subject to a requirement mandating a minimum
20 percentage of below market rate housing based on one of the following:

21 (i) The locality did not submit its latest production report to the department by the
22 time period required by Section 65400, or that production report reflects that there
23 were fewer units of above moderate-income housing issued building permits than
24 were required for the regional housing needs assessment cycle for that reporting
25 period. In addition, if the project contains more than 10 units of housing, the project
26 does either of the following:

27 (I) The project dedicates a minimum of 10 percent of the total number of units to
28 housing affordable to households making at or below 80 percent of the area median
29 income. However, if the locality has adopted a local ordinance that requires that
30 greater than 10 percent of the units be dedicated to housing affordable to households
31 making below 80 percent of the area median income, that local ordinance applies.

32 (II)(ia) If the project is located within the San Francisco Bay area, the project, in
33 lieu of complying with subclause (I), dedicates 20 percent of the total number of
34 units to housing affordable to households making below 120 percent of the area
35 median income with the average income of the units at or below 100 percent of the
36 area median income. However, a local ordinance adopted by the locality applies if
37 it requires greater than 20 percent of the units be dedicated to housing affordable to
38 households making at or below 120 percent of the area median income, or requires
39 that any of the units be dedicated at a level deeper than 120 percent. In order to
40 comply with this subclause, the rent or sale price charged for units that are dedicated
41 to housing affordable to households between 80 percent and 120 percent of the area
42 median income shall not exceed 30 percent of the gross income of the household.

1 (ib) For purposes of this subclause, “San Francisco Bay area” means the entire
2 area within the territorial boundaries of the Counties of Alameda, Contra Costa,
3 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County
4 of San Francisco.

5 (ii) The locality’s latest production report reflects that there were fewer units of
6 housing issued building permits affordable to either very low income or low-income
7 households by income category than were required for the regional housing needs
8 assessment cycle for that reporting period, and the project seeking approval
9 dedicates 50 percent of the total number of units to housing affordable to households
10 making at or below 80 percent of the area median income. However, if the locality
11 has adopted a local ordinance that requires that greater than 50 percent of the units
12 be dedicated to housing affordable to households making at or below 80 percent of
13 the area median income, that local ordinance applies.

14 (iii) The locality did not submit its latest production report to the department by
15 the time period required by Section 65400, or if the production report reflects that
16 there were fewer units of housing affordable to both income levels described in
17 clauses (i) and (ii) that were issued building permits than were required for the
18 regional housing needs assessment cycle for that reporting period, the project
19 seeking approval may choose between utilizing clause (i) or (ii).

20 (C)(i) A development proponent that uses a unit of affordable housing to satisfy
21 the requirements of subparagraph (B) may also satisfy any other local or state
22 requirement for affordable housing, including local ordinances or the Density Bonus
23 Law in Section 65915, provided that the development proponent complies with the
24 applicable requirements in the state or local law.

25 (ii) A development proponent that uses a unit of affordable housing to satisfy any
26 other state or local affordability requirement may also satisfy the requirements of
27 subparagraph (B), provided that the development proponent complies with
28 applicable requirements of subparagraph (B).

29 (iii) A development proponent may satisfy the affordability requirements of
30 subparagraph (B) with a unit that is restricted to households with incomes lower
31 than the applicable income limits required in subparagraph (B).

32 (5) The development, excluding any additional density or any other concessions,
33 incentives, or waivers of development standards granted pursuant to the Density
34 Bonus Law in Section 65915, is consistent with objective zoning standards,
35 objective subdivision standards, and objective design review standards in effect at
36 the time that the development is submitted to the local government pursuant to this
37 section, or at the time a notice of intent is submitted pursuant to subdivision (b),
38 whichever occurs earlier. For purposes of this paragraph, “objective zoning
39 standards,” “objective subdivision standards,” and “objective design review
40 standards” mean standards that involve no personal or subjective judgment by a
41 public official and are uniformly verifiable by reference to an external and uniform
42 benchmark or criterion available and knowable by both the development applicant
43 or proponent and the public official before submittal. These standards may be

1 embodied in alternative objective land use specifications adopted by a city or
2 county, and may include, but are not limited to, housing overlay zones, specific
3 plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the
4 following:

5 (A) A development shall be deemed consistent with the objective zoning
6 standards related to housing density, as applicable, if the density proposed is
7 compliant with the maximum density allowed within that land use designation,
8 notwithstanding any specified maximum unit allocation that may result in fewer
9 units of housing being permitted.

10 (B) In the event that objective zoning, general plan, subdivision, or design review
11 standards are mutually inconsistent, a development shall be deemed consistent with
12 the objective zoning and subdivision standards pursuant to this subdivision if the
13 development is consistent with the standards set forth in the general plan.

14 (C) It is the intent of the Legislature that the objective zoning standards, objective
15 subdivision standards, and objective design review standards described in this
16 paragraph be adopted or amended in compliance with the requirements of Chapter
17 905 of the Statutes of 2004.

18 (D) The amendments to this subdivision made by the act adding this subparagraph
19 do not constitute a change in, but are declaratory of, existing law.

20 (6) The development is not located on a site that is any of the following:

21 (A) A coastal zone, as defined in Division 20 (commencing with Section 30000)
22 of the Public Resources Code.

23 (B) Either prime farmland or farmland of statewide importance, as defined
24 pursuant to United States Department of Agriculture land inventory and monitoring
25 criteria, as modified for California, and designated on the maps prepared by the
26 Farmland Mapping and Monitoring Program of the Department of Conservation, or
27 land zoned or designated for agricultural protection or preservation by a local ballot
28 measure that was approved by the voters of that jurisdiction.

29 (C) Wetlands, as defined in the United States Fish and Wildlife Service Manual,
30 Part 660 FW 2 (June 21, 1993).

31 (D) Within a very high fire hazard severity zone, as determined by the Department
32 of Forestry and Fire Protection pursuant to Section 51178, or within a high or very
33 high fire hazard severity zone as indicated on maps adopted by the Department of
34 Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.
35 This subparagraph does not apply to sites excluded from the specified hazard zones
36 by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have
37 adopted fire hazard mitigation measures pursuant to existing building standards or
38 state fire mitigation measures applicable to the development.

39 (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a
40 hazardous waste site designated by the Department of Toxic Substances Control
41 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
42 4 of Part 2 of Division 45 of the Health and Safety Code, unless the State
43 Department of Public Health, State Water Resources Control Board, or Department

1 of Toxic Substances Control has cleared the site for residential use or residential
2 mixed uses.

3 (F) Within a delineated earthquake fault zone as determined by the State Geologist
4 in any official maps published by the State Geologist, unless the development
5 complies with applicable seismic protection building code standards adopted by the
6 California Building Standards Commission under the California Building Standards
7 Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and
8 Safety Code), and by any local building department under Chapter 12.2
9 (commencing with Section 8875) of Division 1 of Title 2.

10 (G) Within a special flood hazard area subject to inundation by the 1 percent
11 annual chance flood (100-year flood) as determined by the Federal Emergency
12 Management Agency in any official maps published by the Federal Emergency
13 Management Agency. If a development proponent is able to satisfy all applicable
14 federal qualifying criteria in order to provide that the site satisfies this subparagraph
15 and is otherwise eligible for streamlined approval under this section, a local
16 government shall not deny the application on the basis that the development
17 proponent did not comply with any additional permit requirement, standard, or
18 action adopted by that local government that is applicable to that site. A
19 development may be located on a site described in this subparagraph if either of the
20 following are met:

21 (i) The site has been subject to a Letter of Map Revision prepared by the Federal
22 Emergency Management Agency and issued to the local jurisdiction.

23 (ii) The site meets Federal Emergency Management Agency requirements
24 necessary to meet minimum flood plain management criteria of the National Flood
25 Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60
26 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the
27 Code of Federal Regulations.

28 (H) Within a regulatory floodway as determined by the Federal Emergency
29 Management Agency in any official maps published by the Federal Emergency
30 Management Agency, unless the development has received a no-rise certification in
31 accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.
32 If a development proponent is able to satisfy all applicable federal qualifying criteria
33 in order to provide that the site satisfies this subparagraph and is otherwise eligible
34 for streamlined approval under this section, a local government shall not deny the
35 application on the basis that the development proponent did not comply with any
36 additional permit requirement, standard, or action adopted by that local government
37 that is applicable to that site.

38 (I) Lands identified for conservation in an adopted natural community
39 conservation plan pursuant to the Natural Community Conservation Planning Act
40 (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game
41 Code), habitat conservation plan pursuant to the federal Endangered Species Act of
42 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection
43 plan.

1 (J) Habitat for protected species identified as candidate, sensitive, or species of
2 special status by state or federal agencies, fully protected species, or species
3 protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
4 seq.), the California Endangered Species Act (Chapter 1.5 (commencing with
5 Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant
6 Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the
7 Fish and Game Code).

8 (K) Lands under conservation easement.

9 (7) The development is not located on a site where any of the following apply:

10 (A) The development would require the demolition of the following types of
11 housing:

12 (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts
13 rents to levels affordable to persons and families of moderate, low, or very low
14 income.

15 (ii) Housing that is subject to any form of rent or price control through a public
16 entity's valid exercise of its police power.

17 (iii) Housing that has been occupied by tenants within the past 10 years.

18 (B) The site was previously used for housing that was occupied by tenants that
19 was demolished within 10 years before the development proponent submits an
20 application under this section.

21 (C) The development would require the demolition of a historic structure that was
22 placed on a national, state, or local historic register.

23 (D) The property contains housing units that are occupied by tenants, and units at
24 the property are, or were, subsequently offered for sale to the general public by the
25 subdivider or subsequent owner of the property.

26 (8) The development proponent has done both of the following, as applicable:

27 (A) Certified to the locality that either of the following is true, as applicable:

28 (i) The entirety of the development is a public work for purposes of Chapter 1
29 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

30 (ii) If the development is not in its entirety a public work, that all construction
31 workers employed in the execution of the development will be paid at least the
32 general prevailing rate of per diem wages for the type of work and geographic area,
33 as determined by the Director of Industrial Relations pursuant to Sections 1773 and
34 1773.9 of the Labor Code, except that apprentices registered in programs approved
35 by the Chief of the Division of Apprenticeship Standards may be paid at least the
36 applicable apprentice prevailing rate. If the development is subject to this
37 subparagraph, then for those portions of the development that are not a public work
38 all of the following shall apply:

39 (I) The development proponent shall ensure that the prevailing wage requirement
40 is included in all contracts for the performance of the work.

41 (II) All contractors and subcontractors shall pay to all construction workers
42 employed in the execution of the work at least the general prevailing rate of per
43 diem wages, except that apprentices registered in programs approved by the Chief

1 of the Division of Apprenticeship Standards may be paid at least the applicable
2 apprentice prevailing rate.

3 (III) Except as provided in subclause (V), all contractors and subcontractors shall
4 maintain and verify payroll records pursuant to Section 1776 of the Labor Code and
5 make those records available for inspection and copying as provided therein.

6 (IV) Except as provided in subclause (V), the obligation of the contractors and
7 subcontractors to pay prevailing wages may be enforced by the Labor
8 Commissioner through the issuance of a civil wage and penalty assessment pursuant
9 to Section 1741 of the Labor Code, which may be reviewed pursuant to Section
10 1742 of the Labor Code, within 18 months after the completion of the development,
11 by an underpaid worker through an administrative complaint or civil action, or by a
12 joint labor-management committee through a civil action under Section 1771.2 of
13 the Labor Code. If a civil wage and penalty assessment is issued, the contractor,
14 subcontractor, and surety on a bond or bonds issued to secure the payment of wages
15 covered by the assessment shall be liable for liquidated damages pursuant to Section
16 1742.1 of the Labor Code.

17 (V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors
18 performing work on the development are subject to a project labor agreement that
19 requires the payment of prevailing wages to all construction workers employed in
20 the execution of the development and provides for enforcement of that obligation
21 through an arbitration procedure. For purposes of this clause, “project labor
22 agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of
23 Section 2500 of the Public Contract Code.

24 (VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the
25 requirement that employer payments not reduce the obligation to pay the hourly
26 straight time or overtime wages found to be prevailing shall not apply if otherwise
27 provided in a bona fide collective bargaining agreement covering the worker. The
28 requirement to pay at least the general prevailing rate of per diem wages does not
29 preclude use of an alternative workweek schedule adopted pursuant to Section 511
30 or 514 of the Labor Code.

31 (B)(i) For developments for which any of the following conditions apply, certified
32 that a skilled and trained workforce shall be used to complete the development if
33 the application is approved:

34 (I) On and after January 1, 2018, until December 31, 2021, the development
35 consists of 75 or more units with a residential component that is not 100 percent
36 subsidized affordable housing and will be located within a jurisdiction located in a
37 coastal or bay county with a population of 225,000 or more.

38 (II) On and after January 1, 2022, until December 31, 2025, the development
39 consists of 50 or more units with a residential component that is not 100 percent
40 subsidized affordable housing and will be located within a jurisdiction located in a
41 coastal or bay county with a population of 225,000 or more.

42 (III) On and after January 1, 2018, until December 31, 2019, the development
43 consists of 75 or more units with a residential component that is not 100 percent

1 subsidized affordable housing and will be located within a jurisdiction with a
2 population of fewer than 550,000 and that is not located in a coastal or bay county.

3 (IV) On and after January 1, 2020, until December 31, 2021, the development
4 consists of more than 50 units with a residential component that is not 100 percent
5 subsidized affordable housing and will be located within a jurisdiction with a
6 population of fewer than 550,000 and that is not located in a coastal or bay county.

7 (V) On and after January 1, 2022, until December 31, 2025, the development
8 consists of more than 25 units with a residential component that is not 100 percent
9 subsidized affordable housing and will be located within a jurisdiction with a
10 population of fewer than 550,000 and that is not located in a coastal or bay county.

11 (ii) For purposes of this section, “skilled and trained workforce” has the same
12 meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of
13 Division 2 of the Public Contract Code.

14 (iii) If the development proponent has certified that a skilled and trained
15 workforce will be used to complete the development and the application is
16 approved, the following shall apply:

17 (I) The applicant shall require in all contracts for the performance of work that
18 every contractor and subcontractor at every tier will individually use a skilled and
19 trained workforce to complete the development.

20 (II) Every contractor and subcontractor shall use a skilled and trained workforce
21 to complete the development.

22 (III) Except as provided in subclause (IV), the applicant shall provide to the
23 locality, on a monthly basis while the development or contract is being performed,
24 a report demonstrating compliance with Chapter 2.9 (commencing with Section
25 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report
26 provided to the locality pursuant to this subclause shall be a public record under the
27 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of
28 Division 7 of Title 1) and shall be open to public inspection. An applicant that fails
29 to provide a monthly report demonstrating compliance with Chapter 2.9
30 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code
31 shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for
32 each month for which the report has not been provided. Any contractor or
33 subcontractor that fails to use a skilled and trained workforce shall be subject to a
34 civil penalty of two hundred dollars (\$200) per day for each worker employed in
35 contravention of the skilled and trained workforce requirement. Penalties may be
36 assessed by the Labor Commissioner within 18 months of completion of the
37 development using the same procedures for issuance of civil wage and penalty
38 assessments pursuant to Section 1741 of the Labor Code, and may be reviewed
39 pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall
40 be paid to the State Public Works Enforcement Fund.

41 (IV) Subclause (III) shall not apply if all contractors and subcontractors
42 performing work on the development are subject to a project labor agreement that
43 requires compliance with the skilled and trained workforce requirement and

1 provides for enforcement of that obligation through an arbitration procedure. For
2 purposes of this subparagraph, “project labor agreement” has the same meaning as
3 set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract
4 Code.

5 (C) Notwithstanding subparagraphs (A) and (B), a development that is subject to
6 approval pursuant to this section is exempt from any requirement to pay prevailing
7 wages or use a skilled and trained workforce if it meets both of the following:

8 (i) The project includes 10 or fewer units.

9 (ii) The project is not a public work for purposes of Chapter 1 (commencing with
10 Section 1720) of Part 7 of Division 2 of the Labor Code.

11 (9) The development did not or does not involve a subdivision of a parcel that is,
12 or, notwithstanding this section, would otherwise be, subject to the Subdivision Map
13 Act (Division 2 (commencing with Section 66410)) or any other applicable law
14 authorizing the subdivision of land, unless the development is consistent with all
15 objective subdivision standards in the local subdivision ordinance, and either of the
16 following apply:

17 (A) The development has received or will receive financing or funding by means
18 of a low-income housing tax credit and is subject to the requirement that prevailing
19 wages be paid pursuant to subparagraph (A) of paragraph (8).

20 (B) The development is subject to the requirement that prevailing wages be paid,
21 and a skilled and trained workforce used, pursuant to paragraph (8).

22 (10) The development shall not be upon an existing parcel of land or site that is
23 governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with
24 Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational
25 Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of
26 Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part
27 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety
28 Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section
29 18860) of Division 13 of the Health and Safety Code).

30 (b)(1)(A)(i) Before submitting an application for a development subject to the
31 streamlined, ministerial approval process described in subdivision (c), the
32 development proponent shall submit to the local government a notice of its intent to
33 submit an application. The notice of intent shall be in the form of a preliminary
34 application that includes all of the information described in Section 65941.1, as that
35 section read on January 1, 2020.

36 (ii) Upon receipt of a notice of intent to submit an application described in clause
37 (i), the local government shall engage in a scoping consultation regarding the
38 proposed development with any California Native American tribe that is
39 traditionally and culturally affiliated with the geographic area, as described in
40 Section 21080.3.1 of the Public Resources Code, of the proposed development. In
41 order to expedite compliance with this subdivision, the local government shall
42 contact the Native American Heritage Commission for assistance in identifying any

1 California Native American tribe that is traditionally and culturally affiliated with
2 the geographic area of the proposed development.

3 (iii) The timeline for noticing and commencing a scoping consultation in
4 accordance with this subdivision shall be as follows:

5 (I) The local government shall provide a formal notice of a development
6 proponent's notice of intent to submit an application described in clause (i) to each
7 California Native American tribe that is traditionally and culturally affiliated with
8 the geographic area of the proposed development within 30 days of receiving that
9 notice of intent. The formal notice provided pursuant to this subclause shall include
10 all of the following:

11 (ia) A description of the proposed development.

12 (ib) The location of the proposed development.

13 (ic) An invitation to engage in a scoping consultation in accordance with this
14 subdivision.

15 (II) Each California Native American tribe that receives a formal notice pursuant
16 to this clause shall have 30 days from the receipt of that notice to accept the
17 invitation to engage in a scoping consultation.

18 (III) If the local government receives a response accepting an invitation to engage
19 in a scoping consultation pursuant to this subdivision, the local government shall
20 commence the scoping consultation within 30 days of receiving that response.

21 (B) The scoping consultation shall recognize that California Native American
22 tribes traditionally and culturally affiliated with a geographic area have knowledge
23 and expertise concerning the resources at issue and shall take into account the
24 cultural significance of the resource to the culturally affiliated California Native
25 American tribe.

26 (C) The parties to a scoping consultation conducted pursuant to this subdivision
27 shall be the local government and any California Native American tribe traditionally
28 and culturally affiliated with the geographic area of the proposed development.
29 More than one California Native American tribe traditionally and culturally
30 affiliated with the geographic area of the proposed development may participate in
31 the scoping consultation. However, the local government, upon the request of any
32 California Native American tribe traditionally and culturally affiliated with the
33 geographic area of the proposed development, shall engage in a separate scoping
34 consultation with that California Native American tribe. The development
35 proponent and its consultants may participate in a scoping consultation process
36 conducted pursuant to this subdivision if all of the following conditions are met:

37 (i) The development proponent and its consultants agree to respect the principles
38 set forth in this subdivision.

39 (ii) The development proponent and its consultants engage in the scoping
40 consultation in good faith.

41 (iii) The California Native American tribe participating in the scoping
42 consultation approves the participation of the development proponent and its
43 consultants. The California Native American tribe may rescind its approval at any

1 time during the scoping consultation, either for the duration of the scoping
2 consultation or with respect to any particular meeting or discussion held as part of
3 the scoping consultation.

4 (D) The participants to a scoping consultation pursuant to this subdivision shall
5 comply with all of the following confidentiality requirements:

6 (i) Subdivision (r) of Section 6254.

7 (ii) Section 6254.10.

8 (iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

9 (iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of
10 Regulations.

11 (v) Any additional confidentiality standards adopted by the California Native
12 American tribe participating in the scoping consultation.

13 (E) The California Environmental Quality Act (Division 13 (commencing with
14 Section 21000) of the Public Resources Code) shall not apply to a scoping
15 consultation conducted pursuant to this subdivision.

16 (2)(A) If, after concluding the scoping consultation, the parties find that no
17 potential tribal cultural resource would be affected by the proposed development,
18 the development proponent may submit an application for the proposed
19 development that is subject to the streamlined, ministerial approval process
20 described in subdivision (c).

21 (B) If, after concluding the scoping consultation, the parties find that a potential
22 tribal cultural resource could be affected by the proposed development and an
23 enforceable agreement is documented between the California Native American tribe
24 and the local government on methods, measures, and conditions for tribal cultural
25 resource treatment, the development proponent may submit the application for a
26 development subject to the streamlined, ministerial approval process described in
27 subdivision (c). The local government shall ensure that the enforceable agreement
28 is included in the requirements and conditions for the proposed development.

29 (C) If, after concluding the scoping consultation, the parties find that a potential
30 tribal cultural resource could be affected by the proposed development and an
31 enforceable agreement is not documented between the California Native American
32 tribe and the local government regarding methods, measures, and conditions for
33 tribal cultural resource treatment, the development shall not be eligible for the
34 streamlined, ministerial approval process described in subdivision (c).

35 (D) For purposes of this paragraph, a scoping consultation shall be deemed to be
36 concluded if either of the following occur:

37 (i) The parties to the scoping consultation document an enforceable agreement
38 concerning methods, measures, and conditions to avoid or address potential impacts
39 to tribal cultural resources that are or may be present.

40 (ii) One or more parties to the scoping consultation, acting in good faith and after
41 reasonable effort, conclude that a mutual agreement on methods, measures, and
42 conditions to avoid or address impacts to tribal cultural resources that are or may be
43 present cannot be reached.

1 (E) If the development or environmental setting substantially changes after the
2 completion of the scoping consultation, the local government shall notify the
3 California Native American tribe of the changes and engage in a subsequent scoping
4 consultation if requested by the California Native American tribe.

5 (3) A local government may only accept an application for streamlined,
6 ministerial approval pursuant to this section if one of the following applies:

7 (A) A California Native American tribe that received a formal notice of the
8 development proponent's notice of intent to submit an application pursuant to
9 subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the
10 invitation to engage in a scoping consultation.

11 (B) The California Native American tribe accepted an invitation to engage in a
12 scoping consultation pursuant to subclause (II) of clause (iii) of subparagraph (A)
13 of paragraph (1) but substantially failed to engage in the scoping consultation after
14 repeated documented attempts by the local government to engage the California
15 Native American tribe.

16 (C) The parties to a scoping consultation pursuant to this subdivision find that no
17 potential tribal cultural resource will be affected by the proposed development
18 pursuant to subparagraph (A) of paragraph (2).

19 (D) A scoping consultation between a California Native American tribe and the
20 local government has occurred in accordance with this subdivision and resulted in
21 agreement pursuant to subparagraph (B) of paragraph (2).

22 (4) A project shall not be eligible for the streamlined, ministerial process
23 described in subdivision (c) if any of the following apply:

24 (A) There is a tribal cultural resource that is on a national, state, tribal, or local
25 historic register list located on the site of the project.

26 (B) There is a potential tribal cultural resource that could be affected by the
27 proposed development and the parties to a scoping consultation conducted pursuant
28 to this subdivision do not document an enforceable agreement on methods,
29 measures, and conditions for tribal cultural resource treatment, as described in
30 subparagraph (C) of paragraph (2).

31 (C) The parties to a scoping consultation conducted pursuant to this subdivision
32 do not agree as to whether a potential tribal cultural resource will be affected by the
33 proposed development.

34 (5)(A) If, after a scoping consultation conducted pursuant to this subdivision, a
35 project is not eligible for the streamlined, ministerial process described in
36 subdivision (c) for any or all of the following reasons, the local government shall
37 provide written documentation of that fact, and an explanation of the reason for
38 which the project is not eligible, to the development proponent and to any California
39 Native American tribe that is a party to that scoping consultation:

40 (i) There is a tribal cultural resource that is on a national, state, tribal, or local
41 historic register list located on the site of the project, as described in subparagraph
42 (A) of paragraph (4).

1 (ii) The parties to the scoping consultation have not documented an enforceable
2 agreement on methods, measures, and conditions for tribal cultural resource
3 treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B)
4 of paragraph (4).

5 (iii) The parties to the scoping consultation do not agree as to whether a potential
6 tribal cultural resource will be affected by the proposed development, as described
7 in subparagraph (C) of paragraph (4).

8 (B) The written documentation provided to a development proponent pursuant to
9 this paragraph shall include information on how the development proponent may
10 seek a conditional use permit or other discretionary approval of the development
11 from the local government.

12 (6) This section is not intended, and shall not be construed, to limit consultation
13 and discussion between a local government and a California Native American tribe
14 pursuant to other applicable law, confidentiality provisions under other applicable
15 law, the protection of religious exercise to the fullest extent permitted under state
16 and federal law, or the ability of a California Native American tribe to submit
17 information to the local government or participate in any process of the local
18 government.

19 (7) For purposes of this subdivision:

20 (A) “Consultation” means the meaningful and timely process of seeking,
21 discussing, and considering carefully the views of others, in a manner that is
22 cognizant of all parties’ cultural values and, where feasible, seeking agreement.
23 Consultation between local governments and Native American tribes shall be
24 conducted in a way that is mutually respectful of each party’s sovereignty.
25 Consultation shall also recognize the tribes’ potential needs for confidentiality with
26 respect to places that have traditional tribal cultural importance. A lead agency shall
27 consult the tribal consultation best practices described in the “State of California
28 Tribal Consultation Guidelines: Supplement to the General Plan Guidelines”
29 prepared by the Office of Planning and Research.

30 (B) “Scoping” means the act of participating in early discussions or investigations
31 between the local government and California Native American tribe, and the
32 development proponent if authorized by the California Native American tribe,
33 regarding the potential effects a proposed development could have on a potential
34 tribal cultural resource, as defined in Section 21074 of the Public Resources Code,
35 or California Native American tribe, as defined in Section 21073 of the Public
36 Resources Code.

37 (8) This subdivision shall not apply to any project that has been approved under
38 the streamlined, ministerial approval process provided under this section before the
39 effective date of the act adding this subdivision.

40 (c)(1) If a local government determines that a development submitted pursuant to
41 this section is in conflict with any of the objective planning standards specified in
42 subdivision (a), it shall provide the development proponent written documentation
43 of which standard or standards the development conflicts with, and an explanation

1 for the reason or reasons the development conflicts with that standard or standards,
2 as follows:

3 (A) Within 60 days of submittal of the development to the local government
4 pursuant to this section if the development contains 150 or fewer housing units.

5 (B) Within 90 days of submittal of the development to the local government
6 pursuant to this section if the development contains more than 150 housing units.

7 (2) If the local government fails to provide the required documentation pursuant
8 to paragraph (1), the development shall be deemed to satisfy the objective planning
9 standards specified in subdivision (a).

10 (3) For purposes of this section, a development is consistent with the objective
11 planning standards specified in subdivision (a) if there is substantial evidence that
12 would allow a reasonable person to conclude that the development is consistent with
13 the objective planning standards.

14 (d)(1) Any design review or public oversight of the development may be
15 conducted by the local government’s planning commission or any equivalent board
16 or commission responsible for review and approval of development projects, or the
17 city council or board of supervisors, as appropriate. That design review or public
18 oversight shall be objective and be strictly focused on assessing compliance with
19 criteria required for streamlined projects, as well as any reasonable objective design
20 standards published and adopted by ordinance or resolution by a local jurisdiction
21 before submission of a development application, and shall be broadly applicable to
22 development within the jurisdiction. That design review or public oversight shall be
23 completed as follows and shall not in any way inhibit, chill, or preclude the
24 ministerial approval provided by this section or its effect, as applicable:

25 (A) Within 90 days of submittal of the development to the local government
26 pursuant to this section if the development contains 150 or fewer housing units.

27 (B) Within 180 days of submittal of the development to the local government
28 pursuant to this section if the development contains more than 150 housing units.

29 (2) If the development is consistent with the requirements of subparagraph (A) or
30 (B) of paragraph (9) of subdivision (a) and is consistent with all objective
31 subdivision standards in the local subdivision ordinance, an application for a
32 subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with
33 Section 66410)) shall be exempt from the requirements of the California
34 Environmental Quality Act (Division 13 (commencing with Section 21000)) of the
35 Public Resources Code) and shall be subject to the public oversight timelines set
36 forth in paragraph (1).

37 (e)(1) Notwithstanding any other law, a local government, whether or not it has
38 adopted an ordinance governing automobile parking requirements in multifamily
39 developments, shall not impose automobile parking standards for a streamlined
40 development that was approved pursuant to this section in any of the following
41 instances:

42 (A) The development is located within one-half mile of public transit.

1 (B) The development is located within an architecturally and historically
2 significant historic district.

3 (C) When on-street parking permits are required but not offered to the occupants
4 of the development.

5 (D) When there is a car share vehicle located within one block of the development.

6 (2) If the development does not fall within any of the categories described in
7 paragraph (1), the local government shall not impose automobile parking
8 requirements for streamlined developments approved pursuant to this section that
9 exceed one parking space per unit.

10 (f)(1) If a local government approves a development pursuant to this section, then,
11 notwithstanding any other law, that approval shall not expire if the project includes
12 public investment in housing affordability, beyond tax credits, where 50 percent of
13 the units are affordable to households making at or below 80 percent of the area
14 median income.

15 (2)(A) If a local government approves a development pursuant to this section and
16 the project does not include 50 percent of the units affordable to households making
17 at or below 80 percent of the area median income, that approval shall remain valid
18 for three years from the date of the final action establishing that approval, or if
19 litigation is filed challenging that approval, from the date of the final judgment
20 upholding that approval. Approval shall remain valid for a project provided that
21 vertical construction of the development has begun and is in progress. For purposes
22 of this subdivision, “in progress” means one of the following:

23 (i) The construction has begun and has not ceased for more than 180 days.

24 (ii) If the development requires multiple building permits, an initial phase has
25 been completed, and the project proponent has applied for and is diligently pursuing
26 a building permit for a subsequent phase, provided that once it has been issued, the
27 building permit for the subsequent phase does not lapse.

28 (B) Notwithstanding subparagraph (A), a local government may grant a project a
29 one-time, one-year extension if the project proponent can provide documentation
30 that there has been significant progress toward getting the development construction
31 ready, such as filing a building permit application.

32 (3) If a local government approves a development pursuant to this section, that
33 approval shall remain valid for three years from the date of the final action
34 establishing that approval and shall remain valid thereafter for a project so long as
35 vertical construction of the development has begun and is in progress. Additionally,
36 the development proponent may request, and the local government shall have
37 discretion to grant, an additional one-year extension to the original three-year
38 period. The local government’s action and discretion in determining whether to
39 grant the foregoing extension shall be limited to considerations and processes set
40 forth in this section.

41 (g)(1)(A) A development proponent may request a modification to a development
42 that has been approved under the streamlined, ministerial approval process provided

1 in subdivision (b) if that request is submitted to the local government before the
2 issuance of the final building permit required for construction of the development.

3 (B) Except as provided in paragraph (3), the local government shall approve a
4 modification if it determines that the modification is consistent with the objective
5 planning standards specified in subdivision (a) that were in effect when the original
6 development application was first submitted.

7 (C) The local government shall evaluate any modifications requested pursuant to
8 this subdivision for consistency with the objective planning standards using the
9 same assumptions and analytical methodology that the local government originally
10 used to assess consistency for the development that was approved for streamlined,
11 ministerial approval pursuant to subdivision (b).

12 (D) A guideline that was adopted or amended by the department pursuant to
13 subdivision (j) after a development was approved through the streamlined
14 ministerial approval process described in subdivision (b) shall not be used as a basis
15 to deny proposed modifications.

16 (2) Upon receipt of the developmental proponent's application requesting a
17 modification, the local government shall determine if the requested modification is
18 consistent with the objective planning standard and either approve or deny the
19 modification request within 60 days after submission of the modification, or within
20 90 days if design review is required.

21 (3) Notwithstanding paragraph (1), the local government may apply objective
22 planning standards adopted after the development application was first submitted to
23 the requested modification in any of the following instances:

24 (A) The development is revised such that the total number of residential units or
25 total square footage of construction changes by 15 percent or more.

26 (B) The development is revised such that the total number of residential units or
27 total square footage of construction changes by 5 percent or more and it is necessary
28 to subject the development to an objective standard beyond those in effect when the
29 development application was submitted in order to mitigate or avoid a specific,
30 adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of
31 subdivision (j) of Section 65589.5, upon the public health or safety and there is no
32 feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

33 (C) Objective building standards contained in the California Building Standards
34 Code (Title 24 of the California Code of Regulations), including, but not limited to,
35 building plumbing, electrical, fire, and grading codes, may be applied to all
36 modifications.

37 (4) The local government's review of a modification request pursuant to this
38 subdivision shall be strictly limited to determining whether the modification,
39 including any modification to previously approved density bonus concessions or
40 waivers, modify the development's consistency with the objective planning
41 standards and shall not reconsider prior determinations that are not affected by the
42 modification.

1 (h)(1) A local government shall not adopt or impose any requirement, including,
2 but not limited to, increased fees or inclusionary housing requirements, that applies
3 to a project solely or partially on the basis that the project is eligible to receive
4 ministerial or streamlined approval pursuant to this section.

5 (2) A local government shall issue a subsequent permit required for a development
6 approved under this section if the application substantially complies with the
7 development as it was approved pursuant to subdivision (c). Upon receipt of an
8 application for a subsequent permit, the local government shall process the permit
9 without unreasonable delay and shall not impose any procedure or requirement that
10 is not imposed on projects that are not approved pursuant to this section. Issuance
11 of subsequent permits shall implement the approved development, and review of
12 the permit application shall not inhibit, chill, or preclude the development. For
13 purposes of this paragraph, a “subsequent permit” means a permit required
14 subsequent to receiving approval under subdivision (c), and includes, but is not
15 limited to, demolition, grading, encroachment, and building permits and final maps,
16 if necessary.

17 (3)(A) If a public improvement is necessary to implement a development that is
18 subject to the streamlined, ministerial approval pursuant to this section, including,
19 but not limited to, a bicycle lane, sidewalk or walkway, public transit stop,
20 driveway, street paving or overlay, a curb or gutter, a modified intersection, a street
21 sign or street light, landscape or hardscape, an above-ground or underground utility
22 connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining
23 wall, and any related work, and that public improvement is located on land owned
24 by the local government, to the extent that the public improvement requires approval
25 from the local government, the local government shall not exercise its discretion
26 over any approval relating to the public improvement in a manner that would inhibit,
27 chill, or preclude the development.

28 (B) If an application for a public improvement described in subparagraph (A) is
29 submitted to a local government, the local government shall do all of the following:

30 (i) Consider the application based upon any objective standards specified in any
31 state or local laws that were in effect when the original development application was
32 submitted.

33 (ii) Conduct its review and approval in the same manner as it would evaluate the
34 public improvement if required by a project that is not eligible to receive ministerial
35 or streamlined approval pursuant to this section.

36 (C) If an application for a public improvement described in subparagraph (A) is
37 submitted to a local government, the local government shall not do either of the
38 following:

39 (i) Adopt or impose any requirement that applies to a project solely or partially on
40 the basis that the project is eligible to receive ministerial or streamlined approval
41 pursuant to this section.

42 (ii) Unreasonably delay in its consideration, review, or approval of the
43 application.

1 (i)(1) This section shall not affect a development proponent’s ability to use any
2 alternative streamlined by right permit processing adopted by a local government,
3 including the provisions of subdivision (i) of Section 65583.2.

4 (2) This section shall not prevent a development from also qualifying as a housing
5 development project entitled to the protections of Section 65589.5. This paragraph
6 does not constitute a change in, but is declaratory of, existing law.

7 (j) The California Environmental Quality Act (Division 13 (commencing with
8 Section 21000) of the Public Resources Code) does not apply to actions taken by a
9 state agency, local government, or the San Francisco Bay Area Rapid Transit
10 District to:

11 (1) Lease, convey, or encumber land owned by the local government or the San
12 Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or
13 encumbrance of land owned by the local government, or for the lease of land owned
14 by the San Francisco Bay Area Rapid Transit District in association with an eligible
15 TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code,
16 nor to any decisions associated with that lease, or to provide financial assistance to
17 a development that receives streamlined approval pursuant to this section that is to
18 be used for housing for persons and families of very low, low, or moderate income,
19 as defined in Section 50093 of the Health and Safety Code.

20 (2) Approve improvements located on land owned by the local government or the
21 San Francisco Bay Area Rapid Transit District that are necessary to implement a
22 development that receives streamlined approval pursuant to this section that is to be
23 used for housing for persons and families of very low, low, or moderate income, as
24 defined in Section 50093 of the Health and Safety Code.

25 (k) For purposes of this section, the following terms have the following meanings:

26 (1) “Affordable housing cost” has the same meaning as set forth in Section
27 50052.5 of the Health and Safety Code.

28 (2) “Affordable rent” has the same meaning as set forth in Section 50053 of the
29 Health and Safety Code.

30 (3) “Department” means the Department of Housing and Community
31 Development.

32 (4) “Development proponent” means the developer who submits an application
33 for streamlined approval pursuant to this section.

34 (5) “Completed entitlements” means a housing development that has received all
35 the required land use approvals or entitlements necessary for the issuance of a
36 building permit.

37 (6) “Locality” or “local government” means a city, including a charter city, a
38 county, including a charter county, or a city and county, including a charter city and
39 county.

40 (7) “Moderate income housing units” means housing units with an affordable
41 housing cost or affordable rent for persons and families of moderate income, as that
42 term is defined in Section 50093 of the Health and Safety Code.

1 (8) “Production report” means the information reported pursuant to subparagraph
2 (H) of paragraph (2) of subdivision (a) of Section 65400.

3 (9) “State agency” includes every state office, officer, department, division,
4 bureau, board, and commission, but does not include the California State University
5 or the University of California.

6 (10) “Subsidized” means units that are price or rent restricted such that the units
7 are affordable to households meeting the definitions of very low and lower income,
8 as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

9 (11) “Reporting period” means either of the following:

10 (A) The first half of the regional housing needs assessment cycle.

11 (B) The last half of the regional housing needs assessment cycle.

12 (12) “Urban uses” means any current or former residential, commercial, public
13 institutional, transit or transportation passenger facility, or retail use, or any
14 combination of those uses.

15 (l) The department may review, adopt, amend, and repeal guidelines to implement
16 uniform standards or criteria that supplement or clarify the terms, references, or
17 standards set forth in this section. Any guidelines or terms adopted pursuant to this
18 subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340)
19 of Part 1 of Division 3 of Title 2 of the Government Code.

20 (m) The determination of whether an application for a development is subject to
21 the streamlined ministerial approval process provided by subdivision (c) is not a
22 “project” as defined in Section 21065 of the Public Resources Code.

23 (n) It is the policy of the state that this section be interpreted and implemented in
24 a manner to afford the fullest possible weight to the interest of, and the approval and
25 provision of, increased housing supply.

26 (o) This section shall remain in effect only until January 1, 2026, and as of that
27 date is repealed.

28 **Comment.** Section 65913.4(a)(6)(E) is amended to update cross-references in accordance with
29 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
30 of the Health and Safety Code.

31 **Gov’t Code § 65913.15 (amended). Streamlined approval process for residential or mixed-**
32 **use development**

33 SEC. __. Section 65913.15 of the Government Code is amended to read:

34 65913.15. (a) Notwithstanding Section 65913.4, a development proponent may
35 submit an application for a development that is subject to the streamlined,
36 ministerial approval process provided by subdivision (b) and is not subject to a
37 conditional use permit if the development satisfies all of the following objective
38 planning standards:

39 (1) The development is located within the territorial boundaries or a specialized
40 residential planning area identified in the general plan of, and adjacent to existing
41 urban development within, any of the following:

42 (A) The City of Biggs.

- 1 (B) The City of Corning.
- 2 (C) The City of Gridley.
- 3 (D) The City of Live Oak.
- 4 (E) The City of Orland.
- 5 (F) The City of Oroville.
- 6 (G) The City of Willows.
- 7 (H) The City of Yuba City.

8 (2) The development is either a residential development or a mixed-use
9 development that includes residential units with at least two-thirds of the square
10 footage of the development designated for residential use, not including any land
11 that may be devoted to open-space or mitigation requirements.

12 (3) The development proponent has held at least one public meeting on the
13 proposed development before submitting an application pursuant to this
14 subdivision.

15 (4) The development has a minimum density of at least four units per acre.

16 (5) The development is located on a site that meets both of the following
17 requirements:

18 (A) The site is no more than 50 acres.

19 (B) The site is zoned for residential use or residential mixed-use development.

20 (6) The development, excluding any additional density or any other concessions,
21 incentives, or waivers of development standards granted pursuant to the Density
22 Bonus Law in Section 65915, is consistent with objective zoning standards,
23 objective subdivision standards, and objective design review standards in effect at
24 the time that the development is submitted to the local government pursuant to this
25 section.

26 (7) The development will achieve sustainability standards sufficient to receive a
27 gold certification under the United States Green Building Council's Leadership in
28 Energy and Environmental Design for Homes rating system or, in the case of a
29 mixed-use development, the Neighborhood Development or the New Construction
30 rating system, or the comparable rating under the GreenPoint rating system or
31 voluntary tier under the California Green Building Code (Part 11 (commencing with
32 Section 101) of Title 24 of the California Code of Regulations).

33 (8) The development is not located on a site that is any of the following:

34 (A) Either prime farmland or farmland of statewide importance, as defined
35 pursuant to United States Department of Agriculture land inventory and monitoring
36 criteria, as modified for California, and designated on the maps prepared by the
37 Farmland Mapping and Monitoring Program of the Department of Conservation that
38 is protected pursuant to the California Land Conservation Act of 1965 (Chapter 7
39 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), or land zoned
40 or designated for agricultural protection or preservation by a local ballot measure
41 that was approved by the voters of that jurisdiction.

42 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,
43 Part 660 FW 2 (June 21, 1993).

1 (C) Within a very high fire hazard severity zone, as determined by the Department
2 of Forestry and Fire Protection pursuant to Section 51178, or within a high or very
3 high fire hazard severity zone as indicated on maps adopted by the Department of
4 Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

5 (D) A hazardous waste site that is listed pursuant to Section 65962.5 or a
6 hazardous waste site designated by the Department of Toxic Substances Control
7 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
8 4 of Part 2 of Division 45 of the Health and Safety Code, unless the Department of
9 Toxic Substances Control has cleared the site for residential use or residential mixed
10 uses.

11 (E) Within a delineated earthquake fault zone as determined by the State
12 Geologist in any official maps published by the State Geologist, unless the
13 development complies with applicable seismic protection building code standards
14 adopted by the California Building Standards Commission under the California
15 Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13
16 of the Health and Safety Code), and by any local building department under Chapter
17 12.2 (commencing with Section 8875) of Division 1 of Title 2.

18 (F) Within a special flood hazard area subject to inundation by the 1 percent
19 annual chance flood (100-year flood) as determined by the Federal Emergency
20 Management Agency in any official maps published by the Federal Emergency
21 Management Agency. If a development proponent is able to satisfy all applicable
22 federal qualifying criteria in order to provide that the site satisfies this subparagraph
23 and is otherwise eligible for streamlined approval under this section, a local
24 government shall not deny the application on the basis that the development
25 proponent did not comply with any additional permit requirement, standard, or
26 action adopted by that local government that is applicable to that site. A
27 development may be located on a site described in this subparagraph if either of the
28 following are met:

29 (i) The site has been subject to a Letter of Map Revision prepared by the Federal
30 Emergency Management Agency and issued to the local government.

31 (ii) The site meets Federal Emergency Management Agency requirements
32 necessary to meet minimum flood plain management criteria of the National Flood
33 Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60
34 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the
35 Code of Federal Regulations.

36 (G) Within a regulatory floodway as determined by the Federal Emergency
37 Management Agency in any official maps published by the Federal Emergency
38 Management Agency.

39 (H) Lands identified for conservation in an adopted natural community
40 conservation plan adopted on or before January 1, 2019, pursuant to the Natural
41 Community Conservation Planning Act (Chapter 10 (commencing with Section
42 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant

1 to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or
2 other adopted natural resource protection plan.

3 (I) Habitat for protected species identified as candidate, sensitive, or species of
4 special status by state or federal agencies, fully protected species, or species
5 protected by any of the following:

6 (i) The federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

7 (ii) The California Endangered Species Act (Chapter 1.5 (commencing with
8 Section 2050) of Division 3 of the Fish and Game Code).

9 (iii) The Native Plant Protection Act (Chapter 10 (commencing with Section
10 1900) of Division 2 of the Fish and Game Code).

11 (J) Lands under conservation easement.

12 (9) The development does not require the demolition of a historic structure that
13 was placed on a national, state, or local historic register.

14 (10) The development shall not be upon an existing parcel of land or site that is
15 governed under any of the following:

16 (A) The Mobilehome Residency Law (Chapter 2.5 (commencing with Section
17 798) of Title 2 of Part 2 of Division 2 of the Civil Code).

18 (B) The Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing
19 with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code).

20 (C) The Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of
21 Division 13 of the Health and Safety Code).

22 (D) The Special Occupancy Parks Act (Part 2.3 (commencing with Section
23 18860) of Division 13 of the Health and Safety Code).

24 (11)(A) If the development would require the demolition of any affordable
25 housing units, the development shall replace those units by providing at least the
26 same number of units of equivalent size to be made available at affordable housing
27 cost to, and occupied by, persons and families in the same income category as those
28 households in occupancy. If the income category of the household in occupancy is
29 not known, it shall be rebuttably presumed that lower income households occupied
30 the units in the same proportion of lower income households to all households
31 within the jurisdiction, as determined by the most recently available data from the
32 United States Department of Housing and Urban Development's Comprehensive
33 Housing Affordability Strategy database. All replacement calculations resulting in
34 fractional units shall be rounded to the next whole number.

35 (B) For purposes of this paragraph, "equivalent size" means that the replacement
36 units contain at least the same total number of bedrooms as the units being replaced.

37 (b)(1) If a local government determines that a development submitted pursuant to
38 this section is in conflict with any of the objective planning standards specified in
39 subdivision (a), it shall provide the development proponent written documentation
40 of which standard or standards the development conflicts with, and an explanation
41 for the reason or reasons the development conflicts with that standard or standards,
42 as follows:

1 (A) Within 60 days of submittal of the development to the local government
2 pursuant to this section if the development contains 150 or fewer housing units.

3 (B) Within 90 days of submittal of the development to the local government
4 pursuant to this section if the development contains more than 150 housing units.

5 (2) If the local government fails to provide the required documentation pursuant
6 to paragraph (1), the development shall be deemed to satisfy the objective planning
7 standards specified in subdivision (a).

8 (c) Any design review or public oversight of the development may be conducted
9 by the local government’s planning commission or any equivalent commission
10 responsible for review and approval of development projects or the city council, as
11 appropriate. That design review or public oversight shall be objective and be strictly
12 focused on assessing compliance with criteria required for streamlined projects, as
13 well as any reasonable objective design standards published and adopted by
14 ordinance or resolution by a local government before submission of a development
15 application, and shall be broadly applicable to development within the jurisdiction.
16 That design review or public oversight shall be completed as follows and shall not
17 in any way inhibit, chill, or preclude the ministerial approval provided by this
18 section or its effect, as applicable:

19 (1) Within 90 days of submittal of the development to the local government
20 pursuant to this section if the development contains 150 or fewer housing units.

21 (2) Within 180 days of submittal of the development to the local government
22 pursuant to this section if the development contains more than 150 housing units.

23 (d) Notwithstanding any other law, a city, whether or not it has adopted an
24 ordinance governing automobile parking requirements for multifamily
25 developments, shall not impose automobile parking standards for a streamlined
26 development that was approved pursuant to this section if the development is
27 located within one-half mile from a high-quality bus corridor or major transit stop.

28 (e)(1) If a local government approves a development pursuant to this section, then,
29 notwithstanding any other law, that approval shall not expire if the project includes
30 public investment in housing affordability and 50 percent of the units are affordable
31 to households making below 80 percent of the area median income. For purposes of
32 this paragraph, “public investment in housing affordability” does not include tax
33 credits.

34 (2) If a local government approves a development pursuant to this section and the
35 project does not include 50 percent of the units affordable to households making
36 below 80 percent of the area median income, that approval shall automatically
37 expire after three years, except that a project may receive a one-time, one-year
38 extension if the project proponent provides documentation that there has been
39 significant progress toward getting the development construction ready, such as
40 filing a building permit application.

41 (3) If a local government approves a development pursuant to this section, that
42 approval shall remain valid for three years from the date of the final action
43 establishing that approval and shall remain valid thereafter for a project so long as

1 vertical construction of the development has begun and is in progress. Additionally,
2 the development proponent may request, and the local government shall have
3 discretion to grant, an additional one-year extension to the original three-year
4 period. The local government’s action and discretion in determining whether to
5 grant the foregoing extension shall be limited to considerations and process set forth
6 in this section.

7 (4) If a local government approves a development pursuant to this section, the
8 local government shall file a notice of that approval with the Office of Planning and
9 Research.

10 (f)(1) A local government shall not adopt any requirement, including, but not
11 limited to, increased fees or inclusionary housing requirements, that applies to a
12 project solely or partially on the basis that the project is eligible to receive
13 ministerial or streamlined approval pursuant to this section.

14 (2) Notwithstanding paragraph (1), if the local government has adopted a local
15 ordinance that requires that a specified percentage of the units of a housing
16 development project be dedicated to households making below 80 percent of the
17 area median income, that local ordinance applies.

18 (g) This section does not affect a development proponent’s ability to use any
19 alternative streamlined by right permit processing adopted by a local government,
20 including the provisions of subdivision (i) of Section 65583.2.

21 (h) For purposes of this section, the following terms have the following meanings:

22 (1) “Affordable housing” means housing available at affordable housing cost, and
23 occupied by, persons and families of low or moderate income as defined by Section
24 50093 of the Health and Safety Code, lower income households as defined by
25 Section 50079.5 of the Health and Safety Code, very low income households as
26 defined by Section 50105 of the Health and Safety Code, and extremely low income
27 households as defined by Section 50106 of the Health and Safety Code, for a period
28 of 55 years for rental housing and 45 years for owner-occupied housing.

29 (2) “Affordable housing cost” has the same meaning as “affordable housing cost”
30 described in Section 50052.5 of the Health and Safety Code.

31 (3) “Area median income” means area median income as periodically established
32 by the Department of Housing and Community Development pursuant to Section
33 50093 of the Health and Safety Code.

34 (4) “Development proponent” means the developer who submits an application
35 for streamlined approval pursuant to this section.

36 (5) “High-quality bus corridor” means a corridor with fixed route bus service with
37 service intervals no longer than 15 minutes during peak commute hours.

38 (6) “Local government” means a city or a county, including a charter city or a
39 charter county, that has jurisdiction over a development for which a development
40 proponent submits an application pursuant to this section.

41 (7) “Major transit stop” means a site containing an existing rail transit station, a
42 ferry terminal served by either a bus or rail transit service, or the intersection of two
43 or more major bus routes with a frequency of service interval of 15 minutes or less

1 during the morning and afternoon peak commute periods. “Major transit stop” shall
2 also include major transit stops included in a regional transportation plan adopted
3 pursuant to Chapter 2.5 (commencing with Section 65080).

4 (8)(A) “Objective zoning standards,” “objective subdivision standards,” and
5 “objective design review standards” mean standards that involve no personal or
6 subjective judgment by a public official and are uniformly verifiable by reference
7 to an external and uniform benchmark or criterion available and knowable by both
8 the development applicant or proponent and the public official before submittal.
9 These standards may be embodied in alternative objective land use specifications
10 adopted by a local government, and may include, but are not limited to, housing
11 overlay zones, specific plans, inclusionary zoning ordinances, and density bonus
12 ordinances, subject to subparagraph (B).

13 (B) A development shall be deemed consistent with the objective zoning standards
14 related to housing density, as applicable, if the density proposed is consistent with
15 the allowable residential density within that land use designation, notwithstanding
16 any specified unit allocation.

17 (i) This section shall remain in effect only until January 1, 2026, and as of that
18 date is repealed.

19 **Comment.** Section 65913.15(a)(8)(D) is amended to update cross-references in accordance with
20 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
21 of the Health and Safety Code.

22 **Gov’t Code § 65941.1 (amended). Submission of preliminary application for housing**
23 **development project**

24 SEC. __. Section 65941.1 of the Government Code is amended to read:

25 65941.1. (a) An applicant for a housing development project, as defined in
26 paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have
27 submitted a preliminary application upon providing all of the following information
28 about the proposed project to the city, county, or city and county from which
29 approval for the project is being sought and upon payment of the permit processing
30 fee:

31 (1) The specific location, including parcel numbers, a legal description, and site
32 address, if applicable.

33 (2) The existing uses on the project site and identification of major physical
34 alterations to the property on which the project is to be located.

35 (3) A site plan showing the location on the property, elevations showing design,
36 color, and material, and the massing, height, and approximate square footage, of
37 each building that is to be occupied.

38 (4) The proposed land uses by number of units and square feet of residential and
39 nonresidential development using the categories in the applicable zoning ordinance.

40 (5) The proposed number of parking spaces.

41 (6) Any proposed point sources of air or water pollutants.

42 (7) Any species of special concern known to occur on the property.

1 (8) Whether a portion of the property is located within any of the following:

2 (A) A very high fire hazard severity zone, as determined by the Department of
3 Forestry and Fire Protection pursuant to Section 51178.

4 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,
5 Part 660 FW 2 (June 21, 1993).

6 (C) A hazardous waste site that is listed pursuant to Section 65962.5 or a
7 hazardous waste site designated by the Department of Toxic Substances Control
8 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
9 4 of Part 2 of Division 45 of the Health and Safety Code.

10 (D) A special flood hazard area subject to inundation by the 1 percent annual
11 chance flood (100-year flood) as determined by the Federal Emergency
12 Management Agency in any official maps published by the Federal Emergency
13 Management Agency.

14 (E) A delineated earthquake fault zone as determined by the State Geologist in
15 any official maps published by the State Geologist, unless the development
16 complies with applicable seismic protection building code standards adopted by the
17 California Building Standards Commission under the California Building Standards
18 Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and
19 Safety Code), and by any local building department under Chapter 12.2
20 (commencing with Section 8875) of Division 1 of Title 2.

21 (F) A stream or other resource that may be subject to a streambed alteration
22 agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of
23 the Fish and Game Code.

24 (9) Any historic or cultural resources known to exist on the property.

25 (10) The number of proposed below market rate units and their affordability
26 levels.

27 (11) The number of bonus units and any incentives, concessions, waivers, or
28 parking reductions requested pursuant to Section 65915.

29 (12) Whether any approvals under the Subdivision Map Act, including, but not
30 limited to, a parcel map, a tentative map, or a condominium map, are being
31 requested.

32 (13) The applicant's contact information and, if the applicant does not own the
33 property, consent from the property owner to submit the application.

34 (14) For a housing development project proposed to be located within the coastal
35 zone, whether any portion of the property contains any of the following:

36 (A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the
37 California Code of Regulations.

38 (B) Environmentally sensitive habitat areas, as defined in Section 30240 of the
39 Public Resources Code.

40 (C) A tsunami run-up zone.

41 (D) Use of the site for public access to or along the coast.

42 (15) The number of existing residential units on the project site that will be
43 demolished and whether each existing unit is occupied or unoccupied.

1 (16) A site map showing a stream or other resource that may be subject to a
2 streambed alteration agreement pursuant to Chapter 6 (commencing with Section
3 1600) of Division 2 of the Fish and Game Code and an aerial site photograph
4 showing existing site conditions of environmental site features that would be subject
5 to regulations by a public agency, including creeks and wetlands.

6 (17) The location of any recorded public easement, such as easements for storm
7 drains, water lines, and other public rights of way.

8 (b)(1) Each local agency shall compile a checklist and application form that
9 applicants for housing development projects may use for the purpose of satisfying
10 the requirements for submittal of a preliminary application.

11 (2) The Department of Housing and Community Development shall adopt a
12 standardized form that applicants for housing development projects may use for the
13 purpose of satisfying the requirements for submittal of a preliminary application if
14 a local agency has not developed its own application form pursuant to paragraph
15 (1). Adoption of the standardized form shall not be subject to Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
17 Government Code.

18 (3) A checklist or form shall not require or request any information beyond that
19 expressly identified in subdivision (a).

20 (c) After submittal of all of the information required by subdivision (a), if the
21 development proponent revises the project such that the number of residential units
22 or square footage of construction changes by 20 percent or more, exclusive of any
23 increase resulting from the receipt of a density bonus, incentive, concession, waiver,
24 or similar provision, the housing development project shall not be deemed to have
25 submitted a preliminary application that satisfies this section until the development
26 proponent resubmits the information required by subdivision (a) so that it reflects
27 the revisions. For purposes of this subdivision, “square footage of construction”
28 means the building area, as defined by the California Building Standards Code (Title
29 24 of the California Code of Regulations).

30 (d)(1) Within 180 calendar days after submitting a preliminary application with
31 all of the information required by subdivision (a) to a city, county, or city and
32 county, the development proponent shall submit an application for a development
33 project that includes all of the information required to process the development
34 application consistent with Sections 65940, 65941, and 65941.5.

35 (2) If the public agency determines that the application for the development
36 project is not complete pursuant to Section 65943, the development proponent shall
37 submit the specific information needed to complete the application within 90 days
38 of receiving the agency’s written identification of the necessary information. If the
39 development proponent does not submit this information within the 90-day period,
40 then the preliminary application shall expire and have no further force or effect.

41 (3) This section shall not require an affirmative determination by a city, county,
42 or city and county regarding the completeness of a preliminary application or a
43 development application for purposes of compliance with this section.

1 (e) Notwithstanding any other law, submission of a preliminary application in
2 accordance with this section shall not preclude the listing of a tribal cultural resource
3 on a national, state, tribal, or local historic register list on or after the date that the
4 preliminary application is submitted. For purposes of Section 65589.5 or any other
5 law, the listing of a tribal cultural site on a national, state, tribal, or local historic
6 register on or after the date the preliminary application was submitted shall not be
7 deemed to be a change to the ordinances, policies, and standards adopted and in
8 effect at the time that the preliminary application was submitted.

9 (f) This section shall remain in effect only until January 1, 2025, and as of that
10 date is repealed.

11 **Comment.** Section 65941.1(a)(8)(C) is amended to update cross-references in accordance with
12 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
13 of the Health and Safety Code.

14 **Gov't Code § 65962.5 (amended). Information related to hazardous waste and substances**

15 SEC. __. Section 65962.5 of the Government Code is amended to read:

16 65962.5. (a) The Department of Toxic Substances Control shall compile and
17 update as appropriate, but at least annually, and shall submit to the Secretary for
18 Environmental Protection, a list of all of the following:

19 (1) All hazardous waste facilities subject to corrective action pursuant to Section
20 25187.5 of the Health and Safety Code.

21 (2) All land designated as hazardous waste property or border zone property
22 pursuant to former Article 11 (commencing with Section 25220) of Chapter 6.5 of
23 Division 20 of the Health and Safety Code.

24 (3) All information received by the Department of Toxic Substances Control
25 pursuant to Section 25242 of the Health and Safety Code on hazardous waste
26 disposals on public land.

27 (4) All sites listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section
28 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

29 (b) The State Department of Health Services shall compile and update as
30 appropriate, but at least annually, and shall submit to the Secretary for
31 Environmental Protection, a list of all public drinking water wells that contain
32 detectable levels of organic contaminants and that are subject to water analysis
33 pursuant to Section 116395 of the Health and Safety Code.

34 (c) The State Water Resources Control Board shall compile and update as
35 appropriate, but at least annually, and shall submit to the Secretary for
36 Environmental Protection, a list of all of the following:

37 (1) All underground storage tanks for which an unauthorized release report is filed
38 pursuant to Section 25295 of the Health and Safety Code.

39 (2) All solid waste disposal facilities from which there is a migration of hazardous
40 waste and for which a California regional water quality control board has notified
41 the Department of Toxic Substances Control pursuant to subdivision (e) of Section
42 13273 of the Water Code.

1 (3) All cease and desist orders issued after January 1, 1986, pursuant to Section
2 13301 of the Water Code, and all cleanup or abatement orders issued after January
3 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge
4 of wastes that are hazardous materials.

5 (d) The local enforcement agency, as designated pursuant to Section 18051 of
6 Title 14 of the California Code of Regulations, shall compile as appropriate, but at
7 least annually, and shall submit to the Department of Resources Recycling and
8 Recovery, a list of all solid waste disposal facilities from which there is a known
9 migration of hazardous waste. The Department of Resources Recycling and
10 Recovery shall compile the local lists into a statewide list, which shall be submitted
11 to the Secretary for Environmental Protection and shall be available to any person
12 who requests the information.

13 (e) The Secretary for Environmental Protection shall consolidate the information
14 submitted pursuant to this section and distribute it in a timely fashion to each city
15 and county in which sites on the lists are located. The secretary shall distribute the
16 information to any other person upon request. The secretary may charge a
17 reasonable fee to persons requesting the information, other than cities, counties, or
18 cities and counties, to cover the cost of developing, maintaining, and reproducing
19 and distributing the information.

20 (f) Before a lead agency accepts as complete an application for any development
21 project which will be used by any person, the applicant shall consult the lists sent to
22 the appropriate city or county and shall submit a signed statement to the local agency
23 indicating whether the project and any alternatives are located on a site that is
24 included on any of the lists compiled pursuant to this section and shall specify any
25 list. If the site is included on a list, and the list is not specified on the statement, the
26 lead agency shall notify the applicant pursuant to Section 65943. The statement shall
27 read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:

Address:

Phone number:

Address of site (street name and number if available, and ZIP Code):

Local agency (city/county):

Assessor's book, page, and parcel number:

Specify any list pursuant to Section 65962.5 of the Government Code:

Regulatory identification number:

Date of list:

_____ Applicant, Date _____

1 (g) The changes made to this section by the act amending this section, that takes
2 effect January 1, 1992, apply only to projects for which applications have not been
3 deemed complete on or before January 1, 1992, pursuant to Section 65943.

4 **Comment.** Section 65962.5(a)(4) is amended to update cross-references in accordance with the
5 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
6 the Health and Safety Code.

7 HEALTH AND SAFETY CODE

8 **Health & Safety Code § 11374.5 (amended). Penalties for disposal of hazardous substance**
9 **related to manufacture of controlled substance**

10 SEC. __. Section 11374.5 of the Health and Safety Code is amended to read:

11 11374.5. (a) Any manufacturer of a controlled substance who disposes of any
12 hazardous substance that is a controlled substance or a chemical used in, or is a
13 byproduct of, the manufacture of a controlled substance in violation of any law
14 regulating the disposal of hazardous substances or hazardous waste is guilty of a
15 public offense punishable by imprisonment pursuant to subdivision (h) of Section
16 1170 of the Penal Code for two, three, or four years or in the county jail not
17 exceeding one year.

18 (b)(1) In addition to any other penalty or liability imposed by law, a person who
19 is convicted of violating subdivision (a), or any person who is convicted of the
20 manufacture, sale, possession for sale, possession, transportation, or disposal of any
21 hazardous substance that is a controlled substance or a chemical used in, or is a
22 byproduct of, the manufacture of a controlled substance in violation of any law,
23 shall pay a penalty equal to the amount of the actual cost incurred by the state or
24 local agency to remove and dispose of the hazardous substance that is a controlled
25 substance or a chemical used in, or is a byproduct of, the manufacture of a controlled
26 substance and to take removal action with respect to any release of the hazardous
27 substance or any items or materials contaminated by that release, if the state or local
28 agency requests the prosecuting authority to seek recovery of that cost. The court
29 shall transmit all penalties collected pursuant to this subdivision to the county
30 treasurer of the county in which the court is located for deposit in a special account
31 in the county treasury. The county treasurer shall pay that money at least once a
32 month to the agency that requested recovery of the cost for the removal action. The
33 county may retain up to 5 percent of any assessed penalty for appropriate and
34 reasonable administrative costs attributable to the collection and disbursement of
35 the penalty.

36 (2) If the Department of Toxic Substances Control has requested recovery of the
37 cost of removing the hazardous substance that is a controlled substance or a
38 chemical used in, or is a byproduct of, the manufacture of a controlled substance or
39 taking removal action with respect to any release of the hazardous substance, the

1 county treasurer shall transfer funds in the amount of the penalty collected to the
2 Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account,
3 which is hereby created in the General Fund in the State Treasury. The Department
4 of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup
5 Account, upon appropriation by the Legislature, to cover the cost of taking removal
6 actions pursuant to ~~Section 25354.5~~. Article 16 (commencing with Section 79350)
7 of Chapter 5 of Part 2 of Division 45.

8 (3) If a local agency and the Department of Toxic Substances Control have both
9 requested recovery of removal costs with respect to a hazardous substance that is a
10 controlled substance or a chemical used in, or is a byproduct of, the manufacture of
11 a controlled substance, the county treasurer shall apportion any penalty collected
12 among the agencies involved in proportion to the costs incurred.

13 (c) As used in this section the following terms have the following meaning:

14 (1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final
15 action after use has been achieved or a use is no longer intended.

16 (2) “Hazardous substance” has the same meaning as defined in ~~Section 25316~~.
17 subdivision (a) of Section 78075.

18 (3) “Hazardous waste” has the same meaning as defined in Section 25117.

19 (4) For purposes of this section, “remove” or “removal” has the same meaning as
20 set forth in ~~Section 25323~~. 78135.

21 **Comment.** Section 11374.5(b)(2), (c)(2), and (c)(4) are amended to update cross-references in
22 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
23 25300) of Division 20 of the Health and Safety Code.

24 **Health & Safety Code § 11470.1 (amended). Cost recovery for controlled substance**
25 **remedial action**

26 SEC. __. Section 11470.1 of the Health and Safety Code is amended to read:

27 11470.1. (a) The expenses of seizing, eradicating, destroying, or taking remedial
28 action with respect to, any controlled substance or its precursors shall be recoverable
29 from:

30 (1) Any person who manufactures or cultivates a controlled substance or its
31 precursors in violation of this division.

32 (2) Any person who aids and abets or who knowingly profits in any manner from
33 the manufacture or cultivation of a controlled substance or its precursors on property
34 owned, leased, or possessed by the defendant, in violation of this division.

35 (b) The expenses of taking remedial action with respect to any controlled
36 substance or its precursors shall also be recoverable from any person liable for the
37 costs of that remedial action under ~~Chapter 6.8 (commencing with Section 25300)~~
38 of Division 20 Part 2 (commencing with Section 78000) of Division 45 of the Health
39 and Safety Code.

40 (c) It shall be necessary to seek or obtain a criminal conviction for the unlawful
41 manufacture or cultivation of any controlled substance or its precursors prior to the
42 entry of judgment for the recovery of expenses. If criminal charges are pending

1 against the defendant for the unlawful manufacture or cultivation of any controlled
2 substance or its precursors, an action brought pursuant to this section shall, upon a
3 defendant's request, be continued while the criminal charges are pending.

4 (d) The action may be brought by the district attorney, county counsel, city
5 attorney, the State Department of Health Care Services, or Attorney General. All
6 expenses recovered pursuant to this section shall be remitted to the law enforcement
7 agency which incurred them.

8 (e)(1) The burden of proof as to liability shall be on the plaintiff and shall be by a
9 preponderance of the evidence in an action alleging that the defendant is liable for
10 expenses pursuant to paragraph (1) of subdivision (a). The burden of proof as to
11 liability shall be on the plaintiff and shall be by clear and convincing evidence in an
12 action alleging that the defendant is liable for expenses pursuant to paragraph (2) of
13 subdivision (a). The burden of proof as to the amount of expenses recoverable shall
14 be on the plaintiff and shall be by a preponderance of the evidence in any action
15 brought pursuant to subdivision (a).

16 (2) Notwithstanding paragraph (1), for any person convicted of a criminal charge
17 of the manufacture or cultivation of a controlled substance or its precursors there
18 shall be a presumption affecting the burden of proof that the person is liable.

19 (f) Only expenses which meet the following requirements shall be recoverable
20 under this section:

21 (1) The expenses were incurred in seizing, eradicating, or destroying the
22 controlled substance or its precursors or in taking remedial action with respect to a
23 hazardous substance. These expenses may not include any costs incurred in use of
24 the herbicide paraquat.

25 (2) The expenses were incurred as a proximate result of the defendant's
26 manufacture or cultivation of a controlled substance in violation of this division.

27 (3) The expenses were reasonably incurred.

28 (g) For purposes of this section, "remedial action" shall have the meaning set forth
29 in Section ~~25322~~. 78125.

30 (h) For the purpose of discharge in bankruptcy, a judgment for recovery of
31 expenses under this section shall be deemed to be a debt for willful and malicious
32 injury by the defendant to another entity or to the property of another entity.

33 (i) Notwithstanding Section 526 of the Code of Civil Procedure, the plaintiff may
34 be granted a temporary restraining order or a preliminary injunction, pending or
35 during trial, to restrain the defendant from transferring, encumbering,
36 hypothecating, or otherwise disposing of any assets specified by the court, if it
37 appears by the complaint that the plaintiff is entitled to the relief demanded and it
38 appears that the defendant may dispose of those assets to thwart enforcement of the
39 judgment.

40 (j) The Legislature finds and declares that civil penalties for the recovery of
41 expenses incurred in enforcing the provisions of this division shall not supplant
42 criminal prosecution for violation of those provisions, but shall be a supplemental
43 remedy to criminal enforcement.

1 (k) Any testimony, admission, or any other statement made by the defendant in
2 any proceeding brought pursuant to this section, or any evidence derived from the
3 testimony, admission, or other statement, shall not be admitted or otherwise used in
4 any criminal proceeding arising out of the same conduct.

5 (l) No action shall be brought or maintained pursuant to this section against a
6 person who has been acquitted of criminal charges for conduct that is the basis for
7 an action under this section.

8 **Comment.** Section 11470.1(b) and (g) are amended to update cross-references in accordance
9 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
10 Division 20 of the Health and Safety Code.

11 **Health & Safety Code § 13009.6 (amended). Emergency response expenses**

12 SEC. __. Section 13009.6 of the Health and Safety Code is amended to read:

13 13009.6. (a)(1) Those expenses of an emergency response necessary to protect the
14 public from a real and imminent threat to health and safety by a public agency to
15 confine, prevent, or mitigate the release, escape, or burning of hazardous substances
16 described in subdivision (c) are a charge against any person whose negligence
17 causes the incident, if either of the following occurs:

18 (A) Evacuation from the building, structure, property, or public right-of-way
19 where the incident originates is necessary to prevent loss of life or injury.

20 (B) The incident results in the spread of hazardous substances or fire posing a real
21 and imminent threat to public health and safety beyond the building, structure,
22 property, or public right-of-way where the incident originates.

23 (2) Expenses reimbursable to a public agency under this section are a debt of the
24 person liable therefor, and shall be collectible in the same manner as in the case of
25 an obligation under contract, express or implied.

26 (3) The charge created against the person by this subdivision is also a charge
27 against the person's employer if the negligence causing the incident occurs in the
28 course of the person's employment.

29 (4) The public agencies participating in an emergency response meeting the
30 requirements of paragraph (1) of this subdivision may designate one or more of the
31 participating agencies to bring an action to recover the expenses incurred by all of
32 the designating agencies which are reimbursable under this section.

33 (5) An action to recover expenses under this section may be joined with any civil
34 action for penalties, fines, injunctive, or other relief brought against the responsible
35 person or employer, or both, arising out of the same incident.

36 (b) There shall be deducted from any amount otherwise recoverable under this
37 section, the amount of any reimbursement for eligible costs received by a public
38 agency pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20.~~
39 Part 2 (commencing with Section 78000) of Division 45. The amount so reimbursed
40 may be recovered as provided in Section ~~25360.~~ 79650.

1 (c) As used in this section, “hazardous substance” means any hazardous substance
2 listed in ~~Section 25316~~ subdivision (a) of Section 78075 or subdivision (q) of
3 Section 25501 of this code, or in Section 6382 of the Labor Code.

4 (d) As used in this section, “mitigate” includes actions by a public agency to
5 monitor or model ambient levels of airborne hazardous substances for the purpose
6 of determining or assisting in the determination of whether or not to evacuate areas
7 around the property where the incident originates, or to determine or assist in the
8 determination of which areas around the property where the incident originates
9 should be evacuated.

10 **Comment.** Section 13009.6 is amended to update cross-references in accordance with the
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
12 the Health and Safety Code.

13 **Health & Safety Code § 17021.8 (amended). Streamlined approval process for eligible**
14 **agricultural employee housing development**

15 SEC. __. Section 17021.8 of the Health and Safety Code is amended to read:

16 17021.8. (a) A development proponent may submit an application for a
17 development that is subject to a streamlined, ministerial approval process, provided
18 in subdivision (b), and is not subject to a conditional use permit if all of the
19 following requirements are met:

20 (1) The development is located on land designated as agricultural in the applicable
21 city or county general plan.

22 (2) The development is not located on a site that is any of the following:

23 (A) Within the coastal zone, as defined in Division 20 (commencing with Section
24 30000) of the Public Resources Code.

25 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,
26 Part 660 FW 2 (June 21, 1993).

27 (C) Within a very high fire hazard severity zone, as determined by the Department
28 of Forestry and Fire Protection pursuant to Section 51178 of the Government Code,
29 or within a high or very high fire hazard severity zone as indicated on maps adopted
30 by the Department of Forestry and Fire Protection pursuant to Section 4202 of the
31 Public Resources Code.

32 (D) A hazardous waste site that is listed pursuant to Section 65962.5 of the
33 Government Code or a hazardous waste site designated by the Department of Toxic
34 Substances Control pursuant to ~~Section 25356~~, Article 5 (commencing with Section
35 78760) of Chapter 4 of Part 2 of Division 45, unless the Department of Toxic
36 Substances Control has cleared the site for residential use or residential mixed uses.

37 (E) Within a delineated earthquake fault zone as determined by the State
38 Geologist in any official maps published by the State Geologist, unless the
39 development complies with applicable seismic protection building code standards
40 adopted by the California Building Standards Commission under the California
41 Building Standards Law (Part 2.5 (commencing with Section 18901)), and by any

1 local building department under Chapter 12.2 (commencing with Section 8875) of
2 Division 1 of Title 2 of the Government Code.

3 (F) Within a flood plain as determined by maps promulgated by the Federal
4 Emergency Management Agency, unless the development has been issued a flood
5 plain development permit pursuant to Part 59 (commencing with Section 59.1) and
6 Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of
7 the Code of Federal Regulations.

8 (G) Within a floodway as determined by maps promulgated by the Federal
9 Emergency Management Agency.

10 (H) Lands identified for conservation in an adopted natural community
11 conservation plan pursuant to the Natural Community Conservation Planning Act
12 (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game
13 Code), habitat conservation plan pursuant to the federal Endangered Species Act of
14 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection
15 plan.

16 (I) Lands under conservation easement. For purposes of this section,
17 “conservation easement” shall not include a contract executed pursuant to the
18 Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title
19 5 of the Government Code).

20 (J) Lands with groundwater levels within five feet of the soil surface and for which
21 the development would be served by an onsite wastewater disposal system serving
22 more than six family housing units.

23 (3) The development is an eligible agricultural employee housing development
24 that satisfies the requirements specified in subdivision (i).

25 (b)(1) If a local government determines that a development submitted pursuant to
26 this section does not meet the requirements specified in subdivision (a), the local
27 government shall provide the development proponent written documentation of
28 which requirement or requirements the development does not satisfy and an
29 explanation for the reason or reasons the development does not satisfy the
30 requirement or requirements, as follows:

31 (A) Within 30 days of submission of the development to the local government
32 pursuant to this section if the development contains 50 or fewer housing units.

33 (B) Within 60 days of submission of the development to the local government
34 pursuant to this section if the development contains more than 50 housing units.

35 (2) If the local government fails to provide the required documentation pursuant
36 to paragraph (1), the development shall be deemed to satisfy the requirements
37 specified in paragraph (2) of subdivision (a).

38 (c) The local government’s planning commission or an equivalent board or
39 commission responsible for review and approval of development projects, or the
40 city council or board of supervisors, as appropriate, may conduct a development
41 review or public oversight of the development. The development review or public
42 oversight shall be objective and be strictly focused on assessing compliance with
43 criteria required for streamlined projects, as well as any reasonable objective

1 development standards described in this section. For purposes of this subdivision,
2 “objective development standards” mean standards that involve no personal or
3 subjective judgment by a public official and are uniformly verifiable by reference
4 to an external and uniform benchmark or criterion available and knowable by both
5 the development applicant or proponent and the public official prior to submission.
6 The development review or public oversight shall be completed as follows and shall
7 not in any way inhibit, chill, or preclude the ministerial approval provided by this
8 section or its effect, as applicable:

9 (1) Within 90 days of submission of the development to the local government
10 pursuant to this section if the development contains 50 or fewer housing units.

11 (2) Within 180 days of submission of the development to the local government
12 pursuant to this section if the development contains more than 50 housing units.

13 (d) An agricultural employee housing development that is approved pursuant to
14 this section shall not be subject to the density limits specified in Section 17021.6 in
15 order to constitute an agricultural land use for purposes of that section.

16 (e) Notwithstanding Section 17021.6, a local government may subject an
17 agricultural employee housing development that is approved pursuant to this section
18 to the following written, objective development standards:

19 (1)(A) A requirement that the development have adequate water and wastewater
20 facilities and dry utilities to serve the project.

21 (B) A requirement that the development be connected to an existing public water
22 system that has not been identified as failing or being at risk of failing to provide an
23 adequate supply of safe drinking water.

24 (C) If the development proposes to include 10 or more units, a requirement that
25 the development connect to an existing municipal sewer system that has adequate
26 capacity to serve the project. If the local agency has adopted an approved local
27 agency management program for onsite wastewater treatment systems, those
28 requirements shall apply to the development.

29 (2) A requirement that the property on which the development is located be either:
30 (A) Within one-half mile of a duly designated collector road with an Average
31 Daily Trips (ADT) of 6,000 or greater.

32 (B) Adjacent to a duly designated collector road with an ADT of 2,000 or greater.

33 (3) A requirement that the development include off-street parking based upon
34 demonstrated need, provided that the standards do not require more parking for
35 eligible agricultural employee housing developments than for other residential uses
36 of similar size within the jurisdiction.

37 (4) Notwithstanding Section 17020 or any other law, health, safety, and welfare
38 standards for agricultural employee housing, including, but not limited to, density,
39 minimum living space per occupant, minimum sanitation facilities, minimum
40 sanitation requirements, and similar standards.

41 (5) Standards requiring that if a potential for exposure to significant hazards from
42 surrounding properties or activities is found to exist, the effects of the potential

1 exposure shall be mitigated to a level of insignificance in compliance with state and
2 federal requirements.

3 (f) Neither the approval of a development pursuant to this section, including the
4 permit processing, nor the application of development standards pursuant to this
5 section shall be deemed to be discretionary acts within the meaning of the California
6 Environmental Quality Act (Division 13 (commencing with Section 21000) of the
7 Public Resources Code).

8 (g) Notwithstanding Section 17021.6, a local agency may impose fees and other
9 exactions otherwise authorized by law that are essential to provide necessary public
10 services and facilities to the eligible agricultural employee housing development.

11 (h) This section shall not be construed to:

12 (1) Prohibit a local agency from requiring an eligible agricultural employee
13 housing development to comply with objective, quantifiable, written development
14 standards, conditions, and policies that are consistent with subdivision (e) and
15 appropriate to, and consistent with, meeting the jurisdiction’s need for farmworker
16 housing, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583
17 of the Government Code.

18 (2) Prohibit a local agency from disapproving an eligible agricultural employee
19 housing development if the eligible agricultural employee housing development as
20 proposed would have a specific, adverse impact upon the public health or safety,
21 and there is no feasible method to satisfactorily mitigate or avoid the specific,
22 adverse impact without rendering the development unaffordable to lower income
23 households, as defined in Section 50079.5, or rendering the development financially
24 infeasible. As used in this paragraph, a “specific, adverse impact” means a
25 significant, quantifiable, direct, and unavoidable impact, based on objective,
26 identified written public health or safety standards, policies, or conditions as they
27 existed on the date the application was deemed complete.

28 (3) Prohibit a local agency from disapproving an eligible agricultural employee
29 housing development if that project would be in violation of any applicable state or
30 federal law.

31 (4) Change any obligations to comply with any other existing laws, including, but
32 not limited to, Section 116527, Section 106.4 of the Water Code, Division 7
33 (commencing with Section 13000) of the Water Code, and Part 12 (commencing
34 with Section 116270) of Division 104.

35 (i) For the purposes of this section, “eligible agricultural employee housing
36 development” means an agricultural employee housing development that satisfies
37 all of the following:

38 (1) The agricultural employee housing does not contain dormitory-style housing.

39 (2) The development consists of no more than 36 units or spaces designed for use
40 by a single family or household.

41 (3)(A) Except as otherwise provided in subparagraph (B), the agricultural
42 employee housing will be maintained and operated by a qualified affordable housing
43 organization that has been certified pursuant to Section 17030.10. The development

1 proponent shall submit proof of issuance of the qualified affordable housing
2 organization’s certification by the enforcement agency. The qualified affordable
3 housing organization shall provide for onsite management of the development.

4 (B) In the case of agricultural employee housing that is maintained and operated
5 by a local public housing agency or a multicounty, state, or multistate agency that
6 has been certified as a qualified affordable housing organization as required by this
7 paragraph, that agency either directly maintains and operates the agricultural
8 employee housing or contracts with another qualified affordable housing
9 organization that has been certified pursuant to Section 17030.10.

10 (C) The local government ensures an affordability covenant is recorded on the
11 property to ensure the affordability of the proposed agricultural employee housing
12 for agricultural employees for not less than 55 years. For purposes of this paragraph,
13 “affordability” means the agricultural housing is made available at an affordable
14 rent, as defined in Section 50053, to lower income households, as defined in Section
15 50079.5.

16 (4) The agricultural employee housing is not ineligible for state funding pursuant
17 to paragraph (1) of subdivision (b) of Section 50205.

18 (j) For purposes of this section, “agricultural employee housing” means employee
19 housing for agricultural employees as both terms are defined in Sections 17008 and
20 17021 respectively.

21 (k) The Legislature hereby declares that it is the policy of this state that each
22 county and city shall permit and encourage the development and use of sufficient
23 numbers and types of agricultural employee housing as are commensurate with local
24 need. The Legislature further finds and declares that this section addresses a matter
25 of statewide concern rather than a municipal affair as that term is used in Section 5
26 of Article XI of the California Constitution. Therefore, this section applies to all
27 cities, including charter cities.

28 **Comment.** Section 17021.8(a)(2)(D) is amended to update cross-references in accordance with
29 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
30 of the Health and Safety Code.

31 **Health & Safety Code § 25117.13 (amended). “Land use restriction”**

32 SEC. __. Section 25117.13 of the Health and Safety Code is amended to read:

33 25117.13. “Land use restriction” means any limitation regarding the uses of
34 property which may be provided by, but is not limited to, a written instrument which
35 imposes an easement, covenant, restriction, or servitude, or a combination thereof,
36 as appropriate, upon the present and future uses of all, or part of, the land, pursuant
37 to Section 25202.5, 25222.1, 25230, or ~~25355.5~~ 79055.

38 **Comment.** Section 25117.13 is amended to update cross-references in accordance with the
39 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
40 the Health and Safety Code.

41 **Health & Safety Code § 25122.8 (amended). “State operational costs”**

42 SEC. __. Section 25122.8 of the Health and Safety Code is amended to read:

1 25122.8. “State operational costs” means the costs to the state of overseeing
2 removal and remedial action, as defined in Sections ~~25322 and 25323~~, 78125 and
3 78135, to releases of hazardous substances, as defined in Sections ~~25316 and 25320~~,
4 subdivision (a) of Section 78075 and subdivision (a) of Section 78105, if the
5 responsible party is in compliance with an order issued, or with an enforceable
6 agreement entered into, pursuant to paragraph (1) of subdivision (a) of Section
7 ~~25355.5~~. 79055. “State operational costs” include, but are not limited to, the
8 expenditure of funds pursuant to ~~subdivision (e) or (d) of Section 25355.5~~. Section
9 79065.

10 **Comment.** Section 25122.8 is amended to update cross-references in accordance with the
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
12 the Health and Safety Code.

13 **Health & Safety Code § 25123.3 (amended). “Storage facility”**

14 SEC. __. Section 25123.3 of the Health and Safety Code is amended to read:

15 25123.3. (a) For purposes of this section, the following terms have the following
16 meanings:

17 (1) “Liquid hazardous waste” means a hazardous waste that meets the definition
18 of free liquids, as specified in Section 66260.10 of Title 22 of the California Code
19 of Regulations, as that section read on January 1, 1994.

20 (2) “Remediation waste staging” means the temporary accumulation of non-
21 RCRA contaminated soil that is generated and held onsite, and that is accumulated
22 for the purpose of onsite treatment pursuant to a certified, authorized, or permitted
23 treatment method, such as a transportable treatment unit, if all of the following
24 requirements are met:

25 (A) The hazardous waste being accumulated does not contain free liquids.

26 (B) The hazardous waste is accumulated on an impermeable surface, such as high
27 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,
28 or high density polyethylene of at least 60 mils that is not supported by a foundation.

29 (C) The generator provides controls for windblown dispersion and precipitation
30 runoff and run-on and complies with any stormwater permit requirements issued by
31 a regional water quality control board.

32 (D) The generator has the accumulation site inspected weekly and after storms to
33 ensure that the controls for windblown dispersion and precipitation runoff and run-
34 on are functioning properly.

35 (E) The staging area is certified by a registered engineer for compliance with the
36 standards specified in subparagraphs (A) to (D), inclusive.

37 (3) “Transfer facility” means any offsite facility that is related to the transportation
38 of hazardous waste, including, but not limited to, loading docks, parking areas,
39 storage areas, and other similar areas where shipments of hazardous waste are held
40 during the normal course of transportation.

41 (b) “Storage facility” means a hazardous waste facility at which the hazardous
42 waste meets any of the following requirements:

1 (1) The hazardous waste is held for greater than 90 days at an onsite facility. The
2 department may establish criteria and procedures to extend that 90-day period,
3 consistent with the federal act, and to prescribe the manner in which the hazardous
4 waste may be held if not otherwise prescribed by statute.

5 (2) The hazardous waste is held for any period of time at an offsite facility that is
6 not a transfer facility.

7 (3)(A) Except as provided in subparagraph (B), the waste is held at a transfer
8 facility and any one of the following apply:

9 (i) The transfer facility is located in an area zoned residential by the local planning
10 authority.

11 (ii) The transfer facility commences initial operations on or after January 1, 2005,
12 at a site located within 500 feet of a structure identified in paragraphs (1) to (5),
13 inclusive, of subdivision (c) of Section 25227.

14 (iii) The hazardous waste is held for a period greater than six days at a transfer
15 facility located in an area that is not zoned industrial or agricultural by the local
16 planning authority.

17 (iv) The hazardous waste is held for a period greater than 10 days at a transfer
18 facility located in an area zoned industrial or agricultural by the local planning
19 authority.

20 (v) The hazardous waste is held for a period greater than six days at a transfer
21 facility that commenced initial operations before January 1, 2005, is located in an
22 area zoned agricultural by the local planning authority, and is located within 500
23 feet of a structure identified in paragraphs (1) to (5), inclusive, of subdivision (c) of
24 Section 25227.

25 (B)(i) Notwithstanding subparagraph (A), a transfer facility located in an area that
26 is not zoned residential by the local planning authority is not a storage facility, if the
27 only hazardous waste held at the transfer facility is hazardous waste that is generated
28 as a result of an emergency release and that hazardous waste is collected and
29 temporarily stored by emergency rescue personnel, as defined in Section 25501, or
30 by a response action contractor upon the request of emergency rescue personnel or
31 the response action contractor, and the holding of that hazardous waste is approved
32 by the department.

33 (ii) For purposes of this subparagraph, “response action contractor” means any
34 person who enters into a contract with the department to take removal or remedial
35 action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
36 (commencing with Section 78000) of Division 45 in response to a release or
37 threatened release, including any subcontractors of the response action contractor.

38 (4)(A) Except as provided in subparagraph (B), the hazardous waste is held onsite
39 for any period of time, unless the hazardous waste is held in a container, tank, drip
40 pad, or containment building pursuant to regulations adopted by the department.

41 (B) Notwithstanding subparagraph (A), a generator that accumulates hazardous
42 waste generated and held onsite for 90 days or less for offsite transportation is not a
43 storage facility if all of the following requirements are met:

- 1 (i) The waste is non-RCRA contaminated soil.
- 2 (ii) The hazardous waste being accumulated does not contain free liquids.
- 3 (iii) The hazardous waste is accumulated on an impermeable surface, such as high
4 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,
5 or high density polyethylene of at least 60 mils that is not supported by a foundation.
- 6 (iv) The generator provides controls for windblown dispersion and precipitation
7 runoff and run-on and complies with any stormwater permit requirements issued by
8 a regional water quality control board.
- 9 (v) The generator has the accumulation site inspected weekly and after storms to
10 ensure that the controls for windblown dispersion and precipitation runoff and run-
11 on are functioning properly.
- 12 (vi) The generator, after final offsite transportation, inspects the accumulation site
13 for contamination and remediates as necessary.
- 14 (vii) The site is certified by a registered engineer for compliance with the
15 standards specified in clauses (i) to (vi), inclusive.
- 16 (5) The hazardous waste is held at a transfer facility at any location for any period
17 of time in a manner other than in a container.
- 18 (6) The hazardous waste is held at a transfer facility at any location for any period
19 of time and handling occurs. For purposes of this paragraph, “handling” does not
20 include the transfer of packaged or containerized hazardous waste from one vehicle
21 to another.
- 22 (c) The time period for calculating the 90-day period for purposes of paragraph
23 (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision
24 (h), begins when the facility has accumulated 100 kilograms of hazardous waste or
25 one kilogram of extremely hazardous waste or acutely hazardous waste. However,
26 if the facility generates more than 100 kilograms of hazardous waste or one kilogram
27 of extremely hazardous waste or acutely hazardous waste during any calendar
28 month, the time period begins when any amount of hazardous waste first begins to
29 accumulate in that month.
- 30 (d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous
31 waste that accumulates waste onsite is not a storage facility if all of the following
32 requirements are met:
 - 33 (1) The generator accumulates a maximum of 55 gallons of hazardous waste, one
34 quart of acutely hazardous waste, or one quart of extremely hazardous waste at an
35 initial accumulation point that is at or near the area where the waste is generated and
36 that is under the control of the operator of the process generating the waste.
 - 37 (2) The generator accumulates the waste in containers other than tanks.
 - 38 (3) The generator does not hold the hazardous waste onsite without a hazardous
39 waste facilities permit or other grant of authorization for a period of time longer
40 than the shorter of the following time periods:
 - 41 (A) One year from the initial date of accumulation.
 - 42 (B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date
43 that the quantity limitation specified in paragraph (1) is reached.

1 (4) The generator labels any container used for the accumulation of hazardous
2 waste with the initial date of accumulation and with the words “hazardous waste”
3 or other words that identify the contents of the container.

4 (5) Within three days of reaching any applicable quantity limitation specified in
5 paragraph (1), the generator labels the container holding the accumulated hazardous
6 waste with the date the quantity limitation was reached and either transports the
7 waste offsite or holds the waste onsite and complies with either the regulations
8 adopted by the department establishing requirements for generators subject to the
9 time limit specified in paragraph (1) of subdivision (b) or the requirements specified
10 in paragraph (1) of subdivision (h), whichever requirements are applicable.

11 (6) The generator complies with regulations adopted by the department pertaining
12 to the use and management of containers and any other regulations adopted by the
13 department to implement this subdivision.

14 (e)(1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste
15 held for remediation waste staging shall not be considered to be held at a hazardous
16 waste storage facility if the total accumulation period is one year or less from the
17 date of the initial placing of hazardous waste by the generator at the staging site for
18 onsite remediation, except that the department may grant one six-month extension,
19 upon a showing of reasonable cause by the generator.

20 (2)(A) The generator shall submit a notification of plans to store and treat
21 hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by
22 certified mail, with return receipt requested, to the department and to one of the
23 following:

24 (i) The CUPA, if the generator is under the jurisdiction of a CUPA.

25 (ii) If the generator is not under the jurisdiction of a CUPA, the notification shall
26 be submitted to the agency authorized, pursuant to subdivision (f) of Section
27 25404.3, to implement and enforce the requirements of this chapter listed in
28 paragraph (1) of subdivision (c) of Section 25404.

29 (B) If, after the notification pursuant to subparagraph (A), or during the initial
30 year or the six-month extension granted by the department, the generator determines
31 that treatment cannot be accomplished for all, or part of, the hazardous waste
32 accumulated in a remediation waste staging area, the generator shall immediately
33 notify the department and the appropriate local agency, pursuant to subparagraph
34 (A), that the treatment has been discontinued. The generator shall then handle and
35 dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

36 (C) A generator shall not hold hazardous waste for remediation waste staging
37 unless the generator can show, through laboratory testing, bench scale testing, or
38 other documentation, that soil held for remediation waste staging is potentially
39 treatable. Any fines and penalties imposed for a violation of this subparagraph may
40 be imposed beginning with the 91st day that the hazardous waste was initially
41 accumulated.

1 (3) Once an onsite treatment operation is completed on hazardous waste held
2 pursuant to paragraph (1), the generator shall inspect the staging area for
3 contamination and remediate as necessary.

4 (f) Notwithstanding any other provision of this chapter, remediation waste staging
5 and the holding of non-RCRA contaminated soil for offsite transportation in
6 accordance with paragraph (4) of subdivision (b) shall not be considered to be
7 disposal or land disposal of hazardous waste.

8 (g) A generator who holds hazardous waste for remediation waste staging
9 pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite
10 for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain
11 records onsite that demonstrate compliance with this section related to storing
12 hazardous waste for remediation waste staging or related to holding hazardous waste
13 onsite for offsite transportation, as applicable. The records maintained pursuant to
14 this subdivision shall be available for review by a public agency authorized pursuant
15 to Section 25180 or 25185.

16 (h)(1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than
17 1,000 kilograms of hazardous waste in any calendar month who accumulates
18 hazardous waste onsite for 180 days or less, or 270 days or less if the generator
19 transports the generator's own waste, or offers the generator's waste for
20 transportation, over a distance of 200 miles or more, for offsite treatment, storage,
21 or disposal, is not a storage facility if all of the following apply:

22 (A) The quantity of hazardous waste accumulated onsite never exceeds 6,000
23 kilograms.

24 (B) The generator complies with the requirements of subdivisions (d), (e), and (f)
25 of former Section 262.34 of Title 40 of the Code of Federal Regulations, as that
26 section existed on January 1, 2015.

27 (C) The generator does not hold acutely hazardous waste or extremely hazardous
28 waste in an amount greater than one kilogram for a time period longer than that
29 specified in paragraph (1) of subdivision (b).

30 (2) A generator meeting the requirements of paragraph (1) who does not receive
31 a copy of the manifest with the signature of the owner or operator of the facility to
32 which the generator's waste is submitted or is unable to verify through the e-
33 Manifest system that the facility has received the waste and signed the manifest,
34 within 60 days from the date that the hazardous waste was accepted by the initial
35 transporter, shall submit a report to the department along with a legible copy of the
36 manifest indicating that the generator cannot confirm the delivery or receipt of the
37 generator's waste with the owner or operator of the facility.

38 (i) The department may adopt regulations that set forth additional restrictions and
39 enforceable management standards that protect human health and the environment
40 and that apply to persons holding hazardous waste at a transfer facility. A regulation
41 adopted pursuant to this subdivision shall be considered by the Office of
42 Administrative Law to be necessary for the immediate preservation of the public
43 peace, health and safety, and general welfare, and may be adopted as an emergency

1 regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part
2 1 of Division 3 of Title 2 of the Government Code.

3 **Comment.** Section 25123.3(a)(3)(B)(ii) is amended to update cross-references in accordance
4 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
5 Division 20 of the Health and Safety Code.

6 **Health & Safety Code § 25143.1 (amended). Exemption for specified wastes**

7 SEC. __. Section 25143.1 of the Health and Safety Code is amended to read:

8 25143.1. (a) Geothermal waste resulting from drilling for geothermal resources is
9 exempt from the requirements of this chapter because the disposal of these
10 geothermal wastes is regulated by the California regional water quality control
11 boards.

12 (b)(1) Wastes from the extraction, beneficiation, and processing of ores and
13 minerals that are not subject to regulation under the federal act are exempt from the
14 requirements of this chapter, except the requirements of Article 9.5 (commencing
15 with Section 25208), as provided in paragraph (2).

16 (2) The wastes subject to this subdivision are subject to Article 9.5 (commencing
17 with Section 25208) and ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
18 (commencing with Section 78000) of Division 45 if the wastes would otherwise be
19 classified as hazardous wastes pursuant to Section 25117 and the regulations
20 adopted pursuant to Section 25141.

21 (3) For purposes of this subdivision, the following definitions shall apply:

22 (A) “Wastes from the extraction, beneficiation, and processing of ores and
23 minerals” means any of the following:

24 (i) Soil, waste rock, overburden, and other solid, semisolid, or liquid natural
25 materials that are removed, unearthed, or otherwise displaced as a result of
26 excavating or recovering an ore or a mineral.

27 (ii) Residuals of ores or minerals after those ores or minerals have been removed,
28 unearthed, or otherwise displaced from their natural sites and physically or
29 chemically treated or otherwise managed in order to separate or concentrate the
30 commercial product present in the ore or mineral, or processed to produce a final
31 marketable product.

32 (iii) Spent brine solutions that are used to produce geothermal energy and that are
33 transferred, via a closed piping system, to an adjacent facility for reclamation,
34 beneficiation, or processing to recover minerals or other commercial substances, if
35 the spent brine solutions, and any liquid residuals derived from the solutions, satisfy
36 all of the following conditions:

37 (I) Are managed in accordance with the standards set forth in Section
38 261.4(a)(17)(i) to (iii), inclusive, of Title 40 of the Code of Federal Regulations.

39 (II) Are returned after processing, via closed piping, and subsequently managed
40 in accordance with the exemption provided in subdivision (c).

1 (III) Are not a solid or semisolid hazardous residuals. This subclause applies to
2 materials that include, but are not limited to, filter cakes that are not covered by the
3 exemption provided in subdivision (c).

4 (B) “Minerals” has the same meaning as defined in Section 2005 of the Public
5 Resources Code.

6 (c)(1) Except as provided in paragraphs (3) and (4), geothermal waste, excluding
7 filter cake, that is generated from the exploration, development, or production of
8 geothermal energy and that does not result from drilling for geothermal resources,
9 is exempt from the requirements of this chapter, if the geothermal waste meets either
10 of the following requirements:

11 (A) The geothermal waste is contained within a piping system, nonearthen trench,
12 or descaling area, or within related equipment, that is associated with the geothermal
13 plant where the waste was generated.

14 (B) The geothermal waste is within the physical boundaries of a lined surface
15 impoundment associated with the geothermal plant where the waste was generated.

16 (2) If geothermal waste that is exempted pursuant to subparagraph (B) of
17 paragraph (1) is relocated to an elevated location inside a lined surface
18 impoundment for dewatering, that waste shall be removed from the surface
19 impoundment within 30 days of the relocation and while the waste still contains
20 sufficient moisture to prevent wind dispersion, except for residuals that are
21 impractical to remove. The geothermal waste shall be deemed to be generated at the
22 time of removal and shall be properly managed as hazardous waste pursuant to the
23 requirements of this chapter.

24 (3) A geothermal waste that is exempt pursuant to this subdivision ceases to be
25 exempt from the requirements of this chapter, and shall be deemed to have been
26 generated, when any of the following occur:

27 (A) It is no longer contained in one or more of the following, as described in
28 paragraph (1):

29 (i) A piping system.

30 (ii) Nonearthen trench.

31 (iii) Descaling area.

32 (iv) Related equipment.

33 (v) Lined surface impoundment.

34 (B) It is left in a geothermal piping system, a related piping system, a nonearthen
35 trench, a descaling area, or another piece of related equipment 18 months after the
36 date the geothermal power plant last produced power, unless prior to that date the
37 operator submits a written notification, as described in paragraph (4) to the
38 department, and the department acknowledges the notification in writing.

39 (C) It is left in a lined surface impoundment and at any time poses an imminent
40 potential threat to areas outside the surface impoundment due to windblown fugitive
41 dusts.

42 (D) It remains in a unit no longer actively regulated by the regional water quality
43 control board.

1 (E) It is left in a lined surface impoundment 18 months after the date the surface
2 impoundment has last received waste, unless prior to that date the operator submits
3 a written notification as described in paragraph (4) to the department, and the
4 department acknowledges the notification in writing.

5 (4) The notification that is required to be submitted by an operator pursuant to
6 subparagraphs (B) and (E) of paragraph (3) shall contain all of the following
7 information:

8 (A) The name and address of the operator, and the address and physical location
9 of the plant or surface impoundment in which the waste will be stored.

10 (B) Estimated dates on which the units will resume operation.

11 (C) A description of how the waste will be stored and managed, demonstrating to
12 the department that the waste will not pose a significant hazard to human health and
13 safety or the environment.

14 (5) This subdivision does not exempt hazardous waste that is either not directly
15 associated with geothermal energy exploration, development, and production, or
16 that is not exempted from the federal act pursuant to paragraph (5) of subdivision
17 (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or both.
18 Hazardous waste that is not exempted pursuant to this subdivision includes, but is
19 not limited to, used oil generated from vehicles or the lubrication of machinery.

20 **Comment.** Section 25143.1(b)(2) is amended to update cross-references in accordance with the
21 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
22 the Health and Safety Code.

23 **Health & Safety Code § 25143.2 (amended). Application of chapter to recyclable materials**

24 SEC. __. Section 25143.2 of the Health and Safety Code is amended to read:

25 25143.2. (a) Recyclable materials are subject to this chapter and the regulations
26 adopted by the department to implement this chapter that apply to hazardous wastes,
27 unless the department issues a variance pursuant to Section 25143, or except as
28 provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by
29 the department pursuant to Sections 25150 and 25151.

30 (b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable
31 material that is managed in accordance with Section 25143.9 and is or will be
32 recycled by any of the following methods shall be excluded from classification as a
33 waste:

34 (1) Used or reused as an ingredient in an industrial process to make a product if
35 the material is not being reclaimed.

36 (2) Used or reused as a safe and effective substitute for commercial products if
37 the material is not being reclaimed.

38 (3) Returned to the original process from which the material was generated,
39 without first being reclaimed, if the material is returned as a substitute for raw
40 material feedstock, and the process uses raw materials as principal feedstocks.

41 (c) Except as otherwise provided in subdivision (e), any recyclable material may
42 be recycled at a facility that is not authorized by the department pursuant to the

1 applicable hazardous waste facilities permit requirements of Article 9 (commencing
2 with Section 25200) if either of the following requirements is met:

3 (1) The material is a petroleum refinery waste containing oil that is converted into
4 petroleum coke at the same facility at which the waste was generated unless the
5 resulting coke product would be identified as a hazardous waste under this chapter.

6 (2) The material meets all of the following conditions:

7 (A) The material is recycled and used at the same facility at which the material
8 was generated.

9 (B) The material is recycled within the applicable generator accumulation time
10 limits specified in Section 25123.3 and the regulations adopted by the department
11 pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

12 (C) The material is managed in accordance with all applicable requirements for
13 generators of hazardous wastes under this chapter and regulations adopted by the
14 department.

15 (d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable
16 material that meets the definition of a non-RCRA hazardous waste in Section
17 25117.9, is managed in accordance with Section 25143.9, and meets or will meet
18 any of the following requirements is excluded from classification as a waste:

19 (1) The material can be shown to be recycled and used at the site where the
20 material was generated.

21 (2) The material qualifies as one or more of the following:

22 (A) The material is a product that has been processed from a hazardous waste, or
23 has been handled, at a facility authorized by the department pursuant to the facility
24 permit requirements of Article 9 (commencing with Section 25200) to process or
25 handle the material, if the product meets both of the following conditions:

26 (i) The product does not contain constituents, other than those for which the
27 material is being recycled, that render the material hazardous under regulations
28 adopted pursuant to Sections 25140 and 25141.

29 (ii) The product is used, or distributed or sold for use, in a manner for which the
30 product is commonly used.

31 (B) The material is a petroleum refinery waste containing oil that is converted into
32 petroleum coke at the same facility at which the waste was generated, unless the
33 resulting coke product would be identified as a hazardous waste under this chapter.

34 (C) The material is oily waste, used oil, or spent nonhalogenated solvent that is
35 managed by the owner or operator of a refinery that is processing primarily crude
36 oil and is not subject to permit requirements for the recycling of used oil, of a public
37 utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same
38 corporate parent of the refinery or public utility, and meets all of the following
39 requirements:

40 (i) The material is either burned in an industrial boiler, an industrial furnace, an
41 incinerator, or a utility boiler that is in compliance with all applicable federal and
42 state laws, or is recombined with normal process streams to produce a fuel or other
43 refined petroleum product.

1 (ii) The material is managed at the site where it was generated; managed at another
2 site owned or operated by the generator, a corporate subsidiary of the generator, a
3 subsidiary of the same entity of which the generator is a subsidiary, or the corporate
4 parent of the generator; or, if the material is generated in the course of oil or gas
5 exploration or production, managed by an unrelated refinery receiving the waste
6 through a common pipeline.

7 (iii) The material does not contain constituents, other than those for which the
8 material is being recycled, that render the material hazardous under regulations
9 adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing
10 material or recovered oil that is managed in accordance with subdivisions (a) and
11 (c) of Section 25144 or unless the material is used oil removed from equipment,
12 vehicles, or engines used primarily at the refinery where it is to be used to produce
13 fuels or other refined petroleum products and the used oil is managed in accordance
14 with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion
15 into the refining process.

16 (D) The material is a fuel that is transferred to, and processed into, a fuel or other
17 refined petroleum product at a petroleum refinery, as defined in paragraph (4) of
18 subdivision (a) of Section 25144, and meets one of the following requirements:

19 (i) The fuel has been removed from a fuel tank and is contaminated with water or
20 nonhazardous debris, of not more than 2 percent by weight, including, but not
21 limited to, rust or sand.

22 (ii) The fuel has been unintentionally mixed with an unused petroleum product.

23 (3) The material is transported between locations operated by the same person
24 who generated the material, if the material is recycled at the last location operated
25 by that person and all of the conditions of clauses (i) to (vi), inclusive, of
26 subparagraph (A) of paragraph (4) are met. If requested by the department or by any
27 official authorized to enforce this section pursuant to subdivision (a) of Section
28 25180, a person handling material subject to this paragraph, within 15 days from the
29 date of receipt of the request, shall supply documentation to show that the
30 requirements of this paragraph have been satisfied.

31 (4)(A) The material is transferred between locations operated by the same person
32 who generated the material, if the material is to be recycled at an authorized offsite
33 hazardous waste facility and if all of the following conditions are met:

34 (i) The material is transferred by employees of that person in vehicles under the
35 control of that person or by a registered hazardous waste hauler under contract to
36 that person.

37 (ii) The material is not handled at any interim location.

38 (iii) The material is not held at any publicly accessible interim location for more
39 than four hours unless required by other provisions of law.

40 (iv) The material is managed in compliance with this chapter and the regulations
41 adopted pursuant to this chapter prior to the initial transportation of the material and
42 after the receipt of the material at the last location operated by that person. Upon

1 receipt of the material at the last location operated by that person, the material shall
2 be deemed to have been generated at that location.

3 (v) All of the following information is maintained in an operating log at the last
4 location operated by that person and kept for at least three years after receipt of the
5 material at that location:

6 (I) The name and address of each generator location contributing material to each
7 shipment received.

8 (II) The quantity and type of material contributed by each generator to each
9 shipment of material.

10 (III) The destination and intended disposition of all material shipped offsite or
11 received.

12 (IV) The date of each shipment received or sent offsite.

13 (vi) If requested by the department, or by any law enforcement official, a person
14 handling material subject to this paragraph, within 15 days from the date of receipt
15 of the request, shall supply documentation to show that the requirements of this
16 paragraph have been satisfied.

17 (B) For purposes of paragraph (3) and subparagraph (A) of this paragraph,
18 “person” also includes corporate subsidiary, corporate parent, or subsidiary of the
19 same corporate parent.

20 (C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the
21 same corporate parent, and that manage recyclable materials under paragraph (3) or
22 subparagraph (A) of this paragraph, are jointly and severally liable for any activities
23 excluded from regulation pursuant to this section.

24 (5) The material is used or reused as an ingredient in an industrial process to make
25 a product if the material meets all of the following requirements:

26 (A) The material is not a wastewater that meets all of the following criteria:

27 (i) The wastewater is a non-RCRA hazardous waste.

28 (ii) The wastewater contains more than 75 parts per million of total petroleum
29 hydrocarbons, as determined by use of United States Environmental Protection
30 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable
31 Material.

32 (iii) The wastewater has been transported offsite to a facility, that is not a publicly
33 owned treatment works, a facility owned by the generator, or a corporate subsidiary,
34 corporate parent, or a subsidiary of the same corporate parent of the generator.

35 (B) Any discharges to air from the treatment of the material by the procedures
36 specified in subparagraph (C) do not contain constituents that are hazardous wastes
37 pursuant to the regulations of the department and are in compliance with applicable
38 air pollution control laws.

39 (C) The material is not being treated except by one or more of the following
40 procedures:

41 (i) Filtering.

42 (ii) Screening.

43 (iii) Sorting.

- 1 (iv) Sieving.
- 2 (v) Grinding.
- 3 (vi) Physical or gravity separation without the addition of external heat or any
- 4 chemicals.
- 5 (vii) pH adjustment.
- 6 (viii) Viscosity adjustment.
- 7 (6) The material is used or reused as a safe and effective substitute for commercial
- 8 products, if the material meets all of the following requirements:
- 9 (A) The material is not a wastewater that meets all of the following criteria:
- 10 (i) The wastewater is a non-RCRA hazardous waste.
- 11 (ii) The wastewater contains more than 75 parts per million of total petroleum
- 12 hydrocarbons, as determined by use of United States Environmental Protection
- 13 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable
- 14 Material.
- 15 (iii) The wastewater has been transported offsite to a facility that is not a publicly
- 16 owned treatment works, or a facility owned by the generator, or a corporate
- 17 subsidiary, corporate parent, or a subsidiary of the same corporate parent of the
- 18 generator.
- 19 (B) Any discharges to air from the treatment of the material by the procedures
- 20 specified in subparagraph (C) do not contain constituents that are hazardous wastes
- 21 pursuant to the regulations of the department and the discharges are in compliance
- 22 with applicable air pollution control laws.
- 23 (C) The material is not being treated, except by one or more of the following
- 24 procedures:
- 25 (i) Filtering.
- 26 (ii) Screening.
- 27 (iii) Sorting.
- 28 (iv) Sieving.
- 29 (v) Grinding.
- 30 (vi) Physical or gravity separation without the addition of external heat or any
- 31 chemicals.
- 32 (vii) pH adjustment.
- 33 (viii) Viscosity adjustment.
- 34 (7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound
- 35 or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is
- 36 being reused or recycled, and is used in heat transfer equipment, including, but not
- 37 limited to, mobile air-conditioning systems, mobile refrigeration, and commercial
- 38 and industrial air-conditioning and refrigeration systems, used in fire extinguishing
- 39 products, or contained within foam products.
- 40 (e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable
- 41 materials are hazardous wastes and subject to full regulation under this chapter, even
- 42 if the recycling involves use, reuse, or return to the original process as described in

1 subdivision (b), and even if the recycling involves activities or materials described
2 in subdivisions (c) and (d):

3 (1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2,
4 used in a manner constituting disposal, or used to produce products that are applied
5 to the land, including, but not limited to, materials used to produce a fertilizer, soil
6 amendment, agricultural mineral, or an auxiliary soil and plant substance.

7 (2) Materials that are a non-RCRA hazardous waste, as defined in Section
8 25117.9, and used in a manner constituting disposal or used to produce products
9 that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or
10 an auxiliary soil and plant substance. The department may adopt regulations to
11 exclude materials from regulation pursuant to this paragraph.

12 (3) Materials burned for energy recovery, used to produce a fuel, or contained in
13 fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded
14 under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

15 (4) Materials accumulated speculatively.

16 (5) Materials determined to be inherently wastelike pursuant to regulations
17 adopted by the department.

18 (6) Used or spent etchants, stripping solutions, and plating solutions that are
19 transported to an offsite facility operated by a person other than the generator and
20 either of the following applies:

21 (A) The etchants or solutions are no longer fit for their originally purchased or
22 manufactured purpose.

23 (B) If the etchants or solutions are reused, the generator and the user cannot
24 document that they are used for their originally purchased or manufactured purpose
25 without prior treatment.

26 (7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the
27 following applies:

28 (A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of
29 subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1,
30 or Section 25250.3, and is managed in accordance with the applicable requirements
31 of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal
32 Regulations.

33 (B) The used oil is used or reused on the site where it was generated or is excluded
34 under paragraph (3) of subdivision (d), is managed in accordance with the applicable
35 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code
36 of Federal Regulations, and is not any of the following:

37 (i) Used in a manner constituting disposal or used to produce a product that is
38 applied to land.

39 (ii) Burned for energy recovery or used to produce a fuel unless the used oil is
40 excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

41 (iii) Accumulated speculatively.

42 (iv) Determined to be inherently wastelike pursuant to regulations adopted by the
43 department.

1 (f)(1) Any person who manages a recyclable material under a claim that the
2 material qualifies for exclusion or exemption pursuant to this section shall provide,
3 upon request, to the department, the California Environmental Protection Agency,
4 or any local agency or official authorized to bring an action as provided in Section
5 25180, all of the following information:

6 (A) The name, street and mailing address, and telephone number of the owner or
7 operator of any facility that manages the material.

8 (B) Any other information related to the management by that person of the
9 material requested by the department, the California Environmental Protection
10 Agency, or the authorized local agency or official.

11 (2) Any person claiming an exclusion or an exemption pursuant to this section
12 shall maintain adequate records to demonstrate to the satisfaction of the requesting
13 agency or official that there is a known market or disposition for the material, and
14 that the requirements of any exemption or exclusion pursuant to this section are met.

15 (3) For purposes of determining that the conditions for exclusion from
16 classification as a waste pursuant to this section are met, any person, facility, site,
17 or vehicle engaged in the management of a material under a claim that the material
18 is excluded from classification as a waste pursuant to this section is subject to
19 Section 25185.

20 (g) For purposes of ~~Chapter 6.8 (commencing with Section 25300), Part 2~~
21 (commencing with Section 78000) of Division 45, recyclable materials excluded
22 from classification as a waste pursuant to this section are not excluded from the
23 definition of hazardous substances in ~~subdivision (g) of Section 25316, paragraph~~
24 (7) of subdivision (a) of Section 78075.

25 (h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely
26 because the used oil is a RCRA hazardous waste may be managed pursuant to
27 subdivision (d) if the used oil is also managed in accordance with the applicable
28 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code
29 of Federal Regulations.

30 **Comment.** Section 25143.2(g) is amended to update cross-references in accordance with the
31 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
32 the Health and Safety Code.

33 **Health & Safety Code § 25152.5 (amended). Public records**

34 SEC. __. Section 25152.5 of the Health and Safety Code is amended to read:

35 25152.5. (a) For purposes of this section, the following definitions apply:

36 (1) “Unusual circumstances” means only the following:

37 (A) The need to search for and collect the requested records from field facilities
38 or other establishments that are separate from the office processing the request.

39 (B) The need to search for, collect, and appropriately examine a voluminous
40 amount of separate and distinct records which are demanded in a single request.

41 (C) The need to consult with another agency having a substantial interest in the
42 determination of whether to respond to the request.

1 (2) “Public records” means any public record, as defined in Section 6252 of the
2 Government Code, of the department relating to this chapter, Chapter 6.7
3 (commencing with Section 25280), or ~~Chapter 6.8 (commencing with Section~~
4 ~~25300)~~ Part 2 (commencing with Section 78000) of Division 45. “Public records”
5 includes unprinted information relating to this chapter, Chapter 6.7 (commencing
6 with Section 25280), or ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
7 (commencing with Section 78000) of Division 45 which is stored in data or word
8 processing equipment either owned by an employee and located on premises under
9 control of the department or owned by the department.

10 (b) Notwithstanding any other provision of law, the department shall not limit the
11 hours during the normal working day or limit the number of working days during
12 which public records are open for inspection.

13 (c)(1) Notwithstanding any other provision of law, the department shall make
14 public records which are not exempt from disclosure by law, including Chapter 3.5
15 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code,
16 promptly available to any person, within the time limits specified in Section 6256
17 of the Government Code, upon payment of a fee established by the department to
18 cover the direct costs of duplication, as specified in subdivision (f). In addition, a
19 person requesting copies by mail may be required to pay the mailing costs.

20 (2) If any portion of a record is exempt from disclosure, that part which is not
21 exempt shall be provided as prescribed in this section.

22 (d) Any person may request access to, or copies of, public records of the
23 department in person or by mail. A request shall reasonably describe an identifiable
24 record or information to be produced therefrom.

25 (e) If the department determines that an unusual circumstance exists, the
26 department shall comply with the notification procedures and the time limits
27 specified in Section 6256.1 of the Government Code.

28 (f) The department shall, upon request, provide any person with the facts upon
29 which it bases its determination of the direct costs of copying for each page which
30 is requested. The department shall not impose a minimum fee for a copy of a public
31 record which is greater than its direct per page copying costs and the department
32 shall not impose limits on the types or amounts of public records which the
33 department will provide to persons requesting these records, upon payment of any
34 fees covering the direct costs of duplication by the department.

35 (g) This section does not authorize the department, or any employee of the
36 department, to delay access for purposes of inspecting or obtaining copies of public
37 records, unless there are unusual circumstances.

38 (h) Any denial of a request for records shall set forth in writing the reasons for the
39 denial and the names and titles or positions of each person responsible for the denial.
40 This written response shall be provided to the requester within five working days of
41 the denial.

1 **Comment.** Section 25152.5(a)(2) is amended to update cross-references in accordance with the
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
3 the Health and Safety Code.

4 This section is also amended to add paragraph labels.

5 **Health & Safety Code § 25159.22 (amended). Construction of article**

6 SEC. __. Section 25159.22 of the Health and Safety Code is amended to read:

7 25159.22. This article shall not be construed to limit or abridge the powers and
8 duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8~~
9 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
10 Division 45 or to the state board or any regional board pursuant to Division 7
11 (commencing with Section 13000) of the Water Code, to the Division of Oil and
12 Gas pursuant to Division 3 (commencing with Section 3000) of the Public
13 Resources Code, or the authority of any city, county, or district to act pursuant to
14 the local agency's ordinances or regulations.

15 **Comment.** Section 25159.22 is amended to update cross-references in accordance with the
16 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
17 the Health and Safety Code.

18 **Health & Safety Code § 25173.6 (amended). Toxic Substances Control Account**

19 SEC. __. Section 25173.6 of the Health and Safety Code is amended to read:

20 25173.6. (a) There is in the General Fund the Toxic Substances Control Account,
21 which shall be administered by the director. In addition to any other money that may
22 be appropriated by the Legislature to the Toxic Substances Control Account, all of
23 the following shall be deposited in the account:

24 (1) The fees collected pursuant to Section 25205.6.

25 (2) The fees collected pursuant to Section 25187.2, to the extent that those fees
26 are for oversight of a removal or remedial action taken under ~~Chapter 6.8~~
27 ~~(commencing with Section 25300)~~ or Chapter 6.86 (commencing with Section
28 25396), or Part 2 (commencing with Section 78000) of Division 45.

29 (3) Fines or penalties collected pursuant to this chapter, ~~Chapter 6.8 (commencing~~
30 ~~with Section 25300)~~ or Chapter 6.86 (commencing with Section 25396), or Part 2
31 (commencing with Section 78000) of Division 45, except as directed otherwise by
32 Section 25192.

33 (4) Interest earned upon money deposited in the Toxic Substances Control
34 Account.

35 (5) All money recovered pursuant to Section ~~25360~~, 79650, except any amount
36 recovered on or before June 30, 2006, that was paid from the Hazardous Substance
37 Cleanup Fund.

38 (6) All money recovered pursuant to ~~Section 25380~~. Article 7 (commencing with
39 Section 81030) of Chapter 12 of Part 2 of Division 45.

40 (7) All penalties recovered pursuant to Section 25214.3, except as provided by
41 Section 25192.

1 (8) All penalties recovered pursuant to Section 25214.22.1, except as provided by
2 Section 25192.

3 (9) All penalties recovered pursuant to Section 25215.82, except as provided by
4 Section 25192.

5 (10) Reimbursements for funds expended from the Toxic Substances Control
6 Account for services provided by the department, including, but not limited to,
7 reimbursements required pursuant to Sections 25201.9 and ~~25343.~~ 79105.

8 (11) Money received from the federal government pursuant to the federal
9 Comprehensive Environmental Response, Compensation, and Liability Act of
10 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

11 (12) Money received from responsible parties for remedial action or removal at a
12 specific site, except as otherwise provided by law.

13 (b) The funds deposited in the Toxic Substances Control Account may be
14 appropriated to the department for the following purposes:

15 (1) The administration and implementation of the following:

16 (A) ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with~~
17 Section 78000) of Division 45, except that funds shall not be expended from the
18 Toxic Substances Control Account for purposes of ~~Section 25354.5.~~ Article 16
19 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

20 (B) Chapter 6.86 (commencing with Section 25396).

21 (C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the
22 Public Utilities Code, to the extent the department has been delegated
23 responsibilities by the Secretary for Environmental Protection for implementing that
24 article.

25 (D) Activities of the department related to pollution prevention and technology
26 development, authorized pursuant to this chapter.

27 (2) The administration of the following units, and successor organizations of those
28 units, within the department, and the implementation of programs administered by
29 those units or successor organizations:

30 (A) The Human and Ecological Risk Office.

31 (B) The Environmental Chemistry Laboratory.

32 (C) The Office of Pollution Prevention and Technology Development.

33 (3) For allocation to the Office of Environmental Health Hazard Assessment,
34 pursuant to an interagency agreement, to assist the department as needed in
35 administering the programs described in subparagraphs (A) and (B) of paragraph
36 (1).

37 (4) For allocation to the California Department of Tax and Fee Administration to
38 pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation
39 Code.

40 (5) For the state share mandated pursuant to paragraph (3) of subsection (c) of
41 Section 104 of the federal Comprehensive Environmental Response, Compensation,
42 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

1 (6) For the purchase by the state, or by a local agency with the prior approval of
2 the director, of hazardous substance response equipment and other preparations for
3 response to a release of hazardous substances. However, all equipment shall be
4 purchased in a cost-effective manner after consideration of the adequacy of existing
5 equipment owned by the state or the local agency, and the availability of equipment
6 owned by private contractors.

7 (7) For payment of all costs of removal and remedial action incurred by the state,
8 or by a local agency with the approval of the director, in response to a release or
9 threatened release of a hazardous substance, to the extent the costs are not
10 reimbursed by the federal Comprehensive Environmental Response, Compensation,
11 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

12 (8) For payment of all costs of actions taken pursuant to ~~subdivision (b) of Section~~
13 ~~25358.3, Section 78650~~, to the extent that these costs are not paid by the federal
14 Comprehensive Environmental Response, Compensation, and Liability Act of
15 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

16 (9) For all costs incurred by the department in cooperation with the Agency for
17 Toxic Substances and Disease Registry established pursuant to subsection (i) of
18 Section 104 of the federal Comprehensive Environmental Response, Compensation,
19 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of
20 health effects studies undertaken regarding specific sites or specific substances at
21 specific sites. Funds appropriated for this purpose shall not exceed five hundred
22 thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not
23 duplicate reasonably available federal actions and studies.

24 (10) For repayment of the principal of, and interest on, bonds sold pursuant to
25 ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8. Article 5~~
26 ~~(commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.~~

27 (11) Direct site remediation costs.

28 (12) For the department's expenses for staff to perform oversight of
29 investigations, characterizations, removals, remediations, or long-term operation
30 and maintenance.

31 (13) For the administration and collection of the fees imposed pursuant to Section
32 25205.6.

33 (14) For allocation to the office of the Attorney General, pursuant to an
34 interagency agreement or similar mechanism, for the support of the Toxic Substance
35 Enforcement Program in the office of the Attorney General, in carrying out the
36 purposes of ~~Chapter 6.8 (commencing with Section 25300) and Chapter 6.86~~
37 ~~(commencing with Section 25396); and Part 2 (commencing with Section 78000) of~~
38 ~~Division 45.~~

39 (15) For funding the California Environmental Contaminant Biomonitoring
40 Program established pursuant to Chapter 8 (commencing with Section 105440) of
41 Part 5 of Division 103.

1 (16) As provided in Sections 25214.3 and 25215.7 and, with regard to penalties
2 recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4
3 (commencing with Section 25214.11).

4 (c) The funds deposited in the Toxic Substances Control Account may be
5 appropriated by the Legislature to the Office of Environmental Health Hazard
6 Assessment and the State Department of Public Health for the purposes of carrying
7 out their duties pursuant to the California Environmental Contaminant
8 Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of
9 Division 103).

10 (d) The director shall expend federal funds in the Toxic Substances Control
11 Account consistent with the requirements specified in Section 114 of the federal
12 Comprehensive Environmental Response, Compensation, and Liability Act of
13 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for
14 the purposes for which they were provided to the state.

15 (e) Money in the Toxic Substances Control Account shall not be expended to
16 conduct removal or remedial actions if a significant portion of the hazardous
17 substances to be removed or remedied originated from a source outside the state.

18 (f) The Director of Finance, upon request of the director, may make a loan from
19 the General Fund to the Toxic Substances Control Account to meet cash needs. The
20 loan shall be subject to the repayment provisions of Section 16351 of the
21 Government Code and the interest provisions of Section 16314 of the Government
22 Code.

23 (g) The Toxic Substances Control Account established pursuant to subdivision (a)
24 is the successor fund of all of the following:

25 (1) The Hazardous Substance Account established pursuant to Section 25330, as
26 that section read on June 30, 2006.

27 (2) The Hazardous Substance Clearing Account established pursuant to Section
28 25334, as that section read on June 30, 2006.

29 (3) The Hazardous Substance Cleanup Fund established pursuant to Section
30 25385.3, as that section read on June 30, 2006.

31 (4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as
32 that section read on June 30, 2006.

33 (h) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and
34 funds listed in subdivision (g), shall be transferred to, and become a part of, the
35 Toxic Substances Control Account, as provided by Section 16346 of the
36 Government Code. All existing appropriations from these accounts, to the extent
37 encumbered, shall continue to be available for the same purposes and periods from
38 the Toxic Substances Control Account.

39 (i) Notwithstanding Section 10231.5 of the Government Code, the department, on
40 or before February 1 of each year, shall report to the Governor and the Legislature
41 on the prior fiscal year's expenditure of funds within the Toxic Substances Control
42 Account for the purposes specified in subdivision (b).

1 **Comment.** Section 25173.6 is amended throughout to update cross-references in accordance
2 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
3 Division 20 of the Health and Safety Code.

4 **Health & Safety Code § 25173.7 (amended). Appropriation of funds in Toxic Substances**
5 **Control Account**

6 SEC. __. Section 25173.7 of the Health and Safety Code is amended to read:

7 25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic
8 Substances Control Account shall be appropriated in the annual Budget Act each
9 year in the following manner:

10 (1) An amount sufficient to pay for the estimated costs identified by the
11 department in the report submitted pursuant to subdivision (c) to the Site
12 Remediation Account in the General Fund for direct site remediation costs, as
13 defined in ~~Section 25337~~. Section 78260.

14 (2) Not less than ten million seven hundred fifty thousand dollars (\$10,750,000)
15 to the Site Remediation Account in the General Fund for direct site remediation
16 costs, as defined in ~~Section 25337~~. Section 78260.

17 (3) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site
18 Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)
19 of former Section 25399.1, for purposes of paying the orphan share of response costs
20 pursuant to former Chapter 6.85 (commencing with Section 25396).

21 (4) An amount that does not exceed the costs incurred by the State Board of
22 Equalization, a private party, or other public agency, to administer and collect the
23 fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and
24 deposited into the Toxic Substances Control Account, for the purpose of
25 reimbursing the State Board of Equalization, public agency, or private party, for
26 those costs.

27 (5) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of
28 establishing and implementing a program pursuant to Sections 25244.15.1,
29 25244.17.1, 25244.17.2, and 25244.22 to encourage hazardous waste generators to
30 implement pollution prevention measures.

31 (6) Funds not appropriated as specified in paragraphs (1) to (5), inclusive, may be
32 appropriated for any of the purposes specified in subdivision (b) of Section 25173.6,
33 except the purposes specified in subparagraph (C) of paragraph (1) of, and
34 paragraph (13) of, subdivision (b) of Section 25173.6.

35 (b)(1) The amounts specified in paragraphs (2) to (5), inclusive, of subdivision (a)
36 shall be adjusted annually to reflect increases or decreases in the cost of living
37 during the prior fiscal year, as measured by the Consumer Price Index issued by the
38 Department of Industrial Relations or by a successor agency.

39 (2) Notwithstanding paragraph (1), the department may, upon the approval of the
40 Legislature in a statute or the annual Budget Act, take either of the following
41 actions:

1 (A) Reduce the amounts specified in paragraphs (1) to (5), inclusive, of
2 subdivision (a), if there are insufficient funds in the Toxic Substances Control
3 Account.

4 (B) Suspend the transfer specified in paragraph (3) of subdivision (a), if there are
5 no orphan shares pending payment pursuant to former Chapter 6.85 (commencing
6 with Section 25396).

7 (c) The department shall submit to the Legislature with the Governor's Budget
8 each year a report that includes an estimate of the funding needed to fund direct site
9 remediation costs at state orphan sites and meet the state's obligation to pay for
10 direct site remediation costs at federal Superfund orphan sites pursuant to paragraph
11 (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
13 9604(c)(3)). The estimate shall include projected costs for the current budget year
14 and the two following budget years, including, but not limited to, the state's 10-
15 percent funding obligation for remedial actions at federal Superfund orphan sites,
16 the state's 100-percent funding obligation for ongoing operation and maintenance
17 at federal Superfund orphan sites, and ongoing operation and maintenance costs at
18 state orphan sites.

19 **Comment.** Section 25173.7 is amended to update cross-references in accordance with the
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
21 the Health and Safety Code.

22 **Health & Safety Code § 25174 (amended). Hazardous Waste Control Account**

23 SEC. __. Section 25174 of the Health and Safety Code is amended to read:

24 25174. (a) There is in the General Fund the Hazardous Waste Control Account,
25 which shall be administered by the director. In addition to any other money that may
26 be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the
27 following amounts shall be deposited in the account:

28 (1) The fees collected pursuant to Sections 25174.1, 25205.2, 25205.5, 25205.15,
29 and 25205.16.

30 (2) The fees collected pursuant to Section 25187.2, to the extent that those fees
31 are for the oversight of corrective action taken under this chapter.

32 (3) Any interest earned upon the money deposited in the Hazardous Waste Control
33 Account.

34 (4) Any money received from the federal government pursuant to the federal act.

35 (5) Any reimbursements for funds expended from the Hazardous Waste Control
36 Account for services provided by the department pursuant to this chapter, including,
37 but not limited to, the reimbursements required pursuant to Sections 25201.9 and
38 25205.7.

39 (b) The funds deposited in the Hazardous Waste Control Account may be
40 appropriated by the Legislature, for expenditure as follows:

41 (1) To the department for the administration and implementation of this chapter.

1 (2) To the department for allocation to the State Board of Equalization to pay
2 refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and
3 Taxation Code and for the administration and collection of the fees imposed
4 pursuant to Article 9.1 (commencing with Section 25205.1) that are deposited into
5 the Hazardous Waste Control Account.

6 (3) To the department for the costs of performance or review of analyses of past,
7 present, or potential environmental public health effects related to toxic substances,
8 including extremely hazardous waste, as defined in Section 25115, and hazardous
9 waste, as defined in Section 25117.

10 (4)(A) To the department for allocation to the office of the Attorney General for
11 the support of the Toxic Substance Enforcement Program in the office of the
12 Attorney General, in carrying out the purposes of this chapter.

13 (B) On or before October 1 of each year, the Attorney General shall report to the
14 Legislature on the expenditure of any funds allocated to the office of the Attorney
15 General for the preceding fiscal year pursuant to this paragraph and paragraph (14)
16 of subdivision (b) of Section 25173.6. The report shall include all of the following:

17 (i) A description of cases resolved by the office of the Attorney General through
18 settlement or court order, including the monetary benefit to the department and the
19 state.

20 (ii) A description of injunctions or other court orders benefiting the people of the
21 state.

22 (iii) A description of any cases in which the Attorney General's Toxic Substance
23 Enforcement Program is representing the department or the state against claims by
24 defendants or responsible parties.

25 (iv) A description of other pending litigation handled by the Attorney General's
26 Toxic Substance Enforcement Program.

27 (C) Nothing in subparagraph (C) shall require the Attorney General to report on
28 any confidential or investigatory matter.

29 (5) To the department for administration and implementation of Chapter 6.11
30 (commencing with Section 25404).

31 (c)(1) Expenditures from the Hazardous Waste Control Account for support of
32 state agencies other than the department shall, upon appropriation by the Legislature
33 to the department, be subject to an interagency agreement or similar mechanism
34 between the department and the state agency receiving the support.

35 (2) The department shall, at the time of the release of the annual Governor's
36 Budget, describe the budgetary amounts proposed to be allocated to the State Board
37 of Equalization, as specified in paragraph (2) of subdivision (b) and in paragraph
38 (3) of subdivision (b) of Section 25173.6, for the upcoming fiscal year.

39 (3) It is the intent of the Legislature that moneys appropriated in the annual Budget
40 Act each year for the purpose of reimbursing the State Board of Equalization, a
41 private party, or other public agency, for the administration and collection of the
42 fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and
43 deposited in the Hazardous Waste Control Account, shall not exceed the costs

1 incurred by the State Board of Equalization, the private party, or other public
2 agency, for the administration and collection of those fees.

3 (d) With respect to expenditures for the purposes of paragraphs (1) and (3) of
4 subdivision (b) and paragraphs (1) and (2) of subdivision (b) of Section 25173.6,
5 the department shall, at the time of the release of the annual Governor's Budget,
6 also make available the budgetary amounts and allocations of staff resources of the
7 department proposed for the following activities:

8 (1) The department shall identify, by permit type, the projected allocations of
9 budgets and staff resources for hazardous waste facilities permits, including
10 standardized permits, closure plans, and postclosure permits.

11 (2) The department shall identify, with regard to surveillance and enforcement
12 activities, the projected allocations of budgets and staff resources for the following
13 types of regulated facilities and activities:

14 (A) Hazardous waste facilities operating under a permit or grant of interim status
15 issued by the department, and generator activities conducted at those facilities. This
16 information shall be reported by permit type.

17 (B) Transporters.

18 (C) Response to complaints.

19 (3) The department shall identify the projected allocations of budgets and staff
20 resources for both of the following activities:

21 (A) The registration of hazardous waste transporters.

22 (B) The operation and maintenance of the hazardous waste manifest system.

23 (4) The department shall identify, with regard to site mitigation and corrective
24 action, the projected allocations of budgets and staff resources for the oversight and
25 implementation of the following activities:

26 (A) Investigations and removal and remedial actions at military bases.

27 (B) Voluntary investigations and removal and remedial actions.

28 (C) State match and operation and maintenance costs, by site, at joint state and
29 federally funded National Priority List Sites.

30 (D) Investigation, removal and remedial actions, and operation and maintenance
31 at the Stringfellow Hazardous Waste Site.

32 (E) Investigation, removal and remedial actions, and operation and maintenance
33 at the Casmalia Hazardous Waste Site.

34 (F) Investigations and removal and remedial actions at nonmilitary, responsible
35 party lead National Priority List Sites.

36 (G) Preremedial activities under the federal Comprehensive Environmental
37 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

38 (H) Investigations, removal and remedial actions, and operation and maintenance
39 at state-only orphan sites.

40 (I) Investigations and removal and remedial actions at nonmilitary, non-National
41 Priority List responsible party lead sites.

1 (J) Investigations, removal and remedial actions, and operation and maintenance
2 at Expedited Remedial Action Program sites pursuant to former Chapter 6.85
3 (commencing with Section 25396).

4 (K) Corrective actions at hazardous waste facilities.

5 (5) The department shall identify, with regard to the regulation of hazardous
6 waste, the projected allocation of budgets and staff resources for the following
7 activities:

8 (A) Determinations pertaining to the classification of hazardous wastes.

9 (B) Determinations for variances made pursuant to Section 25143.

10 (C) Other determinations and responses to public inquiries made by the
11 department regarding the regulation of hazardous waste and hazardous substances.

12 (6) The department shall identify projected allocations of budgets and staff
13 resources needed to do all of the following:

14 (A) Identify, remove, store, and dispose of, suspected hazardous substances or
15 hazardous materials associated with the investigation of clandestine drug
16 laboratories.

17 (B) Respond to emergencies pursuant to ~~Section 25354~~. Section 78875.

18 (C) Create, support, maintain, and implement the railroad accident prevention and
19 immediate deployment plan developed pursuant to Section 7718 of the Public
20 Utilities Code.

21 (7) The department shall identify projected allocations of budgets and staff
22 resources for the administration and implementation of the unified hazardous waste
23 and hazardous materials regulatory program established pursuant to Chapter 6.11
24 (commencing with Section 25404).

25 (8) The department shall identify the total cumulative expenditures of the
26 Regulatory Structure Update and Site Mitigation Update projects since their
27 inception, and shall identify the total projected allocations of budgets and staff
28 resources that are needed to continue these projects.

29 (9) The department shall identify the total projected allocations of budgets and
30 staff resources that are necessary for all other activities proposed to be conducted
31 by the department.

32 (e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of
33 Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines,
34 penalties, and funds that are required to be deposited into the Hazardous Waste
35 Control Account or the Toxic Substances Control Account, the department, with the
36 approval of the Secretary for Environmental Protection, may take any of the
37 following actions:

38 (1) Assume responsibility for, or enter into a contract with a private party or with
39 another public agency, other than the State Board of Equalization, for the collection
40 of any fees, surcharges, fines, penalties and funds described in subdivision (a) or
41 otherwise described in this chapter or ~~Chapter 6.8 (commencing with Section~~
42 25300), Part 2 (commencing with Section 78000) of Division 45, for deposit into
43 the Hazardous Waste Control Account or the Toxic Substances Control Account.

1 (2) Administer, or by mutual agreement, contract with a private party or another
2 public agency, for the making of those determinations and the performance of
3 functions that would otherwise be the responsibility of the State Board of
4 Equalization pursuant to this chapter, ~~Chapter 6.8 (commencing with Section~~
5 ~~25300)~~, Part 2 (commencing with Section 78000) of Division 45, or Part 22
6 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code,
7 if those activities and functions for which the State Board of Equalization would
8 otherwise be responsible become the responsibility of the department or, by mutual
9 agreement, the contractor selected by the department.

10 (f) If, pursuant to subdivision (e), the department, or a private party or another
11 public agency, pursuant to a contract with the department, performs the
12 determinations and functions that would otherwise be the responsibility of the State
13 Board of Equalization, the department shall be responsible for ensuring that persons
14 who are subject to the fees specified in subdivision (e) have equivalent rights to
15 public notice and comment, and procedural and substantive rights of appeal, as
16 afforded by the procedures of the State Board of Equalization pursuant to Part 22
17 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.
18 Final responsibility for the administrative adjustment of fee rates and the
19 administrative appeal of any fees or penalty assessments made pursuant to this
20 section may only be assigned by the department to a public agency.

21 (g) If, pursuant to subdivision (e), the department, or a private party or another
22 public agency, pursuant to a contract with the department, performs the
23 determinations and functions that would otherwise be the responsibility of the State
24 Board of Equalization, the department shall have equivalent authority to make
25 collections and enforce judgments as provided to the State Board of Equalization
26 pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue
27 and Taxation Code. Unpaid amounts, including penalties and interest, shall be a
28 perfected and enforceable state tax lien in accordance with Section 43413 of the
29 Revenue and Taxation Code.

30 (h) The department, with the concurrence of the Secretary for Environmental
31 Protection, shall determine which administrative functions should be retained by the
32 State Board of Equalization, administered by the department, or assigned to another
33 public agency or private party pursuant to subdivisions (e), (f), and (g).

34 (i) The department may adopt regulations to implement subdivisions (e) to (h),
35 inclusive.

36 (j) The Director of Finance, upon request of the director, may make a loan from
37 the General Fund to the Hazardous Waste Control Account to meet cash needs. The
38 loan shall be subject to the repayment provisions of Section 16351 of the
39 Government Code and the interest provisions of Section 16314 of the Government
40 Code.

41 (k) The department shall establish, within the Hazardous Waste Control Account,
42 a reserve of at least one million dollars (\$1,000,000) each year to ensure that all

1 programs funded by the Hazardous Waste Control Account will not be adversely
2 affected by any revenue shortfalls.

3 **Comment.** Section 25174(d)(6)(B), (e)(1), and (e)(2) are amended to update cross-references in
4 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
5 25300) of Division 20 of the Health and Safety Code.

6 **Health & Safety Code § 25174.6 (amended). Determination of fee**

7 SEC. __. Section 25174.6 of the Health and Safety Code is amended to read:

8 25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as
9 a percentage of the base rate, as adjusted by the State Board of Equalization,
10 pursuant to Section 25174.2, or as otherwise provided by this section. The procedure
11 for determining these fees is as follows:

12 (1) The following fees shall be paid for each ton, or fraction thereof for up to the
13 first 5,000 tons of the following hazardous wastes disposed of, or submitted for
14 disposal, in the state at each specific offsite facility by each producer, or at each
15 specific onsite facility, per month, if the hazardous wastes are not otherwise subject
16 to the fee specified in paragraph (3) or (4) and are not otherwise exempt from the
17 fees imposed pursuant to this article:

18 (A) For non-RCRA hazardous waste, excluding asbestos, generated in a remedial
19 action, a removal action, or a corrective action taken pursuant to this chapter,
20 Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with
21 Section 25299.10), or ~~Chapter 6.8 (commencing with Section 25300), Part 2~~
22 (commencing with Section 78000) of Division 45, or generated in any other required
23 or voluntary cleanup, removal, or remediation of a hazardous substance or non-
24 RCRA hazardous waste, a fee of five dollars and seventy-two cents (\$5.72) per ton.

25 (B) For all other non-RCRA hazardous waste, a fee of 16.31 percent of the base
26 rate for each ton.

27 (2) Thirteen percent of the base rate for each ton, or fraction thereof, shall be paid
28 for up to the first 5,000 tons of hazardous waste disposed of, or submitted for
29 disposal, in the state, at each specific offsite facility by each producer, or at each
30 specific onsite facility, per month, which result from the extraction, beneficiation,
31 and processing of ores and minerals, including phosphate rock and the overburden
32 from the mining of uranium ore and which is not otherwise subject to the fee
33 specified in paragraph (3) or (4).

34 (3) Two hundred percent of the base rate shall be paid for each ton, or fraction
35 thereof, of extremely hazardous waste disposed of, or submitted for disposal, in the
36 state.

37 (4) Two hundred percent of the base rate shall be paid for each ton, or fraction
38 thereof, of restricted hazardous wastes listed in subdivision (b) of Section 25122.7
39 disposed of, or submitted for disposal, in the state.

40 (5) Forty and four-tenths percent of the base rate shall be paid for each ton, or
41 fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the

1 state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3),
2 (4), or (6).

3 (6) Five percent of the base rate shall be paid for each ton, or fraction thereof, of
4 hazardous waste disposed of, or submitted for disposal, in the state, that is a solid
5 hazardous waste residue resulting from incineration or dechlorination. No fees shall
6 be imposed pursuant to this paragraph on a solid hazardous waste residue resulting
7 from incineration or dechlorination which is disposed of, or submitted for disposal,
8 outside of the state.

9 (7) Fifty percent of the fee that would otherwise be paid for each ton, or fraction
10 thereof, of hazardous waste disposed of in the state, that is a solid hazardous waste
11 residue resulting from treatment of a treatable waste by means of a designated
12 treatment technology, as defined in Section 25179.2. No fees shall be imposed
13 pursuant to this paragraph on a solid hazardous waste residue resulting from
14 treatment of a treatable waste by means of a designated treatment technology that is
15 not a hazardous waste or which is disposed of, or submitted for disposal, outside of
16 the state.

17 (b) The amount of fees payable to the State Board of Equalization pursuant to this
18 section shall be calculated using the total wet weight, measured in tons or fractions
19 thereof, of the hazardous waste in the form in which the hazardous waste existed at
20 the time of disposal, submission for disposal, or application to land using a land
21 disposal method, as defined in Section 66260.10 of Title 22 of the California Code
22 of Regulations, if all of the following apply:

23 (1) The weight of any nonhazardous reagents or treatment additives added to the
24 waste, after it has been submitted for disposal, for purposes of rendering the waste
25 less hazardous, shall not be included in those calculations.

26 (2) Except as provided by paragraph (7) of subdivision (a), any RCRA hazardous
27 waste received, treated, and disposed at the disposal facility shall be subject to a
28 disposal fee pursuant to this section as if it were a non-RCRA hazardous waste, if
29 the waste, due to treatment, is no longer a RCRA hazardous waste at the time of
30 disposal.

31 (c) All fees imposed by this section shall be paid in accordance with Part 22
32 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

33 (d) This section shall become operative on January 1, 2001.

34 **Comment.** Section 25174.6(a)(1)(A) is amended to update cross-references in accordance with
35 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
36 of the Health and Safety Code.

37 **Health & Safety Code § 25174.7 (amended). Limitation on application of fees**

38 SEC. __. Section 25174.7 of the Health and Safety Code is amended to read:

39 25174.7. (a) The fees provided for in Sections 25174.1 and 25205.5 do not apply
40 to any of the following:

1 (1) Hazardous wastes which result when a government agency, or its contractor,
2 removes or remedies a release of hazardous waste in the state caused by another
3 person.

4 (2) Hazardous wastes generated or disposed of by a public agency operating a
5 household hazardous waste collection facility in the state pursuant to Article 10.8
6 (commencing with Section 25218), including, but not limited to, hazardous waste
7 received from conditionally exempt small quantity commercial generators,
8 authorized pursuant to Section 25218.3.

9 (3) Hazardous wastes generated or disposed of by local vector control agencies
10 which have entered into a cooperative agreement pursuant to Section 116180 or by
11 county agricultural commissioners, if the hazardous wastes result from their control
12 or regulatory activities and if they comply with the requirements of this chapter and
13 regulations adopted pursuant thereto.

14 (4) Hazardous waste disposed of, or submitted for disposal or treatment, by any
15 person, which is discovered and separated from solid waste as part of a load
16 checking program.

17 (b) Notwithstanding paragraph (1) of subdivision (a), any person responsible for
18 a release of hazardous waste, which has been removed or remedied by a government
19 agency, or its contractor, shall pay the fee pursuant to Section 25174.1.

20 (c) Any person who acquires land for the sole purpose of owner-occupied single-
21 family residential use, and who acquires that land without actual or constructive
22 notice or knowledge that there is a tank containing hazardous waste on or under that
23 property, is exempt from the fees imposed pursuant to Sections ~~25174.1, 25174.1~~
24 and 25205.5, and 25345, in connection with the removal of the tank.

25 **Comment.** Section 25174.7(c) is amended to delete an obsolete cross-reference to Section
26 25345. See 1997 Cal. Stat. ch. 870, § 42 (repealing Section 25345).

27 **Health & Safety Code § 25178 (amended). Information to be posted on department's**
28 **website**

29 SEC. __. Section 25178 of the Health and Safety Code is amended to read:
30 25178. On or before January 1 of each odd-numbered year, the department shall
31 post on its ~~Web site, internet website,~~ at a minimum, all of the following:

32 (a) The status of the regulatory and program developments required pursuant to
33 legislative mandates.

34 (b)(1) The status of the hazardous waste facilities permit program that shall
35 include all of the following information:

36 (A) A description of the final hazardous waste facilities permit applications
37 received.

38 (B) The number of final hazardous waste facilities permits issued to date.

39 (C) The number of final hazardous waste facilities permits yet to be issued.

40 (D) A complete description of the reasons why the final hazardous waste facilities
41 permits yet to be issued have not been issued.

1 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that
2 uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and
3 that disposes of wastes regulated as hazardous waste pursuant to the federal act.

4 (c) The status of the hazardous waste facilities siting program.

5 (d) The status of the hazardous waste abandoned sites program.

6 (e) A summary of enforcement actions taken by the department pursuant to this
7 chapter and any other actions relating to hazardous waste management.

8 (f) Summary data on annual quantities and types of hazardous waste generated,
9 transported, treated, stored, and disposed.

10 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

11 (h) Research activity initiated by the department.

12 (i) Regulatory action by other agencies relating to hazardous waste management.

13 (j) A revised listing of recyclable materials showing any additions or deletions to
14 the list prepared pursuant to Section 25175 that have occurred since the last report.

15 (k) Any other data considered pertinent by the department to hazardous waste
16 management.

17 (l) The information specified in subdivision (c) of Section 25161, paragraph (4)
18 of subdivision (a) of Section 25197.1, ~~subdivision (e) of Section 25354, and~~
19 ~~Sections 25334.7, and 25356.5.~~ and Article 9 (commencing with Section 78575) of
20 Chapter 3 of Part 2 of Division 45.

21 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site
22 in Orange County.

23 **Comment.** Section 25178 is amended to update cross-references in accordance with the
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
25 the Health and Safety Code.

26 This section is also amended to delete an obsolete cross-reference and make a technical change.

27 **Health & Safety Code § 25184.1 (amended). Application to collect administrative penalty**

28 SEC. __. Section 25184.1 of the Health and Safety Code is amended to read:

29 25184.1. If any administrative order or decision that imposes a penalty is issued
30 pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300), Part 2~~
31 (commencing with Section 78000) of Division 45, the administrative order or
32 decision has become final, and, if applicable, a petition for judicial review of the
33 final order or decision has not been filed within the time limits prescribed in Section
34 11523 of the Government Code, the department may apply to the clerk of the
35 appropriate court for a judgment to collect the administrative penalty. The
36 department’s application, which shall include a certified copy of the final
37 administrative order or decision, constitutes a sufficient showing to warrant issuance
38 of the judgment. The court clerk shall enter the judgment immediately in conformity
39 with the application. The judgment so entered has the same force and effect as, and
40 is subject to all the provisions of law relating to, a judgment in a civil action, and
41 may be enforced in the same manner as any other judgment of the court in which it
42 is entered.

1 **Comment.** Section 25184.1 is amended to update cross-references in accordance with the
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
3 the Health and Safety Code.

4 **Health & Safety Code § 25186 (amended). Denial, suspension, or revocation of permit,
5 registration, or certificate**

6 SEC. __. Section 25186 of the Health and Safety Code is amended to read:

7 25186. The department may deny, suspend, or revoke any permit, registration, or
8 certificate applied for, or issued, pursuant to this chapter in accordance with the
9 procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder
10 of the permit, registration, or certificate, or in the case of a business concern, any
11 trustee, officer, director, partner, or any person holding more than 5 percent of the
12 equity in, or debt liability of, that business concern, has engaged in any of the
13 following:

14 (a) Any violation of, or noncompliance with, this chapter, Chapter 6.7
15 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~
16 Part 2 (commencing with Section 78000) of Division 45, the Porter-Cologne Water
17 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
18 Code), the Resource Conservation and Recovery Act of 1976, as amended, (42
19 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C.
20 Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances
22 Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state
23 statute or any requirement or regulation adopted pursuant thereto relating to the
24 generation, transportation, treatment, storage, recycling, disposal, or handling of a
25 hazardous waste, as defined in Section 25117, a hazardous substance, as defined in
26 ~~Section 25316,~~ subdivision (a) of Section 78075, or a hazardous material, as defined
27 in Section 353 of the Vehicle Code, if the violation or noncompliance shows a
28 repeating or recurring pattern or may pose a threat to public health or safety or the
29 environment.

30 (b) The aiding, abetting, or permitting of any violation of, or noncompliance with,
31 this chapter, Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8~~
32 ~~(commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of
33 Division 45, the Porter-Cologne Water Quality Act (Division 7 (commencing with
34 Section 13000) of the Water Code), the Resource Conservation and Recovery Act
35 of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials
36 Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive
37 Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec.
38 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or
39 any other equivalent federal or state statute or any requirement or regulation adopted
40 pursuant thereto relating to the generation, transportation, treatment, storage,
41 recycling, disposal, or handling of a hazardous waste, as defined in Section 25117,
42 a hazardous substance, as defined in ~~Section 25316,~~ subdivision (a) of Section

1 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if
2 the violation or noncompliance shows a repeating or recurring pattern or may pose
3 a threat to public health or safety or the environment.

4 (c) Any violation of, or noncompliance with, any order issued by a state or local
5 agency or by a hearing officer or a court relating to the generation, transportation,
6 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined
7 in Section 25117, a hazardous substance, as defined in ~~Section 25316~~, subdivision
8 (a) of Section 78075, or a hazardous material, as defined in Section 353 of the
9 Vehicle Code.

10 (d) Any misrepresentation or omission of a significant fact or other required
11 information in the application for the permit, registration, or certificate, or in
12 information subsequently reported to the department or to a local officer or agency
13 authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

14 (e)(1) Activities resulting in any federal or state conviction that are significantly
15 related to the fitness of the applicant or holder of the permit, registration, or
16 certificate to perform the applicant's duties or activities under the permit,
17 registration, or certificate.

18 (2) For the purposes of this paragraph, "conviction" means a plea or verdict of
19 guilty or a conviction following a plea of nolo contendere.

20 (3) An action that the department may take pursuant to this paragraph relating to
21 the denial, suspension, or revocation of a permit, registration, or certificate may be
22 based upon a conviction for which any of the following has occurred:

23 (A) The time for appeal has elapsed.

24 (B) The judgment of conviction has been affirmed on appeal.

25 (C) Any order granting probation is made suspending the imposition of sentence,
26 notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code
27 permitting that person to withdraw the person's plea of guilty, and to enter a plea of
28 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
29 information, or indictment.

30 (f) Activities resulting in the revocation or suspension of a license, permit,
31 registration, or certificate held by the applicant or holder of the permit, registration,
32 or certificate or, if the applicant or holder of the permit, registration, or certificate is
33 a business concern, by any trustee, officer, director, partner, or any person holding
34 more than 5 percent of the equity in, or debt liability of, that business concern
35 relating to, the generation, transportation, treatment, storage, recycling, disposal, or
36 handling of a hazardous waste, as defined in Section 25117, a hazardous substance,
37 as defined in ~~Section 25316~~, subdivision (a) of Section 78075, or a hazardous
38 material, as defined in Section 353 of the Vehicle Code.

39 **Comment.** Section 25186 is amended throughout to update cross-references in accordance with
40 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
41 of the Health and Safety Code.

1 **Health & Safety Code § 25187 (amended). Order requiring corrective action and imposing**
2 **penalties for violation**

3 SEC. __. Section 25187 of the Health and Safety Code is amended to read:

4 25187. (a)(1) The department or a unified program agency, in accordance with
5 subdivision (l), may issue an order requiring that the violation be corrected and
6 imposing an administrative penalty, for any violation of this chapter or any permit,
7 rule, regulation, standard, or requirement issued or adopted pursuant to this chapter,
8 whenever the department or unified program agency determines that a person has
9 violated, is in violation of, or threatens, as defined in subdivision (e) of Section
10 13304 of the Water Code, to violate, this chapter or ~~Chapter 6.8 (commencing with~~
11 ~~Section 25300), Part 2 (commencing with Section 78000) of Division 45,~~ or any
12 permit, rule, regulation, standard, or requirement issued or adopted pursuant to this
13 chapter or ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with~~
14 ~~Section 78000) of Division 45.~~

15 (2) In an order proposing a penalty pursuant to this section, the department or
16 unified program agency shall take into consideration the nature, circumstances,
17 extent, and gravity of the violation, the violator's past and present efforts to prevent,
18 abate, or clean up conditions posing a threat to the public health or safety or the
19 environment, the violator's ability to pay the proposed penalty, and the prophylactic
20 effect that the imposition of the proposed penalty would have on both the violator
21 and the regulated community as a whole.

22 (b) The department or a unified program agency, in accordance with subdivision
23 (l), may issue an order requiring corrective action whenever the department or
24 unified program agency determines that there is or has been a release, as defined in
25 ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with Section~~
26 ~~78000) of Division 45,~~ of hazardous waste or constituents into the environment from
27 a hazardous waste facility.

28 (1) In the case of a release of hazardous waste or constituents into the environment
29 from a hazardous waste facility that is required to obtain a permit pursuant to Article
30 9 (commencing with Section 25200), the department shall pursue the remedies
31 available under this chapter, including the issuance of an order for corrective action
32 pursuant to this section, before using the legal remedies available pursuant to
33 ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with Section~~
34 ~~78000) of Division 45,~~ except in any of the following circumstances:

35 (A) If the person who is responsible for the release voluntarily requests in writing
36 that the department issue an order to that person to take corrective action pursuant
37 to ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with Section~~
38 ~~78000) of Division 45.~~

39 (B) If the person who is responsible for the release is unable to pay for the cost of
40 corrective action to address the release. For purposes of this subparagraph, the
41 inability of a person to pay for the cost of corrective action shall be determined in
42 accordance with the policies of the Environmental Protection Agency for the
43 implementation of Section 9605 of Title 42 of the United States Code.

1 (C) If the person responsible for the release is unwilling to perform corrective
2 action to address the release. For purposes of this subparagraph, the unwillingness
3 of a person to take corrective action shall be determined in accordance with the
4 policies of the Environmental Protection Agency for the implementation of Section
5 9605 of Title 42 of the United States Code.

6 (D) If the release is part of a regional or multisite groundwater contamination
7 problem that cannot, in its entirety, be addressed using the legal remedies available
8 pursuant to this chapter and for which other releases that are part of the regional or
9 multisite groundwater contamination problem are being addressed using the legal
10 remedies available pursuant to ~~Chapter 6.8 (commencing with Section 25300). Part~~
11 2 (commencing with Section 78000) of Division 45.

12 (E) If an order for corrective action has already been issued against the person
13 responsible for the release, or the department and the person responsible for the
14 release have, prior to January 1, 1996, entered into an agreement to address the
15 required cleanup of the release pursuant to ~~Chapter 6.8 (commencing with Section~~
16 25300). Part 2 (commencing with Section 78000) of Division 45.

17 (F) If the hazardous waste facility is owned or operated by the federal government.

18 (2) The order shall include a requirement that the person take corrective action
19 with respect to the release of hazardous waste or constituents, abate the effects
20 thereof, and take any other necessary remedial action.

21 (3) If the order requires corrective action at a hazardous waste facility, the order
22 shall require that corrective action be taken beyond the facility boundary, where
23 necessary to protect human health or the environment.

24 (4) The order shall incorporate, as a condition of the order, any applicable waste
25 discharge requirements issued by the State Water Resources Control Board or a
26 California regional water quality control board, and shall be consistent with all
27 applicable water quality control plans adopted pursuant to Section 13170 of the
28 Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of
29 Division 7 of the Water Code and state policies for water quality control adopted
30 pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7
31 of the Water Code existing at the time of the issuance of the order, to the extent that
32 the department or unified program agency determines that those plans and policies
33 are not less stringent than this chapter and regulations adopted pursuant to this
34 chapter. The order may include any more stringent requirement that the department
35 or unified program agency determines is necessary or appropriate to protect water
36 quality.

37 (5) Persons who are subject to an order pursuant to this subdivision include
38 present and prior owners, lessees, or operators of the property where the hazardous
39 waste is located, present or past generators, storers, treaters, transporters, disposers,
40 and handlers of hazardous waste, and persons who arrange, or have arranged, by
41 contract or other agreement, to store, treat, transport, dispose of, or otherwise handle
42 hazardous waste.

1 (6) For purposes of this subdivision, “hazardous waste facility” includes the entire
2 site that is under the control of an owner or operator engaged in the management of
3 hazardous waste.

4 (c) Any order issued pursuant to this section shall be served by personal service
5 or certified mail and shall inform the person so served of the right to a hearing. If
6 the unified program agency issues the order pursuant to this section, the order shall
7 state whether the hearing procedure specified in paragraph (2) of subdivision (f)
8 may be requested by the person receiving the order.

9 (d) Any person served with an order pursuant to this section who has been unable
10 to resolve any violation or deficiency on an informal basis with the department or
11 unified program agency may, within 15 days after service of the order, request a
12 hearing pursuant to subdivision (e) or (f) by filing with the department or unified
13 program agency a notice of defense. The notice shall be filed with the office that
14 issued the order. A notice of defense shall be deemed filed within the 15-day period
15 provided by this subdivision if it is postmarked within that 15-day period. If a notice
16 of defense is not filed within the time limits provided by this subdivision, the order
17 shall become final.

18 (e) Any hearing requested on an order issued by the department shall be conducted
19 within 90 days after receipt of the notice of defense by an administrative law judge
20 of the Office of Administrative Hearings of the Department of General Services in
21 accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of
22 Division 3 of Title 2 of the Government Code, and the department shall have all the
23 authority granted to an agency by those provisions.

24 (f) Except as provided in subparagraph (B) of paragraph (2), a person requesting
25 a hearing on an order issued by a unified program agency may select the hearing
26 process specified in either paragraph (1) or (2) in the notice of defense filed with the
27 unified program agency pursuant to subdivision (d). Within 90 days of receipt of
28 the notice of defense by the unified program agency, the hearing shall be conducted
29 using one of the following procedures:

30 (1) An administrative law judge of the Office of Administrative Hearings of the
31 Department of General Services shall conduct the hearing in accordance with
32 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of
33 the Government Code.

34 (2)(A) A hearing officer designated by the unified program agency shall conduct
35 the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of
36 Part 1 of Division 3 of Title 2 of the Government Code, and the unified program
37 agency shall have all the authority granted to an agency by those provisions. When
38 a hearing is conducted by a unified program agency pursuant to this paragraph, the
39 unified program agency shall, within 60 days of the hearing, issue a decision.

40 (B) A person requesting a hearing on an order issued by a unified program agency
41 may select the hearing process specified in this paragraph in a notice of defense filed
42 pursuant to subdivision (d) only if the unified program agency has, as of the date
43 the order is issued pursuant to subdivision (c), selected a designated hearing officer

1 and established a program for conducting a hearing in accordance with this
2 paragraph.

3 (g) The hearing decision issued pursuant to subdivision (f) is effective and final
4 upon issuance. Copies of the decision shall be served by personal service or by
5 certified mail upon the party served with the order and upon other persons who
6 appeared at the hearing and requested a copy.

7 (h) Any provision of an order issued under this section, except the imposition of
8 an administrative penalty, takes effect upon issuance by the department or unified
9 program agency if the department or unified program agency finds that the violation
10 or violations of law associated with that provision may pose an imminent and
11 substantial endangerment to the public health or safety or the environment, and a
12 request for a hearing shall not stay the effect of that provision of the order pending
13 a hearing decision. However, if the department or unified program agency
14 determines that any or all provisions of the order are so related that the public health
15 or safety or the environment can be protected only by immediate compliance with
16 the order as a whole, then the order as a whole, except the imposition of an
17 administrative penalty, takes effect upon issuance by the department or unified
18 program agency. A request for a hearing shall not stay the effect of the order as a
19 whole pending a hearing decision.

20 (i) A decision issued pursuant to this section may be reviewed by the court
21 pursuant to Section 11523 of the Government Code. In all proceedings pursuant to
22 this section, the court shall uphold the decision of the department or unified program
23 agency if the decision is based upon substantial evidence in the whole record. The
24 filing of a petition for writ of mandate shall not stay any action required pursuant to
25 this chapter or the accrual of any penalties assessed pursuant to this chapter. This
26 subdivision does not prohibit the court from granting any appropriate relief within
27 its jurisdiction.

28 (j)(1) All administrative penalties collected from actions brought by the
29 department pursuant to this section shall be placed in a separate subaccount in the
30 Toxic Substances Control Account and shall be available only for transfer to the
31 Site Remediation Account or the Expedited Site Remediation Trust Fund and for
32 expenditure by the department upon appropriation by the Legislature.

33 (2) The administrative penalties collected from an action brought by the
34 department pursuant to Sections 25214.3, 25214.22.1, and 25215.82, in accordance
35 with this section, shall be deposited in the Toxic Substances Control Account, for
36 expenditure by the department for implementation and enforcement activities, upon
37 appropriation by the Legislature, pursuant to Section 25173.6.

38 (k) All administrative penalties collected from an action brought by a unified
39 program agency pursuant to this section shall be paid to the unified program agency
40 that imposed the penalty, and shall be deposited into a special account that shall be
41 expended to fund the activities of the unified program agency in enforcing this
42 chapter pursuant to Section 25180.

1 (l) The authority granted under this section to a unified program agency is limited
2 to both of the following:

3 (1) The issuance of orders to impose penalties and to correct violations of the
4 requirements of this chapter and its implementing regulations, only when the
5 violations are violations of requirements applicable to hazardous waste generators
6 and persons operating pursuant to a permit-by-rule, conditional authorization, or
7 conditional exemption, when the violations occur at a unified program facility
8 within the jurisdiction of the CUPA.

9 (2) The issuance of orders to require corrective action when there has been a
10 release of hazardous waste or constituents only when the unified program agency is
11 authorized to do so pursuant to Section 25404.1.

12 (m) The CUPA shall annually submit a summary report to the department on the
13 status of orders issued by the unified program agencies under this section and
14 Section 25187.1.

15 (n) The CUPA shall consult with the district attorney for the county on the
16 development of policies to be followed in exercising the authority delegated
17 pursuant to this section and Section 25187.1, as they relate to the authority of unified
18 program agencies to issue orders.

19 (o) The CUPA shall arrange to have appropriate legal representation in
20 administrative hearings that are conducted by an administrative law judge of the
21 Office of Administrative Hearings of the Department of General Services, and when
22 a decision issued pursuant to this section is appealed to the superior court.

23 (p) The department may adopt regulations to implement this section and
24 paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of
25 unified program agencies to issue orders. The regulations shall include, but not be
26 limited to, all of the following requirements:

27 (1) Provisions to ensure coordinated and consistent application of this section and
28 Section 25187.1 when both the department and the unified program agency have
29 issued or will be issuing orders under one or both of these sections with regard to
30 the same facility.

31 (2) Provisions to ensure that the enforcement authority granted to the unified
32 program agencies will be exercised consistently throughout the state.

33 (3) Minimum training requirements for staff of the unified program agency
34 relative to this section and Section 25187.1.

35 (4) Procedures to be followed by the department to rescind the authority granted
36 to a unified program agency under this section and Section 25187.1, if the
37 department finds that the unified program agency is not exercising that authority in
38 a manner consistent with this chapter and Chapter 6.11 (commencing with Section
39 25404) and the regulations adopted pursuant thereto.

40 (q) Except for an enforcement action taken pursuant to this chapter or ~~Chapter 6.8~~
41 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
42 Division 45, this section does not otherwise affect the authority of a local agency to
43 take any action under any other law.

1 **Comment.** Subdivisions (a), (b), and (q) of Section 25187 are amended to update cross-
2 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
3 Section 25300) of Division 20 of the Health and Safety Code.

4 **Health & Safety Code § 25189.1 (amended). Civil liability for costs or expenses incurred by**
5 **state or local agency**

6 SEC. __. Section 25189.1 of the Health and Safety Code is amended to read:

7 25189.1. (a) In addition to liability under any other provision of law, any person
8 who is liable for a civil penalty pursuant to subdivision (c) or (d) of Section 25189
9 or subdivision (c) of Section 25189.2, or is convicted pursuant to subdivision (b) of
10 Section 25189.5, is also civilly liable for all the costs or expenses which may be
11 incurred by the state, or by a local agency, in doing any of the following:

12 (1) Assess short-term or long-term injury to, degradation or destruction of, or any
13 loss of, any natural resource resulting from the disposal of the hazardous waste
14 which is the subject of the civil penalty or conviction.

15 (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource
16 injured, degraded, destroyed, or lost as a result of the disposal of the hazardous
17 waste which is the subject of the civil penalty or conviction.

18 (b) The liability imposed by subdivision (a) is separate and in addition to any civil
19 penalty imposed pursuant to subdivision (c) or (d) of Section 25189 or subdivision
20 (c) of Section 25189.2 or any fine imposed pursuant to subdivision (e) of Section
21 25189.5.

22 (c) Any funds collected pursuant to this section are in addition to any other funds
23 which may be collected pursuant to this chapter.

24 (d) A state or local agency may collect funds pursuant to this section prior to
25 carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

26 (e) An action brought pursuant to this section may be brought by the trustee of the
27 natural resources specified in ~~subdivision (c) of Section 25352.~~ Section 79685. The
28 action may be prosecuted by the Attorney General or the district attorney. The action
29 may be prosecuted by the district attorney only after the trustee, in consultation with
30 the Office of the Attorney General, approves that prosecution in writing. The trustee
31 shall have 30 days to consider any requested action and approval shall be presumed
32 to have been granted if a written denial is not issued within 30 days. The trustee may
33 not unreasonably withhold approval.

34 (f) All funds collected pursuant to this section by the trustee of the natural
35 resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife
36 Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund
37 or in a special deposit trust fund.

38 **Comment.** Section 25189.1 is amended to update cross-references in accordance with the
39 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
40 the Health and Safety Code.

41 **Health & Safety Code § 25198.3 (amended). Cooperative agreements**

42 SEC. __. Section 25198.3 of the Health and Safety Code is amended to read:

1 25198.3. (a) The secretary may enter into any cooperative agreement which meets
2 the requirements of this article.

3 (b) Each cooperative agreement shall include, but shall not be limited to, all
4 requirements determined to be necessary to meet the requirements of subdivision
5 (e) to do all of the following:

6 (1) Protect water quality, as determined by the State Water Resources Control
7 Board or the appropriate California regional water quality control board.

8 (2) Protect air quality, as determined by the State Air Resources Board or the
9 appropriate air pollution control officer.

10 (3) Provide for proper management of hazardous materials and hazardous wastes,
11 as determined necessary by the Department of Toxic Substances Control.

12 (4) In making these determinations, the state agencies shall consider any
13 applicable federal environmental and public health and safety laws.

14 (c) A decision by the secretary whether to enter into a cooperative agreement shall
15 be based on a good faith determination concerning whether a proposed cooperative
16 agreement meets the requirements of this article. The secretary shall take this action
17 within 130 days of a written request by the tribe that the secretary approve a draft
18 cooperative agreement. At least 60 days prior to determining whether to enter into
19 a cooperative agreement, the secretary shall provide notice, and make available for
20 public review and comment, drafts of ~~his or her~~ the secretary's proposed action and
21 drafts of the findings and determinations that are required by this section. The
22 secretary shall hold a public hearing in the affected area on the proposed action
23 within the time period for taking that action, as specified in this section. Within 10
24 days after the close of the public review and comment period, the agencies shall
25 complete the determinations required by this section and the secretary shall issue a
26 final decision.

27 (d) The findings and determinations of the secretary and relevant agencies made
28 pursuant to this section shall explain material differences between state laws and
29 regulations and the proposed tribal or federal functionally equivalent provisions.
30 The findings and determinations do not need to explain each difference between the
31 state and tribal or federal requirements as long as they identify and evaluate whether
32 the material differences meet the requirements of this article, including, but not
33 limited to, providing at least as much protection for public health and safety and the
34 environment as would the state requirements.

35 (e) Any cooperative agreement executed pursuant to this article shall provide for
36 regulation of the hazardous waste facility through inclusion in the agreement of
37 design, permitting, construction, siting, operation, monitoring, inspection, closure,
38 postclosure, liability, enforcement, and other regulatory provisions applicable to a
39 hazardous waste facility, or which relate to any environmental consequences that
40 may be caused by facility construction or operation, that are functionally equivalent
41 to all of the following:

1 (1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5
2 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section
3 13370) of, Division 7 of the Water Code.

4 (2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with
5 Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of,
6 and Part 6 (commencing with Section 44300) of, Division 26.

7 (3) This chapter, Chapter 6.6 (commencing with Section 25249.5), ~~Chapter 6.8~~
8 ~~(commencing with Section 25300)~~, and Chapter 6.95 (commencing with Section
9 25500), of this division, and Part 2 (commencing with Section 78000) of Division
10 45.

11 (4) All regulations adopted pursuant to the statutes specified in this section.

12 (5) Any other provision of state environmental, public health, and safety laws and
13 regulations germane to the hazardous waste facility proposed by the tribe.

14 (f) The tribal organizational structures or other means of implementing the
15 requirements specified in subdivision (e) are not required to be the same as the state
16 organizational structures or means of implementing its system of regulation.

17 (g) Neither the approval of any cooperative agreement nor amendments to the
18 agreement, nor any determination of sufficiency provided in Section 25198.5, shall
19 constitute a “project” as defined in Section 21065 of the Public Resources Code and
20 shall not be subject to review pursuant to the California Environmental Quality Act
21 (Division 13 (commencing with Section 21000) of the Public Resources Code).

22 (h) Each cooperative agreement shall provide for the incorporation of the
23 standards and requirements germane to the protection of the environment, public
24 health, and safety listed in subdivision (e), as enacted, or as those provisions may
25 be amended after January 1, 1992, or after the effective date of any cooperative
26 agreement, if those standards and requirements meet both of the following
27 requirements:

28 (1) The standards and requirements do not discriminate against a tribe which has
29 executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or
30 not more stringent than, other rules applicable to other similar or analogous facilities
31 or operations outside Indian country.

32 (2) Adequate notice and opportunity for comment on the incorporation of new and
33 amended standards or requirements are provided to the tribe, facility owner, and
34 operator to facilitate any physical or operational changes in the facility in
35 accordance with state law.

36 **Comment.** Section 25198.3(e)(3) is amended to update cross-references in accordance with the
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
38 the Health and Safety Code.

39 This section is also amended to eliminate gendered pronouns.

40 **Health & Safety Code § 25201.9 (amended). Agreement for consultative services**

41 SEC. __. Section 25201.9 of the Health and Safety Code is amended to read:

1 25201.9. (a) Upon the written request of any person, the department may enter
2 into an agreement with that person pursuant to which the department will perform
3 consultative services for the purpose of providing assistance to the person, or any
4 facility owned or operated by the person, in complying with this chapter, ~~Chapter~~
5 ~~6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
6 Division 45, and any regulations adopted pursuant to those provisions. The
7 agreement shall require the person to reimburse the department for its costs of
8 performing the consultative services pursuant to Article 9.2 (commencing with
9 Section 25206.1). The agreement may provide for some or all of the reimbursement
10 to be made in advance of the performance of the consultative services.

11 (b) The consultative services performed pursuant to subdivision (a) shall be over
12 and above the routine functions of the department, and may include, but need not
13 be limited to, onsite inspections, regulation and compliance training, and technical
14 consultation.

15 (c) Any reimbursement received for assistance in complying with this chapter
16 pursuant to this section shall be placed in the Hazardous Waste Control Account for
17 disbursement in accordance with Section 25174. Any reimbursement received for
18 assistance in complying with ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
19 (commencing with Section 78000) of Division 45 shall be deposited in the Toxic
20 Substances Control Account for expenditure in accordance with Section 25173.6.

21 (d) The consultative services shall be provided subject to available staff and
22 resources as determined by the department, and may include, but need not be limited
23 to, onsite inspections, regulation and compliance training, and technical
24 consultation.

25 (e) In scheduling limited onsite inspections, priority shall be given to businesses
26 with fewer than 50 employees.

27 (f)(1) The staff of the department providing consultation pursuant to this section
28 shall not initiate an administrative or civil enforcement action, except as specified
29 in subdivision (g), for violations identified during a limited onsite inspection
30 conducted pursuant to an agreement at a facility which does not require a permit
31 pursuant to the federal act.

32 (2) The staff of the department shall require the owner or operator to correct any
33 identified deficiencies and violations in accordance with a schedule for compliance
34 or correction issued by the department.

35 (g) If class I violations, as defined in regulations adopted by the department, are
36 identified during a limited onsite inspection, or an owner or operator refuses or fails
37 to correct any deficiencies or violations within the timeframe specified in the
38 schedule for compliance or correction issued by the department pursuant to
39 subdivision (f), the department may undertake any further inspection, investigation,
40 or enforcement action authorized by law.

41 (h) The failure of the department to discover any particular deficiencies or
42 violations during a limited onsite inspection shall not preclude the department, or

1 any other agency, from undertaking a subsequent enforcement action to address any
2 deficiencies or violations should they be discovered at a later time.

3 (i) Nothing in this section is intended to limit the authority of the department to
4 refer criminal violations to the Attorney General, a district attorney, a county
5 counsel, or a city attorney.

6 (j) Other than as expressly provided in this section, nothing in this section is
7 intended to limit or restrict the authority of the department under any other provision
8 of this division.

9 (k) This section shall become operative only if the department adopts regulations
10 defining “class I violations.”

11 **Comment.** Section 25201.9 is amended to update cross-references in accordance with the
12 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
13 the Health and Safety Code.

14 **Health & Safety Code § 25205.23 (amended). Settlement of fee disputes**

15 SEC. __. Section 25205.23 of the Health and Safety Code is amended to read:

16 25205.23. Notwithstanding Chapter 3 (commencing with Section 43151) of Part
17 22 of Division 2 of the Revenue and Taxation Code, at the request of any party
18 contesting any fee imposed pursuant to this chapter or ~~Chapter 6.8 (commencing~~
19 ~~with Section 25300)~~, Part 2 (commencing with Section 78000) of Division 45, the
20 department may hold an informal conference to attempt to settle the dispute. Upon
21 the payment of any sum agreed upon between the contesting party and the
22 department in settlement of the disputed fee liability, the liable person shall be
23 released from any further liability for payment of the disputed fee.

24 **Comment.** Section 25205.23 is amended to update cross-references in accordance with the
25 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
26 the Health and Safety Code.

27 **Health & Safety Code § 25207.12 (amended). Collection of banned, unregistered, or**
28 **outdated agricultural wastes**

29 SEC. __. Section 25207.12 of the Health and Safety Code is amended to read:

30 25207.12. (a) Any eligible participant who submits banned, unregistered, or
31 outdated agricultural wastes for collection in a program established pursuant to this
32 article is exempt from the fees and reimbursements required by Sections 25174.1,
33 25205.2, 25205.5, and 25205.7, with regard to the wastes submitted for collection.

34 (b) An eligible participant who submits banned, unregistered, or outdated
35 agricultural wastes for collection is exempt from the hazardous waste facilities
36 permit requirements of Section 25201 with regard to the management of the wastes
37 submitted for collection.

38 (c) A county operating a collection program in compliance with this article shall
39 not be held liable in any cost recovery action brought pursuant to Section ~~25360~~
40 79650 for any hazardous waste which has been properly handled and transported to
41 an authorized hazardous waste treatment or disposal facility, in compliance with this
42 chapter, at a location other than that of the collection program.

1 **Comment.** Section 25207.12 is amended to update cross-references in accordance with the
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
3 the Health and Safety Code.

4 **Health & Safety Code § 25208.11 (amended). Construction of article**

5 SEC. __. Section 25208.11 of the Health and Safety Code is amended to read:
6 25208.11. This article shall not be construed to limit or abridge the powers and
7 duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8~~
8 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
9 Division 45 or to the state board or any regional board pursuant to Division 7
10 (commencing with Section 13000) of the Water Code.

11 **Comment.** Section 25208.11 is amended to update cross-references in accordance with the
12 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
13 the Health and Safety Code.

14 **Health & Safety Code § 25215.1 (amended). Definitions**

15 SEC. __. Section 25215.1 of the Health and Safety Code is amended to read:
16 25215.1. For purposes of this article, the following definitions shall apply:
17 (a) “Board” means the California Department of Tax and Fee Administration.
18 (b) “Business” means any person, as defined in subdivision (k), except a natural
19 person or a city, county, city and county, district, commission, the state, or any
20 department, agency, or political subdivision of any of those, or an interstate body
21 or, to the extent permitted by law, the United States and its agencies and
22 instrumentalities.
23 (c) “California battery fee” means the fee imposed pursuant to Section 25215.25.
24 (d) “Dealer” means a person who engages in the retail sale of replacement lead-
25 acid batteries directly to persons in California. “Dealer” includes a manufacturer of
26 a new lead-acid battery that sells at retail that lead-acid battery directly to a person
27 through any means, including, but not limited to, a transaction conducted through a
28 sales outlet, catalog, or internet website or any other similar electronic means.
29 (e) “Importer” means a person described in paragraph (2) of subdivision (h).
30 (f) “Lead-acid battery” means a battery weighing over five kilograms that is
31 primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid,
32 solid, or gel state, with a capacity of six volts or more that is used for any of the
33 following purposes:
34 (1) As a starting battery that is designed to deliver a high burst of energy to an
35 internal combustion engine until it starts.
36 (2) As a motive power battery that is designed to provide the source of power for
37 propulsion or operation of a vehicle, including a watercraft.
38 (3) As a stationary storage or standby battery that is designed to be used in systems
39 where the battery acts as either electrical storage for electricity generation
40 equipment or a source of emergency power, or otherwise serves as a backup in case
41 of failure or interruption in the flow of power from the primary source.

1 (4) As a source of auxiliary power to support the electrical systems in a vehicle,
2 as defined in Section 670 of the Vehicle Code, including an implement of
3 husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft.

4 (g)(1) “Lead-acid battery recycling facility” means a site at which lead-acid
5 batteries are or have been disassembled for the purpose of making components
6 available for reclamation to produce elemental lead or lead alloys or at which lead-
7 acid batteries or their components, or both, are or have been reclaimed to produce
8 elemental lead or lead alloys.

9 (2) “Lead-acid battery recycling facility” does not include a facility designed and
10 operated for the primary purpose of recovering lead from materials other than used
11 lead-acid batteries or a facility that incidentally processes lead-acid batteries. The
12 processing of lead previously reclaimed from a lead-acid battery at a separate
13 facility or the incidental processing of lead-acid batteries shall not be sufficient to
14 establish that a facility is a lead-acid battery recycling facility.

15 (h) “Manufacturer” means either of the following:

16 (1) The person who manufactures the lead-acid battery and who sells, offers for
17 sale, or distributes the lead-acid battery in the state.

18 (2)(A) If there is no person described in paragraph (1) that is subject to the
19 jurisdiction of the state, the manufacturer is the person who imports the lead-acid
20 battery into the state for sale or distribution.

21 (B) For purposes of this article, a person is subject to the jurisdiction of the state
22 with respect to a lead-acid battery if the person is engaged in business in this state.
23 For purposes of this subparagraph, a person shall be considered to be engaged in
24 business in this state if the person is a “retailer engaged in business in this state,” as
25 defined in subdivision (c) of Section 6203 of the Revenue and Taxation Code, with
26 respect to that lead-acid battery, or if the person has a substantial nexus with this
27 state for purposes of the commerce clause of the United States Constitution.

28 (i) “Manufacturer battery fee” means the fee imposed pursuant to Section
29 25215.35.

30 (j) “Owner or operator” has the same meaning given in Section 9601(20) of Title
31 42 of the United States Code and any person that previously met that definition or
32 is the legal successor to a person that meets the definition or previously met the
33 definition.

34 (k) “Person” means an individual, trust, firm, joint stock company, business
35 concern, corporation, including, but not limited to, a government corporation,
36 partnership, limited liability company, or association. “Person” also includes any
37 city, county, city and county, district, commission, the state, or any department,
38 agency, or political subdivision of any of those, interstate body, and the United
39 States and its agencies and instrumentalities to the extent permitted by law.

40 (l) “Remedial action” has the same meaning as in Section ~~25322~~. 78125.

41 (m) “Removal” has the same meaning as in Section ~~25323~~. 78135.

42 (n) “Replacement lead-acid battery” means a new lead-acid battery that is sold at
43 retail subsequent to the original sale or lease of the equipment or vehicle in which

1 the lead-acid battery is intended to be used. “Replacement lead-acid battery” does
2 not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-
3 acid battery.

4 (o) “Response action” has the same meaning as in Section ~~25323.3~~. 78140.

5 (p)(1) A “retail sale” or a “sale at retail” has the same meaning as defined in
6 Section 6007 of the Revenue and Taxation Code.

7 (2) The following shall not be considered a “retail sale” or a “sale at retail” for
8 purposes of this article:

9 (A) The sale of a battery for which a California battery fee has previously been
10 paid.

11 (B) The sale of a replacement lead-acid battery that is temporarily stored or used
12 in California for the sole purpose of preparing the replacement lead-acid battery for
13 use thereafter solely outside of the state and that is subsequently transported outside
14 the state and thereafter used solely outside of the state.

15 (C) The sale of a battery for incorporation into new equipment for subsequent
16 resale.

17 (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle
18 service contract described under Section 12800 of the Insurance Code.

19 (E) The sale of any battery intended for use with or contained within a medical
20 device, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.
21 321(h)), as that definition may be amended.

22 (q) “Used lead-acid battery” means a lead-acid battery no longer fully capable of
23 providing the power for which it was designed or that a person no longer wants for
24 any other reason.

25 (r) “Wholesaler” means a person who purchases a lead-acid battery from a
26 manufacturer for the purpose of selling the lead-acid battery to a dealer, high-
27 volume customer, or person for incorporation into new equipment for resale.

28 **Comment.** Subdivisions (l), (m), and (o) of Section 25215.1 are amended to update cross-
29 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
30 Section 25300) of Division 20 of the Health and Safety Code.

31 **Health & Safety Code § 25215.56 (amended). Manufacturer battery fees**

32 SEC. __. Section 25215.56 of the Health and Safety Code is amended to read:

33 25215.56. (a) Any manufacturer battery fees remitted pursuant to this article shall,
34 subject to subdivision (b) of Section 25215.3, be credited to the account of the
35 manufacturer remitting those fees to the California Department of Tax and Fee
36 Administration and shall be credited against amounts owed by the manufacturer to
37 the state pursuant to a judgment or determination of liability under ~~Chapter 6.8~~
38 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
39 Division 45 or any other law for removal, remediation, or other response costs
40 relating to a release of a hazardous substance from a lead-acid battery recycling
41 facility. A manufacturer shall not seek more than one credit for the same fee amount.

1 This subdivision does not apply to any manufacturer who is also an owner or
2 operator of a lead-acid battery recycling facility in California.

3 (b) The amount paid by a manufacturer for a manufacturer battery fee shall be
4 considered to reduce the manufacturer's share of liability in the allocation or
5 apportionment of costs among potentially responsible parties in a contribution
6 action brought by a private party related to a release of hazardous substances from
7 a lead-acid battery recycling facility. This subdivision does not apply to any
8 manufacturer who is also an owner or operator or a former owner or operator of a
9 lead-acid battery recycling facility in California where a release occurred.

10 (c) This article does not create a private cause of action. Nothing in this article
11 shall be construed to affect, expand, alter, or limit any requirements, duties, rights,
12 or remedies under other law, or limit the state or any other party from bringing any
13 cause of action that may exist under any law.

14 **Comment.** Section 25215.56 is amended to update cross-references in accordance with the
15 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
16 the Health and Safety Code.

17 **Health & Safety Code § 25220 (amended). Recorded land use restriction**

18 SEC. __. Section 25220 of the Health and Safety Code is amended to read:

19 25220. (a) The department shall notify the planning and building department of
20 each city, county, or regional council of governments of any recorded land use
21 restriction imposed within the jurisdiction of the local agency pursuant to the former
22 Section 25229, 25230, or 25398.7, as those sections read prior to the effective date
23 of this article, or Section 25202.5, 25221, or ~~25355.5~~. 79055. Upon receiving this
24 notification, the planning and building department shall do both of the following:

25 (1) File all recorded land use restrictions in the property files of the city, county,
26 or regional council of government.

27 (2) Require that a person requesting a land use that differs from those filed land
28 use restrictions on the property apply to the department for a variance or a removal
29 of the land use restrictions pursuant to Section 25223 or 25224.

30 (b) A planning and building department of a city, county, or regional council of
31 governments may assess a property owner a reasonable fee to cover the costs of
32 taking the actions required by subdivision (a). For purposes of this subdivision,
33 "property owner" does not include a person who holds evidence of ownership solely
34 to protect a security interest in the property, unless the person participates, or has a
35 legal right to participate, in the management of the property.

36 (c) The department shall maintain a list of all recorded land use restrictions,
37 including deed restrictions, recorded pursuant to the former Sections 25229, 25230,
38 and 25398.7, as those sections read prior to the effective date of this article, and
39 Sections 25202.5, 25221, and ~~25355.5~~. 69055. The list shall, at a minimum, provide
40 the street address, or, if a street address is not available, an equivalent description
41 of location for a rural location or the latitude and longitude of each property. The
42 department shall update the list as new deed restrictions are recorded. The

1 department shall make the list available to the public, upon request, and shall make
2 the list available on the department's ~~Internet Web site~~. internet website. The list
3 shall also be incorporated into the list of sites compiled pursuant to Section 65962.5
4 of the Government Code.

5 **Comment.** Section 25220 is amended to update cross-references in accordance with the
6 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
7 the Health and Safety Code.

8 This section is also amended to make a technical change.

9 **Health & Safety Code § 25224 (amended). Application for removal of land use restriction**

10 SEC. __. Section 25224 of the Health and Safety Code is amended to read:

11 25224. (a) A person may apply to the department to remove a land use restriction
12 imposed by the department on the grounds that the waste no longer creates a
13 significant existing or potential hazard to present or future public health or safety.
14 A person shall not make a subsequent application pursuant to this section within 12
15 months of a final decision on an application by the department. A person applying
16 to the department pursuant to this section shall pay the department all costs incurred
17 by the department relating to the application. An application shall contain sufficient
18 evidence for the department to make a finding upon any or all of the following
19 grounds:

20 (1) The hazardous waste that caused the land to be restricted or designated has
21 since been removed or altered in a manner that precludes any significant existing or
22 potential hazard to present or future public health.

23 (2) New scientific evidence is available since the restriction or designation of the
24 land or the making of any previous application pursuant to this section, concerning
25 either of the following:

26 (A) The nature of the hazardous waste that caused the land to be designated.

27 (B) The geology or other physical environmental characteristics of the designated
28 land.

29 (b) An aggrieved person may appeal a determination of the department made
30 pursuant to subdivision (a) by submitting a request for a hearing to the director. The
31 request shall be mailed by certified mail not later than 30 days after the date of the
32 mailing of the department's decision on the application.

33 (c) Upon receipt of a timely appeal, the director shall give notice of a hearing
34 pursuant to the procedures set forth in this article.

35 (d) The department shall record within 10 days any new and final determination
36 made by the department pursuant to this section as provided in Section 25225.

37 (e) A determination made by the department, after a hearing held pursuant to this
38 section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil
39 Procedure and shall be upheld if the court finds that it is supported by substantial
40 evidence.

41 (f) Whenever there is a final determination pursuant to this section removing a
42 land use restriction, the easement, covenant, restriction, or servitude imposed on the

1 land created by Section 25221 or ~~25355.5~~ 79055 or the former Section 25222.1 or
2 25230 shall automatically terminate. The department shall record or cause to be
3 recorded within 10 days a termination of the easement, covenant, restriction, or
4 servitude, which shall particularly describe the real property subject to the easement,
5 covenant, restriction, or servitude and shall be indexed by the recorder in the grantee
6 index in the name of the record title owner of the real property subject to the
7 easement, covenant, restriction, or servitude and in the grantor index in the name of
8 the department.

9 **Comment.** Section 25224(f) is amended to update cross-references in accordance with the
10 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
11 the Health and Safety Code.

12 **Health & Safety Code § 25225 (amended). Recordation of final written instrument**

13 SEC. ___. Section 25225 of the Health and Safety Code is amended to read:

14 25225. The department shall record within 10 days any final written instrument
15 made pursuant to Section 25221 or 25224 with the county recorder of the county in
16 which the property is located. Any recordation made pursuant to this article or
17 Section 25202.5 or ~~25355.5~~ 79055 shall include the street address, assessor's parcel
18 number, or legal description of each parcel affected and the name of the owner
19 thereof, and the recordation shall be recorded by the recorder in the grantor index in
20 the name of the record title owner of the real property and in the grantee index in
21 the name of the department.

22 **Comment.** Section 25225 is amended to update cross-references in accordance with the
23 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
24 the Health and Safety Code.

25 **Health & Safety Code § 25226 (amended). Assessment of land subject to land use restriction**

26 SEC. ___. Section 25226 of the Health and Safety Code is amended to read:

27 25226. An assessor shall consider a restrictive easement, covenant, restriction, or
28 servitude adopted pursuant to the former Section 25230, as that section read prior
29 to the effective date of this article, or Section 25202.5, 25221, or ~~25355.5~~ 79055 as
30 an enforceable easement, covenant, restriction, or servitude subject to Section 402.1
31 of the Revenue and Taxation Code and shall appropriately reassess the land, those
32 of which has been restricted, at the lien date following the adoption or imposition
33 of the easement, covenant, restriction, or servitude.

34 **Comment.** Section 25226 is amended to update cross-references in accordance with the
35 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
36 the Health and Safety Code.

37 **Health & Safety Code § 25227 (amended). Prohibited activities on land subject to land use**
38 **restriction**

39 SEC. ___. Section 25227 of the Health and Safety Code is amended to read:

40 25227. A person shall not engage in any of the following on land that is subject
41 to a recorded land use restriction pursuant to former Section 25229, 25230, or

1 25398.7, as those sections read on January 1, 2012, or pursuant to Section 25202.5,
2 25221, or ~~25355.5~~, 79055, unless the person obtains a specific approval in writing
3 from the department for the land use on the land in question:

4 (a) A new use of the land, other than the use, modification, or expansion of an
5 existing industrial or manufacturing facility or complex on land that is owned by, or
6 held for the beneficial use of, the facility or complex on or before January 1, 1981.

7 (b) Subdivision of the land, as that term is used in Division 2 (commencing with
8 Section 66410) of Title 7 of the Government Code, except that this subdivision does
9 not prevent the division of a parcel of land so as to divide that portion of the parcel
10 that contains hazardous materials, as defined in subdivision (d) of Section 25260,
11 from other portions of that parcel.

12 (c) Construction or placement of a building or structure on the land that is intended
13 for use as any of the following, or the new use of an existing structure for the purpose
14 of serving as any of the following:

15 (1)(A) Except as provided in subparagraph (B), a residence, including a
16 mobilehome or factory built housing constructed or installed for use as permanently
17 occupied human habitation.

18 (B) The addition of rooms or living space to an existing single-family dwelling or
19 other minor repairs or improvements to residential property that do not change the
20 use of the property, increase the population density, or impair the effectiveness of a
21 response action, shall not constitute construction or placement of a building or
22 structure for the purposes of subparagraph (A).

23 (2) A hospital for humans.

24 (3) A school for persons under 21 years of age.

25 (4) A day care center for children.

26 (5) A permanently occupied human habitation, other than those used for industrial
27 purposes.

28 **Comment.** Section 25227 is amended to update cross-references in accordance with the
29 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
30 the Health and Safety Code.

31 **Health & Safety Code § 25242 (amended). Unauthorized disposal of hazardous waste**

32 SEC. __. Section 25242 of the Health and Safety Code is amended to read:

33 25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee,
34 knows or has probable cause to believe that a disposal of hazardous waste which is
35 not authorized pursuant to this chapter has occurred on, under, or into the land which
36 the city, county, or state agency owns or leases shall notify the department. Upon
37 receiving that notice, the department shall determine if there has been a disposal of
38 hazardous waste which is not authorized pursuant to this chapter.

39 (b) If the department determines that there has been a disposal of hazardous waste
40 which is not authorized pursuant to this chapter, the department shall do all of the
41 following:

1 (1) Conduct, or arrange for the conducting of, tests to determine the general
2 chemical and mineral composition of the hazardous waste.

3 (2) Require the city, county, or state agency which submitted the notice pursuant
4 to subdivision (a) to prepare a hazardous waste management plan specifying those
5 removal or remedial actions, as defined in Sections ~~25322 and 25323~~, 78125 and
6 78135, which are needed to be taken concerning the hazardous waste. The
7 hazardous waste management plan shall provide for the protection of human health
8 and the environment and minimize or eliminate the escape of hazardous waste
9 constituents, leachate, contaminated rainfall, and waste decomposition products into
10 ground and surface waters and into the atmosphere.

11 (3) Send notice of the department's findings made pursuant to paragraph (1) to
12 the county in which the land is located, the city, if any, in which the land is located,
13 the owner of the property, and residents living within 2,000 feet of the property line
14 of the land on which the hazardous wastes were disposed. The department shall also
15 post signs in the vicinity of the land which contain this information and are visible
16 to the public. The department may also provide this notice to other persons, or post
17 these signs in any other area, to protect the public health and safety or to provide the
18 maximum opportunity for comment from the potentially affected public.

19 (4) Conduct public hearings on the proposed hazardous waste management plan
20 during those times and at those places which are convenient to the affected public.
21 These hearings shall be conducted even if the hazardous waste management plan
22 provides that no removal or remedial actions will be taken. The department shall
23 publish notice of these hearings in newspapers of general circulation, as defined in
24 Section 6000 of the Government Code, and shall use all other reasonable means to
25 publicize these hearings.

26 (5) Take all actions required by Section ~~25358.7~~ 78930 concerning any proposed
27 removal or remedial actions.

28 (6) Take any other actions authorized by this chapter or ~~Chapter 6.8 (commencing~~
29 ~~with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45
30 to carry out the legislative intent specified in Section 25242.1.

31 (c) The city, county, or state agency which is required to prepare a hazardous
32 waste management plan pursuant to paragraph (2) of subdivision (b) shall submit
33 the proposed hazardous waste management plan for approval to the department or
34 a California Regional Water Quality Control Board, whichever the department
35 determines is appropriate. A city or state agency shall submit the plan to the county
36 in which the land is located, and a county or state agency shall submit the plan to
37 the city, if any, in which the land is located, for comments and recommendations.
38 The city, county, or state agency shall also consider whether to incorporate any
39 changes in the plan which are recommended by the county, city, and the public.

40 **Comment.** Section 25242(b)(2), (b)(5), and (b)(6) are amended to update cross-references in
41 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
42 25300) of Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 25250.54 (amended). Extension of deadline**

2 SEC. __. Section 25250.54 of the Health and Safety Code is amended to read:

3 25250.54. (a)(1) On and after January 1, 2019, a manufacturer may apply to the
4 department for a one-year, two-year, or three-year extension of the January 1, 2025,
5 deadline established in Section 25250.53, except as provided in subdivision (h).

6 (2) An extension application submitted pursuant to this section shall be submitted
7 based on vehicle model, class, platform, or other vehicle-based category, and not on
8 the basis of the brake friction material formulation.

9 (3) The application shall be accompanied by documentation that will allow the
10 advisory committee to make a recommendation pursuant to subdivisions (e) and (f).

11 (4) The documentation shall include a scientifically sound quantitative estimate
12 of the quantity of copper that would be emitted if the extension is granted, including
13 a description of the assumptions used in arriving at that estimate.

14 (b) No more than 30 days after receipt of an application for an extension pursuant
15 to subdivision (a), the department shall do all of the following:

16 (1) Post a notice of receipt on the department's ~~Internet Web site~~ internet website
17 that includes the vehicle model, class, platform, or other vehicle-based category,
18 whether the brake friction material is intended for use in original equipment or
19 replacement parts, and the quantity of copper that would be emitted if the extension
20 is granted.

21 (2) Consult with the board and the State Air Resources Board.

22 (3) Solicit comment from the public and from scientific and vehicle engineering
23 experts on the availability of generally affordable compliant brake friction materials,
24 their safety and performance characteristics, and the feasibility of brake pad copper
25 emissions reduction through means other than friction material reformulation.

26 (c)(1) In consultation with the board, the department shall determine if sufficient
27 documentation has been presented upon which to base a decision. If the department
28 determines that further documentation is needed, it shall deliver a detailed request
29 for further documentation to the applicant.

30 (2) Not later than 30 days after receipt of the application for an extension pursuant
31 to subdivision (a), the department shall forward the application to the advisory
32 committee for the purpose of the advisory committee making a recommendation
33 pursuant to subdivisions (e) and (f).

34 (d)(1) In considering any application for an extension, the advisory committee
35 shall consider all of the documentation supplied by the applicant pursuant to
36 subdivision (a).

37 (2) The advisory committee may request, no later than 75 days after receipt of the
38 application from the department pursuant to subdivision (c), further documentation
39 from the applicant.

40 (3) The advisory committee shall hold at least one public hearing at which it shall
41 accept and consider comments from the public on each category of application. The
42 advisory committee meetings shall be open to the public and are subject to the

1 Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of
2 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

3 (e)(1) The advisory committee shall recommend to the secretary that the extension
4 be approved if the advisory committee determines that there are no brake friction
5 materials that are safe and available for individual or multiple vehicle models,
6 classes, platforms, or other vehicle-based categories identified in the application.

7 (2) The advisory committee shall recommend to the secretary that the extension
8 not be approved if the advisory committee determines that alternative brake friction
9 materials are safe and available for individual or multiple vehicle models, classes,
10 platforms, or other vehicle-based categories identified in the application.

11 (3) For purposes of this section, “safe and available” shall mean all of the
12 following:

13 (A) The brake system for which the alternative brake friction material is
14 manufactured meets applicable federal safety standards, or if no federal standard
15 exists, a widely accepted safety standard.

16 (B) Acceptable alternative brake friction materials are commercially available for
17 the individual or multiple vehicles, classes, platforms, or vehicle-based categories
18 identified in the application.

19 (C) Adequate industry testing and production capacity exists to supply the
20 alternative brake friction materials for use on the individual or multiple vehicles,
21 classes, platforms, or vehicle-based categories identified in the application.

22 (D) The alternative brake friction material is technically feasible for use on the
23 individual or multiple vehicles, classes, platforms, or vehicle-based categories
24 identified in the application.

25 (E) The alternative brake friction materials meet customer performance
26 expectations, including noise, wear, vibration, and durability for the individual or
27 multiple vehicles, classes, platforms, or vehicle-based categories identified in the
28 application.

29 (F) The alternative acceptable brake friction material is economically feasible
30 with respect to the industry and the cost to the consumer for the individual or
31 multiple vehicles, classes, platforms, or vehicle-based categories identified in the
32 application.

33 (4) The advisory committee shall provide relevant data to the department and the
34 board concerning the potential impacts of the extension on California watersheds
35 for purposes of the report required pursuant to Section 25250.65.

36 (f)(1) No sooner than 60 days and no later than 120 days after the department
37 solicits comments pursuant to paragraph (3) of subdivision (b), the advisory
38 committee shall make a recommendation to the secretary in accordance with
39 subdivisions (d) and (e) as to whether the application for extension should be
40 approved or not approved.

41 (2) The recommendation of the advisory committee that the secretary approve or
42 not approve the application for extension shall be accompanied by documentation
43 of the basis for the recommendation.

1 (g)(1) The secretary shall make available the recommendation of the advisory
2 committee and the accompanying documentation for public review and comment
3 for 60 days following receipt of the recommendation from the advisory committee.

4 (2) The secretary shall consider public comments on the advisory committee's
5 recommendation and issue a final decision on the application for extension no later
6 than 45 days after the conclusion of the 60-day comment period.

7 (3) In making the determination whether to approve or disapprove the extension,
8 the secretary shall rely upon the recommendations made by the advisory committee
9 pursuant to subdivision (f).

10 (4) If the secretary does not follow the recommendation of the advisory committee
11 made pursuant to subdivision (f), ~~he or she~~ the secretary shall explain in writing the
12 basis of ~~his or her~~ the secretary's decision.

13 (h)(1) On or before December 31, 2029, a manufacturer with an approved
14 extension of the January 1, 2025, deadline established in Section 25250.53, may
15 reapply to the department for additional two-year extensions from the deadline in
16 accordance with a schedule that may be established by the department.

17 (2) Except as provided in subdivision (i), a manufacturer may not apply on or after
18 January 1, 2030, for an extension of the January 1, 2025, deadline established in
19 Section 25250.53.

20 (3) The department shall comply with all of the requirements of this section when
21 granting an additional extension of the January 1, 2025, deadline pursuant to this
22 subdivision.

23 (i)(1) On and after January 1, 2030, a manufacturer of vehicle brake friction
24 materials to be used on heavy-duty vehicles with an approved extension of the
25 January 1, 2025, deadline established in Section 25250.53, may reapply to the
26 department for additional two-year extensions from the deadline established in
27 Section 25250.53, that results in an extension of that deadline to a date on and after
28 January 1, 2032.

29 (2) The department shall comply with all of the requirements of this section when
30 granting an additional extension of the January 1, 2025, deadline pursuant to this
31 subdivision.

32 (j) The department shall assess a fee for each application for an extension
33 sufficient to cover actual costs incurred in implementing this section. The
34 department may expend the fees collected pursuant to this subdivision, upon
35 appropriation by the Legislature, for reimbursement for the costs incurred in
36 implementing this section.

37 (k) When granting an extension pursuant to this section, the department, board,
38 advisory committee, and secretary shall comply with the requirements of ~~Section~~
39 ~~25358.2~~, Article 5 (commencing with Section 78480) of Chapter 3 of Part 2 of
40 Division 45, to ensure the protection of trade secrets, as defined in Section ~~25358.2~~
41 78480.

1 **Comment.** Section 25250.54(k) is amended to update cross-references in accordance with the
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
3 the Health and Safety Code.

4 This section is also amended to eliminate gendered pronouns and make a technical change.

5 **Health & Safety Code § 25260 (amended). Definitions**

6 SEC. __. Section 25260 of the Health and Safety Code is amended to read:

7 25260. The definitions set forth in this section shall govern the interpretation of
8 this chapter. Unless the context requires otherwise and except as provided in this
9 chapter, the definitions contained in ~~Article 2 (commencing with Section 25310) of~~
10 ~~Chapter 6.8~~ Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of
11 Division 45 shall apply to the terms used in this chapter.

12 (a) “Administering agency” means the agency designated by the committee
13 pursuant to Section 25262.

14 (b) “Advisory team” means the team convened by the committee pursuant to
15 Section 25263.

16 (c) “Agency” means any city, county, district, commission, the state, or any
17 department, agency, or political subdivision thereof, that has jurisdiction under a
18 state or local law, ordinance, or regulation to supervise, oversee, or approve a site
19 investigation and a remedial action at a hazardous materials release site.

20 (d) “Hazardous material” means a substance or waste that, because of its physical,
21 chemical, or other characteristics, may pose a risk of endangering human health or
22 safety or of degrading the environment. “Hazardous material” includes, but is not
23 limited to, all of the following:

24 (1) A hazardous substance, as defined in Section 25281 or ~~25316~~. subdivision (a)
25 of Section 78075.

26 (2) A hazardous waste, as defined in Section 25117.

27 (3) A waste, as defined in Section 470 or as defined in Section 13050 of the Water
28 Code.

29 (e) “Hazardous materials release site” or “site” means any area, location, or
30 facility where a hazardous material has been released or threatens to be released into
31 the environment. “Hazardous materials release site” does not include a site subject
32 to a response and cleanup operation under Chapter 7.4 (commencing with Section
33 8670.1) of Division 1 of Title 2 of the Government Code or a corrective action under
34 Part 6 (commencing with Section 46000) of Division 30 of the Public Resources
35 Code.

36 (f) “Committee” means the Site Designation Committee created by Section
37 25261.

38 (g) “Remedial action” means actions required by state or local laws, ordinances,
39 or regulations that are necessary to prevent, minimize, or mitigate damage that may
40 otherwise result from a release or threatened release of a hazardous material, and
41 that are consistent with a permanent remedy for a hazardous materials release.
42 “Remedial action” includes, but is not limited to, the cleanup or removal of released
43 hazardous materials from the environment, monitoring, testing and analysis of the

1 site, site operation and maintenance, and the placing of conditions, limitations, or
2 restrictions on the uses of the site after remedial action has been completed.

3 (h) “Responsible party” means any person, except for an independent contractor,
4 who agrees to carry out a site investigation and remedial action at a hazardous
5 materials release site for one of the following reasons:

6 (1) The person is liable under a state or local law, ordinance, or regulation for the
7 site investigation or remedial action.

8 (2) The site investigation or remedial action is required by a state or local law,
9 ordinance, or regulation because of a hazardous materials release.

10 (i) “Site investigation” means those actions that are necessary to determine the
11 full extent of a release or threatened release of a hazardous material at a hazardous
12 materials release site, identify the public health and safety or environmental threat
13 posed by the release or threatened release, collect data on possible remedies, and
14 otherwise evaluate the hazardous materials release site for the purpose of
15 implementing remedial action.

16 **Comment.** Section 25260 is amended to update cross-references in accordance with the
17 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
18 the Health and Safety Code.

19 **Health & Safety Code § 25262 (amended). Designation of administering agency for site**

20 SEC. __. Section 25262 of the Health and Safety Code is amended to read:

21 25262. (a) A responsible party for a hazardous materials release site may request
22 the committee at any time to designate an administering agency to oversee a site
23 investigation and remedial action at the site. The committee shall designate an
24 administering agency as responsible for the site within 45 days of the date the
25 request is received. A request to designate an administering agency may be denied
26 only if the committee makes one of the following findings:

27 (1) No single agency in state or local government has the expertise needed to
28 adequately oversee a site investigation and remedial action at the site.

29 (2) Designating an administering agency will have the effect of reversing a
30 regulatory or enforcement action initiated by an agency that has jurisdiction over
31 the site, a facility on the site, or an activity at the site.

32 (3) Designating an administering agency will prevent a regulatory or enforcement
33 action required by federal law or regulations.

34 (4) The administering agency and the responsible party are local agencies formed,
35 in whole or in part, by the same political subdivision.

36 (b) A responsible party who requests the designation of an administering agency
37 for a hazardous materials release site shall provide the committee with a brief
38 description of the site, an analysis of the known or suspected nature of the release
39 or threatened release that is the subject of required site investigation or remedial
40 action, a description of the type of facility from which the release occurred or the
41 type of activity that caused the release, a specification of the regulatory or
42 enforcement actions that have been taken, or are pending, with respect to the release,

1 and a statement of which agency the responsible party believes should be designated
2 as administering agency for the site.

3 (c)(1) The committee shall take all of the following factors into account in
4 determining which agency to designate as administering agency for a site:

5 (A) The type of release that is the subject of site investigation and remedial action.

6 (B) The nature of the threat that the release poses to human health and safety or
7 to the environment.

8 (C) The source of the release, the type of facility or activity from which the release
9 occurred, the regulatory programs that govern the facility or activity involved, and
10 the agency or agencies that administer those regulatory programs.

11 (D) The regulatory history of the site, the types of regulatory actions or
12 enforcement actions that have been taken with respect to the site or the facility or
13 activity from which the release occurred, and the experience and involvement that
14 various agencies have had with the site.

15 (E) The capabilities and expertise of the agencies that are candidates for
16 designation as the administering agency for the site and the degree to which those
17 capabilities and that expertise are applicable to the type of release at the site, the
18 nature of the threat that the release poses to health and safety or the environment
19 and the probable remedial measures that will be required.

20 (2) After weighing the factors described in paragraph (1) as they apply to the site,
21 the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D)
22 as guidelines for designating the administering agency. If more than one of the
23 criteria apply to the site, the committee shall use its best judgment, taking into
24 account the known facts concerning the hazardous materials release at the site and
25 its regulatory history, in determining which agency may best serve as the
26 administering agency. The criteria are as follows:

27 (A) The administering agency shall be the Department of Toxic Substances
28 Control if one of the following applies:

29 (i) The department has issued an order, or otherwise initiated action, with respect
30 to the release at the site pursuant to ~~Section 25355, 25355.5, or 25358.3.~~ Article 1
31 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with
32 Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79055,
33 79060, or 79065.

34 (ii) The department has issued an order for corrective action at the site pursuant
35 to Section 25187.

36 (iii) The source of the release is a facility or hazardous waste management unit or
37 an activity that is, or was, regulated by the department pursuant to Chapter 6.5
38 (commencing with Section 25100).

39 (iv) The department is conducting, or has conducted, oversight of the site
40 investigation and remedial action at the site at the request of the responsible party.

41 (B) The administering agency shall be the California regional water quality
42 control board for the region in which the site is located, if one of the following
43 applies:

1 (i) The California regional water quality control board has issued a cease and
2 desist order pursuant to Section 13301, or a cleanup and abatement order pursuant
3 to Section 13304 of the Water Code in connection with the release at the site.

4 (ii) The source of the release is a facility or an activity that is subject to waste
5 discharge requirements issued by the California regional water quality control board
6 pursuant to Section 13263 of the Water Code or that is regulated by the California
7 regional water quality control board pursuant to Article 5.6 (commencing with
8 Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter
9 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

10 (iii) The California regional water quality control board has jurisdiction over the
11 site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the
12 Water Code.

13 (C) The administering agency shall be the Department of Fish and ~~Game~~ Wildlife
14 if the release has polluted or contaminated the waters of the state and the department
15 has taken action against the responsible party pursuant to Section 2014 or 12015 of,
16 or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6
17 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive
18 Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C.
19 Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33
20 U.S.C. Sec. 1321).

21 (D) The administering agency shall be a local agency if any one of the following
22 circumstances is applicable:

23 (i) The source of the release at the site is an underground storage tank, as defined
24 in subdivision (y) of Section 25281, the local agency is the agency described in
25 subdivision (i) of Section 25281, and there is no evidence of any extensive
26 groundwater contamination at the site.

27 (ii) The local agency has accepted responsibility for overseeing the site
28 investigation or remedial action at the site and a state agency is not involved.

29 (iii) The local agency has agreed to oversee the site investigation or remedial
30 action at the site and is certified, or has been approved, by a state agency to conduct
31 that oversight.

32 (d) A responsible party for a hazardous materials release site may request the
33 designation of an administering agency for the site pursuant to this section only
34 once. The action of the committee on the request is a final action and is not subject
35 to further administrative or judicial review.

36 **Comment.** Section 25262(c)(2)(A)(i) is amended to update cross-references in accordance with
37 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
38 of the Health and Safety Code.

39 This section is also amended to correct a reference to the “Department of Fish and Game” to
40 refer instead to the “Department of Fish and Wildlife.” See Fish and Game Code § 700.

41 **Health & Safety Code § 25269.2 (amended). Recovery of oversight costs**

42 SEC. __. Section 25269.2 of the Health and Safety Code is amended to read:

1 25269.2. (a) The department shall comply with this chapter when recovering
2 oversight costs for corrective action pursuant to Chapter 6.5 (commencing with
3 Section 25100), for removal or remedial action pursuant to ~~Chapter 6.8~~
4 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
5 Division 45, and for response actions pursuant to former Chapter 6.85 (commencing
6 with Section 25396).

7 (b) The department shall develop a concise statement of its cost recovery policies
8 and billing procedures, including dispute resolution procedures and availability of
9 program guidance and policies, and distribute the statement to all responsible
10 parties.

11 **Comment.** Section 25269.2 is amended to update cross-references in accordance with the
12 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
13 the Health and Safety Code.

14 **Health & Safety Code § 25281 (amended). Definitions**

15 SEC. __. Section 25281 of the Health and Safety Code is amended to read:

16 25281. For purposes of this chapter and unless otherwise expressly provided, the
17 following definitions apply:

18 (a) “Automatic line leak detector” means any method of leak detection, as
19 determined in regulations adopted by the board, that alerts the owner or operator of
20 an underground storage tank to the presence of a leak. “Automatic line leak
21 detector” includes, but is not limited to, any device or mechanism that alerts the
22 owner or operator of an underground storage tank to the presence of a leak by
23 restricting or shutting off the flow of a hazardous substance through piping, or by
24 triggering an audible or visual alarm, and that detects leaks of three gallons or more
25 per hour at 10 pounds per square inch line pressure within one hour.

26 (b) “Board” means the State Water Resources Control Board. “Regional board”
27 means a California regional water quality control board.

28 (c) “Compatible” means the ability of two or more substances to maintain their
29 respective physical and chemical properties upon contact with one another for the
30 design life of the tank system under conditions likely to be encountered in the tank
31 system.

32 (d)(1) “Certified Unified Program Agency” or “CUPA” means the agency
33 certified by the Secretary for Environmental Protection to implement the unified
34 program specified in Chapter 6.11 (commencing with Section 25404) within a
35 jurisdiction.

36 (2) “Participating Agency” or “PA” means an agency that has a written agreement
37 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by
38 the secretary to implement or enforce the unified program element specified in
39 paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections
40 25404.1 and 25404.2.

41 (3) “Unified Program Agency” or “UPA” means the CUPA, or its participating
42 agencies to the extent each PA has been designated by the CUPA, pursuant to a

1 written agreement, to implement or enforce the unified program element specified
2 in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a
3 UPA has the responsibility and authority, to the extent provided by this chapter and
4 Sections 25404.1 to 25404.2, inclusive, to implement and enforce only those
5 requirements of this chapter listed in paragraph (3) of subdivision (c) of Section
6 25404 and the regulations adopted to implement those requirements. Except as
7 provided in Section 25296.09, after a CUPA has been certified by the secretary, the
8 UPA shall be the only local agency authorized to enforce the requirements of this
9 chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the
10 jurisdiction of the CUPA. This paragraph shall not be construed to limit the
11 authority or responsibility granted to the board and the regional boards by this
12 chapter to implement and enforce this chapter and the regulations adopted pursuant
13 to this chapter.

14 (e) “Department” means the Department of Toxic Substances Control.

15 (f) “Facility” means any one, or combination of, underground storage tanks used
16 by a single business entity at a single location or site.

17 (g) “Federal act” means Subchapter IX (commencing with Section 6991) of
18 Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and
19 Solid Waste Amendments of 1984 (Public Law 98-616), or as it may subsequently
20 be amended or supplemented.

21 (h) “Hazardous substance” means either of the following:

22 (1) All of the following liquid and solid substances, unless the department, in
23 consultation with the board, determines that the substance could not adversely affect
24 the quality of the waters of the state:

25 (A) Substances on the list prepared by the Director of Industrial Relations
26 pursuant to Section 6382 of the Labor Code.

27 (B) Hazardous substances, as defined in ~~Section 25316~~, subdivision (a) of Section
28 78075.

29 (C) Any substance or material that is classified by the National Fire Protection
30 Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class
31 III-A combustible liquid.

32 (2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title
33 42 of the United States Code, as that section reads on January 1, 2012, or as it may
34 subsequently be amended or supplemented.

35 (i) “Local agency” means one of the following, as specified in subdivision (b) of
36 Section 25283:

37 (1) The unified program agency.

38 (2) Before July 1, 2013, a city or county.

39 (3) On and after July 1, 2013, a city or county certified by the board to implement
40 the local oversight program pursuant to Section 25297.01.

41 (j) “Operator” means any person in control of, or having daily responsibility for,
42 the daily operation of an underground storage tank system.

43 (k) “Owner” means the owner of an underground storage tank.

1 (l) “Person” means an individual, trust, firm, joint stock company, corporation,
2 including a government corporation, partnership, limited liability company, or
3 association. “Person” also includes any city, county, district, the state, another state
4 of the United States, any department or agency of this state or another state, or the
5 United States to the extent authorized by federal law.

6 (m) “Pipe” means any pipeline or system of pipelines that is used in connection
7 with the storage of hazardous substances and that is not intended to transport
8 hazardous substances in interstate or intrastate commerce or to transfer hazardous
9 materials in bulk to or from a marine vessel.

10 (n) “Primary containment” means the first level of containment, such as the
11 portion of a tank that comes into immediate contact on its inner surface with the
12 hazardous substance being contained.

13 (o) “Product tight” means impervious to the substance that is contained, or is to
14 be contained, so as to prevent the seepage of the substance from the containment.

15 (p) “Release” means any spilling, leaking, emitting, discharging, escaping,
16 leaching, or disposing from an underground storage tank into or on the waters of the
17 state, the land, or the subsurface soils.

18 (q) “Secondary containment” means the level of containment external to, and
19 separate from, the primary containment.

20 (r) “Single walled” means construction with walls made of only one thickness of
21 material. For the purposes of this chapter, laminated, coated, or clad materials are
22 considered single walled.

23 (s) “Special inspector” means a professional engineer, registered pursuant to
24 Chapter 7 (commencing with Section 6700) of Division 3 of the Business and
25 Professions Code, who is qualified to attest, at a minimum, to structural soundness,
26 seismic safety, the compatibility of construction materials with contents, cathodic
27 protection, and the mechanical compatibility of the structural elements of
28 underground storage tanks.

29 (t)(1) “Storage” or “store” means the containment, handling, or treatment of
30 hazardous substances, either on a temporary basis or for a period of years.

31 (2) “Storage” or “store” does not include the storage of hazardous wastes in an
32 underground storage tank if the person operating the tank has been issued a
33 hazardous waste facilities permit by the department pursuant to Section 25200 or
34 25201.6 or granted interim status under Section 25200.5.

35 (3) “Storage” or “store” does not include the storage of hazardous wastes in an
36 underground storage tank if all of the following apply:

37 (A) The facility has been issued a unified program facility permit pursuant to
38 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous
39 waste in a tank.

40 (B) The tank is located in an underground area, as defined in Section 280.12 of
41 Title 40 of the Code of Federal Regulations.

42 (C) The tank is subject to Chapter 6.67 (commencing with Section 25270).

1 (D) The tank complies with the hazardous waste tank standards pursuant to Article
2 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California
3 Code of Regulations.

4 (4) “Storage” or “store” does not include the storage of hazardous wastes in an
5 underground storage tank if all of the following apply:

6 (A) The facility has been issued a unified program facility permit pursuant to
7 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous
8 waste in a tank.

9 (B) The tank is located in a structure that is at least 10 percent below the ground
10 surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.

11 (C) The structure in which the tank is located, at a minimum, provides for
12 secondary containment of the contents of the tank, piping, and ancillary equipment,
13 until cleanup occurs.

14 (D) The tank complies with the hazardous waste tank standards pursuant to Article
15 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California
16 Code of Regulations.

17 (u) “Tank” means a stationary device designed to contain an accumulation of
18 hazardous substances which is constructed primarily of nonearthen materials,
19 including, but not limited to, wood, concrete, steel, or plastic that provides structural
20 support.

21 (v) “Tank integrity test” means a test method capable of detecting an unauthorized
22 release from an underground storage tank consistent with the minimum standards
23 adopted by the board.

24 (w) “Tank tester” means an individual who performs tank integrity tests on
25 underground storage tanks.

26 (x) “Unauthorized release” means any release of any hazardous substance that
27 does not conform to this chapter, including an unauthorized release specified in
28 Section 25295.5.

29 (y)(1) “Underground storage tank” means any one or combination of tanks,
30 including pipes connected thereto, that is used for the storage of hazardous
31 substances and that is substantially or totally beneath the surface of the ground.
32 “Underground storage tank” does not include any of the following:

33 (A) A tank with a capacity of 1,100 gallons or less that is located on a farm and
34 that stores motor vehicle fuel used primarily for agricultural purposes and not for
35 resale.

36 (B) A tank that is located on a farm or at the residence of a person, that has a
37 capacity of 1,100 gallons or less, and that stores home heating oil for consumptive
38 use on the premises where stored.

39 (C) Structures, such as sumps, separators, storm drains, catch basins, oil field
40 gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars,
41 separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a
42 part of a monitoring system required under Section 25290.1, 25290.2, 25291, or

1 25292 and sumps or other structures defined as underground storage tanks under the
2 federal act are not exempted by this subparagraph.

3 (D) A tank holding hydraulic fluid for a closed loop mechanical system that uses
4 compressed air or hydraulic fluid to operate lifts, elevators, and other similar
5 devices.

6 (E) A tank in an underground area, as defined in Section 25270.2, and associated
7 piping, that is subject to Chapter 6.67 (commencing with Section 25270).

8 (2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be
9 regulated by the board and any regional board pursuant to the Porter-Cologne Water
10 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
11 Code) to ensure that they do not pose a threat to water quality.

12 (z) “Underground tank system” or “tank system” means an underground storage
13 tank, connected piping, ancillary equipment, and containment system, if any.

14 (aa)(1) “Unified program facility” means all contiguous land and structures, other
15 appurtenances, and improvements on the land that are subject to the requirements
16 of paragraph (3) of subdivision (c) of Section 25404.

17 (2) “Unified program facility permit” means a permit issued pursuant to Chapter
18 6.11 (commencing with Section 25404), and that encompasses the permitting
19 requirements of Section 25284.

20 (3) “Permit” means a permit issued pursuant to Section 25284 or a unified
21 program facility permit as defined in paragraph (2).

22 **Comment.** Section 25281(h)(1)(B) is amended to update cross-references in accordance with
23 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
24 of the Health and Safety Code.

25 **Health & Safety Code § 25297 (amended). Request by local agency for agency action**

26 SEC. __. Section 25297 of the Health and Safety Code is amended to read:
27 25297. The local agency may request the following agencies to utilize that
28 agency’s authority to remedy the effects of, and remove, any hazardous substance
29 which has been released from an underground storage tank:

30 (a) The department which may take action pursuant to ~~Chapter 6.8 (commencing~~
31 ~~with Section 25300) Part 2 (commencing with Section 78000) of Division 45~~ and,
32 for this purpose, any unauthorized release shall be deemed a release as defined in
33 ~~Section 25320. subdivision (a) of Section 78105.~~

34 (b) A regional water quality control board may take action pursuant to Division 7
35 (commencing with Section 13000) of the Water Code and, for this purpose, the
36 discharged hazardous substance shall be deemed a waste as defined in subdivision
37 (d) of Section 13050.

38 **Comment.** Section 25297 is amended to update cross-references in accordance with the
39 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
40 the Health and Safety Code.

41 **Health & Safety Code § 25297.01 (amended). Local oversight program**

42 SEC. __. Section 25297.01 of the Health and Safety Code is amended to read:

1 25297.01. (a) In addition to the authority granted to the board pursuant to Division
2 7 (commencing with Section 13000) of the Water Code and to the department
3 pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing
4 with Section 78000) of Division 45, the board, in cooperation with the department,
5 shall develop and implement a local oversight program for the abatement of, and
6 oversight of the abatement of, unauthorized releases of hazardous substances from
7 underground storage tanks by a local agency certified pursuant to this section.

8 (b) On and after July 1, 2013, only a city or county certified pursuant to
9 subdivision (c) may implement a local oversight program. The board may enter into
10 an agreement pursuant to Section 25297.1 with a certified city or county to
11 implement the oversight program.

12 (c) The board may certify a city or county if the board determines that the city or
13 county is qualified to oversee or perform the abatement of unauthorized releases of
14 hazardous substances from underground storage tanks. The board shall consider, as
15 criteria for determining whether a city or county is qualified, at a minimum, all of
16 the following factors:

17 (1) Adequacy of the technical expertise possessed by the city or county.

18 (2) Adequacy of staff resources.

19 (3) Adequacy of budget resources and funding mechanisms.

20 (4) Training requirements.

21 (5) Past performance in implementing and enforcing corrective action
22 requirements.

23 (6) Recordkeeping and accounting systems.

24 (d) The board shall adopt procedures and criteria for certifying and withdrawing
25 certification from cities and counties pursuant to this section. The adoption of these
26 procedures and criteria shall not be considered as regulations subject to, and shall
27 be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code.

29 (e) If the board does not, by July 1, 2013, certify a city or county that has been
30 implementing a local oversight program pursuant to an agreement entered into with
31 the board on or before January 1, 2013, the board shall assign the cases from that
32 city or county to the appropriate regional board or to a city or county that is certified
33 by the board. An order or directive issued by that uncertified city or county on or
34 before July 1, 2013, shall remain in effect and may be enforced by the regional board
35 or certified city or county that receives the case.

36 (f) The board shall review, at least once every three years, the ability of the
37 certified city or county to carry out the local oversight program. When conducting
38 this review, the board shall consider the certification criteria contained in paragraphs
39 (1) to (6), inclusive, of subdivision (c) and the criteria adopted pursuant to
40 subdivision (d). The board may, after conducting the review, withdraw the
41 certification of the city or county. Upon making this withdrawal, the cases of the
42 former certified city or county shall be transferred from the city or county and the
43 orders and directives issued by the former certified city or county shall remain

1 effective and enforceable in accordance with subdivision (e). The board shall not
2 make the effective date for the withdrawal of a certification before the expiration
3 date of the local oversight program agreement entered into between the board and
4 the certified city or county pursuant to Section 25297.1, unless the certified city or
5 county fails to comply with the agreement.

6 **Comment.** Section 25297.01(a) is amended to update cross-references in accordance with the
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
8 the Health and Safety Code.

9 **Health & Safety Code § 25297.1 (amended). Agreement for implementation of local**
10 **oversight program**

11 SEC. __. Section 25297.1 of the Health and Safety Code is amended to read:

12 25297.1. (a)(1) For purposes of implementing, pursuant to Section 25297.01, the
13 local oversight program for the abatement of, and oversight of the abatement of,
14 unauthorized releases of hazardous substances from underground storage tanks, the
15 board may enter into in an agreement specified in subdivision (b) with the local
16 agency.

17 (2) A city or county that the board selected pursuant to this section, as it read on
18 January 1, 2012, which entered into an agreement with the board before July 1,
19 2013, may apply to the board for certification pursuant to Section 25297.01. The
20 city or county may continue to implement the oversight program until July 1, 2013,
21 and after that date the city or county shall either be certified or be subject to
22 subdivision (e) of Section 25297.01.

23 (3) On and after June 30, 2013, the board may enter into an agreement pursuant
24 to this section only with a city or county certified pursuant to Section 25297.01.

25 (b) In implementing the local oversight program for the abatement of, and
26 oversight of the abatement of, unauthorized releases of hazardous substances from
27 underground storage tanks, the board may select a local agency to enter into an
28 agreement with the board. When selecting a local agency, the board shall, from
29 among those local agencies that apply to the board, give first priority to those local
30 agencies that have demonstrated prior experience in cleanup, abatement, or other
31 actions necessary to remedy the effects of unauthorized releases of hazardous
32 substances from underground storage tanks. The board shall enter into an agreement
33 with only those local agencies that have implemented this chapter and that, except
34 as provided in Section 25404.5, have begun to collect and transmit to the board the
35 surcharge or fees pursuant to subdivision (b) of Section 25287. The agreement shall
36 provide for the local agency to perform, or cause to be performed, any cleanup,
37 abatement, or other action necessary to remedy the effects of a release of hazardous
38 substances from an underground storage tank with respect to which the local agency
39 has enforcement authority pursuant to this section. The board may not enter into an
40 agreement with a local agency for soil contamination cleanup or for groundwater
41 contamination cleanup unless the board determines that the local agency has a
42 demonstrated capability to oversee or perform the cleanup. The implementation of

1 the cleanup, abatement, or other action shall be consistent with procedures adopted
2 by the board pursuant to subdivision (d) and shall be based upon cleanup standards
3 specified by the board or regional board.

4 (c) The board shall provide funding to a local agency that enters into an agreement
5 pursuant to subdivision (b) for the reasonable costs incurred by the local agency in
6 overseeing any cleanup, abatement, or other action taken by a responsible party to
7 remedy the effects of unauthorized releases from underground storage tanks.

8 (d) The board shall adopt administrative and technical procedures, as part of the
9 state policy for water quality control adopted pursuant to Section 13140 of the Water
10 Code, for cleanup and abatement actions taken by a local agency with which the
11 board has entered into an agreement pursuant to this section. The procedures shall
12 include, but not be limited to, all of the following:

13 (1) Guidelines as to which sites may be assigned to the local agency.

14 (2) The content of the agreements.

15 (3) Procedures by which a responsible party may petition the board or a regional
16 board for review, pursuant to Article 2 (commencing with Section 13320) of
17 Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing
18 with Section 2250) of Division 3 of Title 23 of the California Code of Regulations,
19 or any successor regulation, as applicable, of actions or decisions of the local agency
20 in implementing the cleanup, abatement, or other action.

21 (4) Protocols for assessing and recovering money from responsible parties for any
22 reasonable and necessary costs incurred by the local agency in implementing this
23 section, as specified in subdivision (i), unless the cleanup or abatement action is
24 subject to subdivision (d) of Section 25296.10.

25 (5) Quantifiable measures to evaluate the outcome of a pilot program established
26 pursuant to this section.

27 (e) Any agreement between the regional board and a local agency to carry out a
28 local oversight program pursuant to this section shall require both of the following:

29 (1) The local agency shall establish and maintain accurate accounting records of
30 all costs it incurs pursuant to this section and shall periodically make these records
31 available to the board. The Controller may annually audit these records to verify the
32 hourly oversight costs charged by a local agency. The board shall reimburse the
33 Controller for the cost of the audits of a local agency's records conducted pursuant
34 to this section.

35 (2) The board and the department shall make reasonable efforts to recover costs
36 incurred pursuant to this section from responsible parties, and may pursue any
37 available legal remedy for this purpose.

38 (f) The board shall develop a system for maintaining a database for tracking
39 expenditures of funds pursuant to this section, and shall make this data available to
40 the Legislature upon request.

41 (g)(1) ~~Sections 25355.5 and 25356~~ Sections 78780 and 79055 do not apply to
42 expenditures from the Toxic Substances Control Account for oversight of abatement

1 of releases from underground storage tanks as part of the local oversight program
2 conducted pursuant to an agreement entered into pursuant to this section.

3 (2) A local agency that enters into an agreement pursuant to subdivision (b) shall
4 notify the responsible party, for any site subject to a cleanup, abatement, or other
5 action taken pursuant to the local oversight program established pursuant to this
6 section, that the responsible party is liable for not more than 150 percent of the total
7 amount of site-specific oversight costs actually incurred by the local agency.

8 (h) Any aggrieved person may petition the board or regional board for review of
9 the action or failure to act of a local agency that enters into an agreement pursuant
10 to subdivision (b), at a site subject to cleanup, abatement, or other action conducted
11 as part of the local oversight program established pursuant to this section, in
12 accordance with the procedures adopted by the board or regional board pursuant to
13 subdivision (d).

14 (i)(1) For purposes of this section, site-specific oversight costs include only the
15 costs of the following activities, when carried out by the staff of a local agency or
16 the local agency's authorized representative, that are either technical program staff
17 or their immediate supervisors:

18 (A) Responsible party identification and notification.

19 (B) Site visits.

20 (C) Sampling activities.

21 (D) Meetings with responsible parties or responsible party consultants.

22 (E) Meetings with the regional board or with other affected agencies regarding a
23 specific site.

24 (F) Review of reports, workplans, preliminary assessments, remedial action plans,
25 or postremedial monitoring.

26 (G) Development of enforcement actions against a responsible party.

27 (H) Issuance of a closure document.

28 (2) The responsible party is liable for the site-specific oversight costs, calculated
29 pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any
30 cleanup, abatement, or other action taken pursuant to an agreement entered into
31 pursuant to this section to remedy an unauthorized release from an underground
32 storage tank.

33 (3) Notwithstanding the requirements of any other law, the amount of liability of
34 a responsible party for the oversight costs incurred by the local agency and by the
35 board and regional boards in overseeing any action pursuant to an agreement entered
36 into pursuant to this section shall be calculated as an amount not more than 150
37 percent of the total amount of the site-specific oversight costs actually incurred by
38 the local agency and shall not include the direct or indirect costs incurred by the
39 board or regional boards.

40 (4)(A) The total amount of oversight costs for which a local agency may be
41 reimbursed shall not exceed one hundred fifteen dollars (\$115) per hour, multiplied
42 by the total number of site-specific hours performed by the local agency.

1 (B) The total amount of the costs per site for administration and technical
2 assistance to local agencies by the board and the regional board entering into
3 agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-
4 five dollars (\$35) for each hour of site-specific oversight. The board shall base its
5 costs on the total hours of site-specific oversight work performed by all participating
6 local agencies. The regional board shall base its costs on the total number of hours
7 of site-specific oversight costs attributable to the local agency that received regional
8 board assistance.

9 (C) The amounts specified in subparagraphs (A) and (B) are base rates for the
10 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter,
11 the board shall adjust the base rates annually to reflect increases or decreases in the
12 cost of living during the prior fiscal year, as measured by the implicit price deflator
13 for state and local government purchases of goods and services, as published by the
14 United States Department of Commerce or by a successor agency of the federal
15 government.

16 (5) In recovering costs from responsible parties for costs incurred under this
17 section, the local agency shall prorate any costs identifiable as startup costs over the
18 expected number of cases that the local agency will oversee during a 10-year period.
19 A responsible party who has been assessed startup costs for the cleanup of any
20 unauthorized release that, as of January 1, 1991, is the subject of oversight by a local
21 agency, shall receive an adjustment by the local agency in the form of a credit, for
22 the purposes of cost recovery. Startup costs include all of the following expenses:

23 (A) Small tools, safety clothing, cameras, sampling equipment, and other similar
24 articles necessary to investigate or document pollution.

25 (B) Office furniture.

26 (C) Staff assistance needed to develop computer tracking of financial and site-
27 specific records.

28 (D) Training and setup costs for the first six months of the local agency program.

29 (6) This subdivision does not apply to costs that are required to be recovered
30 pursuant to ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8.~~ Article 5
31 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

32 (j) The inoperation of former paragraph (1) of this subdivision does not affect the
33 validity of any action taken by the Santa Clara Valley Water District before June
34 30, 2005, and does not provide a defense for an owner, operator, or other responsible
35 party who fails to comply with that action.

36 (k) Notwithstanding subdivisions (a) and (b), any agreement entered into before
37 January 1, 2013, between a regional board and a water district to oversee,
38 coordinate, or implement a cooperative oversight program will remain in effect in
39 accordance with the terms of that agreement or the terms of that agreement as may
40 be amended from time to time.

41 **Comment.** Section 25297.1(g)(1) and (i)(6) are amended to update cross-references in
42 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
43 25300) of Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 25299.5 (amended). Construction of chapter**

2 SEC. __. Section 25299.5 of the Health and Safety Code is amended to read:

3 25299.5. (a) This chapter shall be construed to assure consistency with the
4 requirements for state programs implementing the federal act.

5 (b) This chapter shall not be construed to limit or abridge the powers and duties
6 granted to the department by Chapter 6.5 (commencing with Section 25100) and
7 ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section
8 78000) of Division 45 or to the board and each regional board by Division 7
9 (commencing with Section 13000) of the Water Code.

10 **Comment.** Section 25299.5 is amended to update cross-references in accordance with the
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
12 the Health and Safety Code.

13 **Health & Safety Code § 25299.50.6 (amended). Site Cleanup Subaccount**

14 SEC. __. Section 25299.50.6 of the Health and Safety Code is amended to read:

15 25299.50.6. (a) The Site Cleanup Subaccount is hereby established in the State
16 Treasury. Moneys shall be deposited in the subaccount pursuant to subdivision (m)
17 of Section 25299.51.

18 (b) The board may expend the funds in the Site Cleanup Subaccount, upon
19 appropriation by the Legislature, for the following purposes:

20 (1) To pay for reasonable and necessary expenditures that the board, the
21 department, a regional board, a local agency, or a water replenishment district incurs
22 to identify the source of surface or groundwater contamination.

23 (2)(A) To pay for reasonable and necessary expenditures to remediate the harm
24 or threat of harm to human health, safety, and the environment caused by existing
25 or threatened surface or groundwater contamination incurred by any of the
26 following:

27 (i) The board.

28 (ii) The department.

29 (iii) A regional board.

30 (iv) A local agency.

31 (v) A water replenishment district, under the direction of the board, a regional
32 board, a local agency, or another appropriate regulatory agency with authority over
33 surface or groundwater cleanup oversight.

34 (B) The board shall consider the following factors when approving expenditures
35 for specific locations:

36 (i) The degree to which human health, safety, and the environment are threatened
37 by contamination at the location.

38 (ii) Whether the location is located in a small or financially disadvantaged
39 community.

40 (iii) The cost and potential environmental benefit of the investigation or cleanup.

41 (iv) Whether there are other potential sources of funding for the investigation or
42 cleanup.

1 (v) Any other information the board identifies as necessary for consideration.

2 (3) To issue grants pursuant to this section for the reasonable and necessary costs
3 of actions to remediate the harm or threat of harm to human health, safety, and the
4 environment caused by existing or threatened surface or groundwater contamination
5 at a location that meets both of the following conditions:

6 (A) The board, the department, a regional board, or a local agency requires the
7 responsible parties to undertake or contract for investigation or cleanup, pursuant to
8 an oral or written order, directive, notification, or approval issued pursuant to
9 Section 25187, 25296.10, ~~25355.5, or 25358.3~~, 78870 or 79055, or pursuant to a
10 cleanup and abatement order issued under Section 13304 of the Water Code. The
11 board may waive this requirement if the board finds that it is infeasible for an order
12 to be issued before initiation of remediation.

13 (B) The responsible parties lack sufficient financial resources to pay for the
14 required response actions.

15 (4) For payments to the Attorney General by the board pursuant to subdivision
16 (g).

17 (c) At least annually, the board shall review grant applications and adopt a list of
18 applicants to be awarded grants pursuant to paragraph (3) of subdivision (b). In
19 addition to the conditions specified in paragraph (3) of subdivision (b), the board
20 shall consider all of the following factors when awarding grants:

21 (1) The degree to which human health, safety, and the environment are threatened
22 by surface water or groundwater contamination at the location.

23 (2) Whether the location is located in a small or financially disadvantaged
24 community.

25 (3) The cost and potential environmental benefit of the investigation or cleanup.

26 (4) Whether there are other potential sources of funding for the investigation or
27 cleanup.

28 (5) Any other information the board identifies as necessary for consideration.

29 (d)(1) The board shall specify the information that shall be included in a grant
30 application, consistent with this section, including, but not limited to, a provision
31 requiring the applicant to make a sworn verification of the information in the
32 application to the best of the applicant's knowledge.

33 (2) The board may adopt procedures to implement this section.

34 (3) The board shall post any procedures or information requirements adopted
35 pursuant to this section on its internet website.

36 (e)(1) The recipient of grant moneys shall expend those funds only for the
37 reasonable costs necessary to protect human health, safety, and the environment,
38 incurred on or after September 25, 2014.

39 (2) The board shall not issue a grant for any costs for which the applicant has
40 been, or will be, paid by another source.

41 (3) The board may terminate a grant and may bar the applicant from receiving any
42 future grants from the Site Cleanup Subaccount if the board finds that the applicant
43 has made a misrepresentation or false claim.

1 (f)(1) Any funds in the Site Cleanup Subaccount that are not expended in a fiscal
2 year shall remain in the subaccount until they are encumbered.

3 (2) Notwithstanding Section 16304.1 of the Government Code, the board shall
4 encumber the funds appropriated pursuant to this section within three years of the
5 appropriation and the board may make a disbursement in liquidation of an
6 encumbrance before or during the three years following the last day the
7 appropriation is available for encumbrance.

8 (3) Notwithstanding Section 16475 of the Government Code, any interest earned
9 upon the money in the Site Cleanup Subaccount shall be deposited in the Site
10 Cleanup Subaccount.

11 (g) The Attorney General may recover the actual, reasonable costs of investigation
12 or cleanup undertaken pursuant to this section in a civil action, upon request from
13 the board, from any responsible party. All money recovered by the Attorney General
14 pursuant to this section shall be deposited in the Site Cleanup Subaccount.

15 (h) For purposes of this section, “water replenishment district” has the meaning
16 provided for in Division 18 (commencing with Section 60000) of the Water Code.

17 **Comment.** Section 25299.50.6(b)(3)(A) is amended to update cross-references in accordance
18 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
19 Division 20 of the Health and Safety Code.

20 **Health & Safety Code § 25395.63 (amended). Application of definitions**

21 SEC. __. Section 25395.63 of the Health and Safety Code is amended to read:

22 25395.63. The definitions set forth in this article and in Article 6 (commencing
23 with Section 25395.90) shall govern the interpretation of this chapter. If a term is
24 not otherwise defined in this chapter, the definition contained in ~~Chapter 6.8~~
25 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
26 Division 45 shall apply to that term.

27 **Comment.** Section 25395.63 is amended to update cross-references in accordance with the
28 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
29 the Health and Safety Code.

30 **Health & Safety Code § 25395.66 (amended). “Applicable law”**

31 SEC. __. Section 25395.66 of the Health and Safety Code is amended to read:

32 25395.66. “Applicable law” means all of the provisions of the following state
33 statutory and common laws that impose liability on an owner or occupant of
34 property for pollution conditions caused by a release or threatened release of
35 hazardous material on, under, or adjacent to the property:

36 (a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section
37 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of
38 the Civil Code.

39 (b) Chapter 2 (commencing with Section 731) of Title 10 of Part 2 of the Code of
40 Civil Procedure, but not including Section 736 of the Code of Civil Procedure.

41 (c) Section 5650 of the Fish and Game Code.

1 (d) Chapter 6.7 (commencing with Section 25280); and Chapter 6.75
2 (commencing with Section 25299.10), ~~and Chapter 6.8 (commencing with Section~~
3 ~~25300), of this division.~~ of this division, and Part 2 (commencing with Section
4 78000) of Division 45.

5 (e) Chapter 1 (commencing with Section 13000) to Chapter 5 (commencing with
6 Section 13300), inclusive, of Division 7 of the Water Code.

7 (f) State common law regarding contribution, nuisance, trespass, and equitable
8 indemnity.

9 **Comment.** Section 25395.66 is amended to update cross-references in accordance with the
10 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
11 the Health and Safety Code.

12 **Health & Safety Code § 25395.79 (amended). “Release”**

13 SEC. __. Section 25395.79 of the Health and Safety Code is amended to read:

14 25395.79. “Release” has the same meaning as defined in ~~Section 25320.~~
15 subdivision (a) of Section 78105.

16 **Comment.** Section 25395.79 is amended to update cross-references in accordance with the
17 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
18 the Health and Safety Code.

19 **Health & Safety Code § 25395.79.2 (amended). “Site”**

20 SEC. __. Section 25395.79.2 of the Health and Safety Code is amended to read:

21 25395.79.2. (a) “Site” means real property located in an urban infill area for which
22 the expansion, redevelopment, or reuse may be complicated by the presence or
23 perceived presence of hazardous materials.

24 (b) “Site” does not include any of the following:

25 (1) A facility that is listed or proposed for listing on the National Priorities List
26 established under Section 105 of the Comprehensive Environmental Response,
27 Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

28 (2) A site on the list maintained by the department pursuant to ~~Section 25356.~~
29 Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45.

30 (3) A site that is solely impacted by a petroleum release from an underground
31 storage tank eligible for reimbursement from the California Underground Storage
32 Tank Cleanup Fund.

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

34 (1) “Infill area” means a vacant or underutilized lot of land within an urban area
35 that has been previously developed or that is surrounded by parcels that are or have
36 been previously developed.

37 (2) “Urban area” means either of the following:

38 (A) An incorporated city.

39 (B) An unincorporated area that is completely surrounded by one or more
40 incorporated cities that meets both of the following criteria:

41 (i) The population of the unincorporated area and the population of the
42 surrounding incorporated cities is equal to a population of 100,000 or more.

1 (ii) The population density of the unincorporated area is equal to, or greater than,
2 the population density of the surrounding cities.

3 **Comment.** Section 25395.79.2 is amended to update cross-references in accordance with the
4 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
5 the Health and Safety Code.

6 **Health & Safety Code § 25395.90 (amended). Definitions**

7 SEC. __. Section 25395.90 of the Health and Safety Code is amended to read:

8 25395.90. (a) Except as otherwise expressly provided in this article, the
9 definitions in Article 2 (commencing with Section 25395.63) apply to the terms used
10 in this article.

11 (b) “Action level” has the same meaning as defined in paragraph (1) of
12 subdivision (c) of Section 116455.

13 (c) “Host jurisdiction” means the city or county in which the site is located and
14 which has the authority to take action regarding the site pursuant to Title 7
15 (commencing with Section 65000) of the Government Code.

16 (d) “Unreasonable risk” at a site means that a condition at a site requires a
17 response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
18 (commencing with Section 78000) of Division 45 of this code or Division 7
19 (commencing with Section 13000) of the Water Code.

20 **Comment.** Section 25395.90 is amended to update cross-references in accordance with the
21 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
22 the Health and Safety Code.

23 **Health & Safety Code § 25395.92 (amended). Agreement for immunity**

24 SEC. __. Section 25395.92 of the Health and Safety Code is amended to read:

25 25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property
26 owner who seeks to qualify for the immunity provided by this chapter shall enter
27 into an agreement with an agency pursuant to this article that includes the
28 performance of a site assessment, and, if the agency determines that a response plan
29 is necessary pursuant to Section 25395.96, the preparation and implementation of a
30 response plan.

31 (b) Before finalizing the agreement, the requested agency shall notify other
32 appropriate agencies, including the host jurisdiction.

33 (c) A person who enters into an agreement with an agency pursuant to this section
34 shall submit sufficient information to the agency for the agency to determine
35 whether the site is an eligible site, whether the person meets the conditions to qualify
36 as a bona fide purchaser, innocent landowner, or contiguous property owner
37 pursuant to this chapter, and to prepare an agreement pursuant to this section.

38 (d)(1) A person who enters into an agreement pursuant to this section shall agree
39 to take all actions required for a response action pursuant to ~~Chapter 6.8~~
40 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
41 Division 45 and Division 7 (commencing with Section 13000) of the Water Code.

1 These actions may include actions necessary to prevent an unreasonable risk before
2 the approval of a response plan.

3 (2) In determining whether there is unreasonable risk at a site for purposes of this
4 subdivision, the agency shall take into account the intended use of the property, in
5 accordance with any changed use of the property, as specified in subdivision (d) of
6 Section 25395.96.

7 **Comment.** Section 25395.92 is amended to update cross-references in accordance with the
8 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
9 the Health and Safety Code.

10 **Health & Safety Code § 25395.93 (amended). Withdrawal from agreement**

11 SEC. __. Section 25395.93 of the Health and Safety Code is amended to read:

12 25395.93. (a) A person may withdraw from an agreement entered into pursuant
13 to this article by providing a 30-day written notice to the agency and doing both of
14 the following:

15 (1) Reimbursing the agency for all costs incurred by the agency pursuant to the
16 agreement.

17 (2) Demonstrating to the satisfaction of the agency that conditions at the site to
18 which the agreement applies do not pose an endangerment to public health and
19 safety or the environment. If the agency determines that conditions at the site pose
20 an endangerment to public health, safety, or the environment, this article does not
21 prevent the agency from exercising its authority to take appropriate response actions
22 or to cause the person or persons responsible for the endangerment to take
23 appropriate response actions.

24 (b) A person who enters into an agreement with an agency pursuant to this article
25 shall reimburse the agency for all agency costs, including, but not limited to, costs
26 incurred while reviewing a site assessment plan or a response plan or overseeing the
27 implementation of a site assessment or response plan by the person pursuant to this
28 article, except that the department's costs shall be reimbursed pursuant to Chapter
29 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section
30 ~~25360.~~ 79650.

31 (c) The entry into an agreement pursuant to this article shall not constitute an
32 admission of fact or liability or conclusion of law for any purpose or proceeding and
33 a person who enters into an agreement under this article shall not be deemed liable
34 under any other provision of law solely by reason of entering into that agreement.

35 (d) If the conditions described in paragraph (1) of subdivision (c) of Section
36 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw
37 from an agreement entered into pursuant to this chapter by providing a 30-day
38 written notice to the other party.

39 **Comment.** Section 25395.93 is amended to update cross-references in accordance with the
40 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
41 the Health and Safety Code.

1 **Health & Safety Code § 25395.94 (amended). Site assessment plan**

2 SEC. __. Section 25395.94 of the Health and Safety Code is amended to read:

3 25395.94. (a)(1) A person who enters into an agreement pursuant to this article
4 with an agency for the oversight of a site assessment shall submit a site assessment
5 plan to the agency to conduct a site assessment of the site in accordance with the
6 requirements of this section.

7 (2) If the agency requires a health risk assessment as part of that agreement, the
8 health assessment shall be prepared in accordance with ~~subdivisions (b), (c), and (d)~~
9 ~~of Section 25356.1.5. Sections 79265, 79270, and subdivision (a) of Section 79275.~~

10 (b) The site assessment plan shall provide for the evaluation of all of the
11 following:

12 (1) Whether a release of hazardous materials has occurred at the site, a threat of a
13 release of hazardous materials exists at the site, or there is a threat of a release of
14 hazardous materials from the site.

15 (2) If a release or threatened release of hazardous materials exists at the site or
16 there is a release or a threatened release from the site, whether the release or
17 threatened release poses an unreasonable risk to public health and safety or the
18 environment.

19 (c) The site assessment plan shall also include all of the following:

20 (1) Adequate characterization of the hazardous materials released or threatened to
21 be released at, or from, the site and documentation of the findings.

22 (2) Reasonably available information about the site, including, where appropriate,
23 a risk assessment that evaluates the risk posed by any hazardous materials released
24 or threatened to be released at, or from, the site, and information regarding
25 reasonably anticipated foreseeable uses of the site based on current and projected
26 land use and zoning designations.

27 (3) If the release has impacted groundwater, reasonable characterization of
28 underlying groundwater, including present and anticipated beneficial uses of that
29 water.

30 (d) A person shall submit the site assessment plan to the agency for review and
31 approval.

32 (e) The agency shall evaluate the adequacy of the site assessment plan to ensure
33 that it contains all necessary information.

34 (f) After evaluating the site assessment plan, if the agency finds that the site
35 assessment plan is adequate, the agency shall approve the site assessment plan and
36 provide notification to appropriate persons, including notification of any public
37 water system that relies on impacted groundwater for public drinking water
38 purposes.

39 **Comment.** Section 25395.94(a)(2) is amended to update cross-references in accordance with the
40 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
41 the Health and Safety Code.

1 **Health & Safety Code § 25395.101 (amended). Effect of article**

2 SEC. __. Section 25395.101 of the Health and Safety Code is amended to read:

3 25395.101. (a) Except as expressly provided in this article, this article does not
4 affect the authority of an agency to issue an order or take any other action under any
5 provision of law to protect public health and safety or the environment.

6 (b) Except as otherwise expressly provided in this article, this article does not
7 affect the authority of the agency or any other public agency to pursue any existing
8 legal, equitable, or administrative remedies pursuant to state or federal law.

9 (c) Except as otherwise expressly provided in this article, ~~Chapter 6.8~~
10 ~~(commencing with Section 25300) Part 2 (commencing with Section 78000) of~~
11 Division 45 does not apply to this article.

12 (d) If a local agency determines that, due to an emergency, it is necessary to gain
13 access to a site that is the subject of a finding of no further action or a certificate of
14 completion, the person who has obtained immunity pursuant to this chapter with
15 regard to that site shall allow the local agency access to the site to take any action
16 necessary to mitigate that emergency, or take any other necessary response action.
17 However, that person shall not be required to pay for, or undertake, any of those
18 actions taken by or required by the local agency, unless the person caused or
19 contributed to the release at the site that constituted the emergency.

20 **Comment.** Section 25395.101 is amended to update cross-references in accordance with the
21 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
22 the Health and Safety Code.

23 **Health & Safety Code § 25395.104 (amended). Immunities for bona fide ground tenant**

24 SEC. __. Section 25395.104 of the Health and Safety Code is amended to read:

25 25395.104. (a) Except as otherwise provided in this section, a bona fide ground
26 tenant shall qualify for the following immunities:

27 (1) The bona fide ground tenant shall not be liable under any applicable statute
28 for a claim made by a person, other than an agency, for response costs or other relief
29 associated with a release or threatened release of a hazardous material at the site
30 once the bona fide ground tenant obtains a certification pursuant to subdivision (b)
31 or (c) that the immunity provided by this section has attached.

32 (2)(A) Except as provided in subparagraph (B), an agency shall not, subsequent
33 to the date of the agreement, take any action under any applicable statute to require
34 a bona fide ground tenant to take a response action on account of a release or
35 threatened release of a hazardous material at a site.

36 (B) The agency that entered into the agreement pursuant to this article may take
37 action under any applicable statute to enforce the conditions imposed on the bona
38 fide ground tenant pursuant to the agreement.

39 (b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a),
40 the immunity provided in this section shall attach to a bona fide ground tenant once
41 the agency certifies in writing that all of the following have occurred:

1 (1) A site assessment has been completed sufficient for the agency to determine
2 the remedial measures necessary to allow the site to be used for its intended purposes
3 without unreasonable risk to the human health and safety of the intended site
4 occupants.

5 (2) Except for site monitoring, reporting, institutional controls, operation and
6 maintenance activities, and other ongoing obligations of the bona fide ground
7 tenant, if any, the portion of the site investigation and the response plan necessary
8 to allow the site to be used for its intended purposes without unreasonable risk to
9 the human health and safety of the intended site occupants, including any
10 confirmation sampling required by the agency to confirm that this standard has been
11 met, has been implemented to the agency's satisfaction.

12 (3) To the extent required in the agreement entered into pursuant to this article,
13 all wells, piping, extraction systems, or similar materials or equipment required for
14 the conduct of remediation efforts to be performed by a person other than the bona
15 fide ground tenant have either been installed to the agency's satisfaction or have
16 been accounted for to the agency's satisfaction in site development plans and
17 specifications.

18 (4) If applicable, an instrument that restricts or imposes obligations on the present
19 of future uses or activities on the site has been executed and recorded pursuant to
20 Section 1471 of the Civil Code.

21 (c) A party to an agreement pursuant to this article may request the agency to issue
22 a written certification confirming that the conditions stated in subdivision (b) have
23 been met and that the immunity provided for in this section is in effect. The agency
24 shall provide this certification within 60 days of the date it finds that the conditions
25 stated in subdivision (b) have been met.

26 (d) The agency that issued a certification pursuant to subdivision (c) may
27 withdraw that certification if it first provides reasonable notice and opportunity for
28 the bona fide ground tenant to take action to prevent the withdrawal, and subsequent
29 to the notice and cure opportunity makes any of the following findings:

30 (1) A material deviation from those requirements applicable to the bona fide
31 ground tenant under the agreement entered into pursuant to this article that has not
32 been approved by the agency exists and continues to exist subsequent to the notice
33 and cure period.

34 (2) The bona fide ground tenant induced the agency to issue the certification by
35 fraud, or intentional nondisclosure or misrepresentation.

36 (e) Upon the agency's certification pursuant to subdivision (c), the immunity
37 provided in this section extends to all of the following:

38 (1) The bona fide ground tenant and any successor who demonstrates to the
39 agency that the person meets the qualifying conditions of subdivision (b) of Section
40 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who
41 assumes the bona fide ground tenant's obligations of any agreement entered into
42 pursuant to this article.

43 (2) A person who provides financing to a person specified in paragraph (1).

1 (f) The immunity provided in this section does not extend to, and may not be
2 transferred to, a person who was a responsible party, as that term is defined in
3 Section ~~25323.5~~ 78145 for the release at the site prior to acquiring an interest in the
4 site from the bona fide ground tenant or providing financing as specified in
5 paragraph (3) of subdivision (e).

6 (g) The immunity provided in this section shall be in addition to any other
7 immunity provided by law.

8 (h) This section shall not modify or limit the existing authority of a state or local
9 agency to impose a condition on the issuance of a discretionary permit relating to
10 the development, use, or occupancy of a site.

11 (i) This section shall not relieve a bona fide ground tenant from reporting,
12 disclosure, and notification requirements under any applicable statute.

13 (j) The entry into an agreement pursuant to this article shall not constitute an
14 admission of any fact or liability or conclusion of law for any purpose or proceeding
15 and a person who enters into an agreement under this article shall not be deemed
16 liable under any other provision of law solely by reason of entering into the
17 agreement.

18 (k) If the use of the property changes, after a response plan is approved, to a use
19 that requires a higher level of protection, the agency may require the preparation
20 and implementation of a new response plan pursuant to this article.

21 (l) A bona fide ground tenant that purchases a site subsequent to leasing, or taking
22 an easement in the site, may convert its status to that of a bona fide purchaser
23 pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground
24 tenant otherwise meets the requirements of Section 25395.69 and Article 6
25 (commencing with Section 25395.90). Upon the conversion, the bona fide ground
26 tenant shall qualify for any and all immunities available to a bona fide purchaser
27 under this chapter.

28 (m) If the response plan relies on the use of institutional or engineering controls
29 to make the site suitable for its intended purposes without unreasonable risk to the
30 human health and safety of the intended occupants of the site, the bona fide ground
31 tenant seeking immunity shall provide any applicable financial assurances, using
32 financial assurance guidelines and mechanisms approved by a board, department,
33 or organization of the California Environmental Protection Agency; periodic reports
34 as required by the agency to demonstrate that there remains no unreasonable risk to
35 the human health and safety of the intended occupants. The bona fide ground tenant
36 shall not make any change in use of the site that is inconsistent with any land use
37 control recorded for the site unless the change is approved by the agency pursuant
38 to Sections 25233 and 25234 or, in the case of the board or a regional board,
39 substantially similar procedures.

40 **Comment.** Section 25395.104(f) is amended to update cross-references in accordance with the
41 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
42 the Health and Safety Code.

1 **Health & Safety Code § 25395.117 (amended). Database and website requirements**

2 SEC. __. Section 25395.117 of the Health and Safety Code is amended to read:
3 25395.117. (a) On or before January 1, 2006, the agency and the California
4 Environmental Protection Agency shall implement the requirements imposed by
5 this section.

6 (b) The department shall revise and upgrade the department’s database systems,
7 including the list of hazardous substances release sites adopted pursuant to ~~Section~~
8 ~~25356~~ Article 5 (commencing with Section 78000) of Chapter 4 of Part 2 of Division
9 45 and the information sent to the agency pursuant to Section 65962.5 of the
10 Government Code, to enable compatibility with existing databases of the board,
11 including the GIS mapping system established pursuant to Section 25299.97. The
12 department shall also install improvements to the database systems to maintain and
13 display information that includes the number of brownfield sites, each brownfield
14 site’s location, acreage, response action, site assessments, and the number of orphan
15 sites where the department is overseeing the response action.

16 (c) The California Environmental Protection Agency, the department, the regional
17 boards, and the board shall expand their respective Web sites to allow access to
18 information about brownfield sites and other response action sites through a single
19 Web site portal.

20 **Comment.** Section 25395.117 is amended to update cross-references in accordance with the
21 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
22 the Health and Safety Code.

23 **Health & Safety Code § 25400.12 (amended). Definitions for terms not defined by this**
24 **article**

25 SEC. __. Section 25400.12 of the Health and Safety Code is amended to read:
26 25400.12. Any term not defined expressly by this article shall have the same
27 meaning as defined in ~~Chapter 6.8 (commencing with Section 25300). Part 2~~
28 (commencing with Section 78000) of Division 45.

29 **Comment.** Section 25400.12 is amended to update cross-references in accordance with the
30 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
31 the Health and Safety Code.

32 **Health & Safety Code § 25403 (amended). Definitions**

33 SEC. __. Section 25403 of the Health and Safety Code is amended to read:
34 25403. For purposes of this chapter, the following terms shall have the following
35 meanings:

36 (a) “Blighted area” means an area in which the local agency determines there are
37 vacancies, abandonment of property, or a reduction or lack of proper utilization of
38 property, and the presence or perceived presence of a release or releases of
39 hazardous material contributes to the vacancies, abandonment of property, or
40 reduction or lack of proper utilization of property.

1 (b) “Blighted property” means property with the presence or perceived presence
2 of a release or releases of hazardous material that contributes to the vacancies,
3 abandonment of property, or reduction or lack of proper utilization of property.

4 (c) “Clean up” or “cleanup” means an action taken to remove, as defined in
5 Section ~~25323~~, 78135, remediate, as described in subdivision (a) or (b) of Section
6 ~~25322~~, 78125, or otherwise abate the effects of a release of hazardous material.

7 (d) “Cleanup plan” means a document that details the actions to be taken to clean
8 up a release of a hazardous material.

9 (e) “CUPA” means the Certified Unified Program Agency certified to implement
10 the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

11 (f) “Department” means the Department of Toxic Substances Control.

12 (g) “Designated agency” means an agency designated by the local agency
13 pursuant to paragraph (1) or (2) of subdivision (e) of Section 25403.1.

14 (h) “Director” means the Director of Toxic Substances Control.

15 (i) “Hazardous material” has the same meaning as defined in subdivision (d) of
16 Section 25260.

17 (j) “Investigation” means an action taken to determine the source, nature, and
18 extent of a release of hazardous material with sufficient detail to provide a
19 reasonable basis for decisions regarding the cleanup of the hazardous material. An
20 investigation does not include a Phase I or Phase II environmental site assessment.

21 (k) “Investigation plan” means a document that specifies actions to be taken to
22 investigate a suspected release of hazardous material. An investigation plan does
23 not include a Phase I or Phase II environmental site assessment.

24 (l) “Local agency” means both of the following:

25 (1) A county, a city, or a city and county.

26 (2) A “housing authority,” as provided in Section 34240, if the housing authority
27 is an entity assuming the housing functions of a former redevelopment agency
28 pursuant to paragraph (2) of subdivision (a) of Section 34176 and the property
29 subject to this chapter was transferred from that successor agency to the housing
30 authority.

31 (m) “Person” means an individual, trust, firm, joint stock company, business
32 concern, partnership, limited liability company, association, and corporation,
33 including, but not limited to, a government corporation. “Person” also includes any
34 local agency, county, district, commission, the state or any department, agency, or
35 political subdivision thereof, any interstate body, and the federal government or any
36 department or agency thereof to the extent permitted by law.

37 (n) “Phase I environmental assessment” means a preliminary assessment of a
38 property to determine whether there has been, or may have been, a release of
39 hazardous material based on reasonable available information about the property
40 and general vicinity. A Phase I environmental assessment shall meet the most
41 current requirements adopted by the American Society for Testing and Materials
42 (ASTM) for Standard Practice for Environmental Site Assessment: Phase I

1 Environmental Site Assessment Process or meet the requirements of Part 312
2 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations.

3 (o) “Phase II environmental assessment” means an intrusive study where actual
4 physical environmental samples are collected and analyzed to characterize the type
5 and distribution of hazardous material in the environment. A phase II environmental
6 assessment shall meet the most current requirements adopted by the American
7 Society for Testing and Materials (ASTM) for Standard Practice for Environmental
8 Site Assessments: Phase II Environmental Site Assessment Process.

9 (p) “Qualified independent contractor” means an independent contractor who is
10 any of the following:

11 (1) An engineering geologist who is certified pursuant to Section 7842 of the
12 Business and Professions Code.

13 (2) A geologist who is registered pursuant to Section 7850 of the Business and
14 Professions Code.

15 (3) A civil engineer who is registered pursuant to Section 6762 of the Business
16 and Professions Code.

17 (q) “Regional board” means a California regional water quality control board.

18 (r) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,
19 discharging, injecting, escaping, leaching, dumping, or disposing into the
20 environment on blighted property.

21 (s) “Responsible party” means a person described in subdivision (a) of Section
22 ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

23 (t) “Site designation committee” means the committee established pursuant to
24 Section 25261.

25 (u) “State board” means the State Water Resources Control Board.

26 **Comment.** Subdivisions (c) and (s) of Section 25403 are amended to update cross-references in
27 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
28 25300) of Division 20 of the Health and Safety Code.

29 **Health & Safety Code § 25403.1 (amended). Local agency action to address release affecting**
30 **blighted property**

31 SEC. __. Section 25403.1 of the Health and Safety Code is amended to read:

32 25403.1. (a)(1)(A) A local agency may, in accordance with this chapter, take any
33 action that the local agency determines is necessary and that is consistent with other
34 state and federal laws to investigate or clean up a release on, under, or from blighted
35 property that the local agency has found to be within a blighted area within the local
36 agency’s boundaries due to the presence of hazardous materials following a Phase I
37 or Phase II environmental assessment pursuant to subdivision (f), whether the local
38 agency owns that property or not. When taking action pursuant to this chapter, if the
39 local agency does not own property that is the subject of the investigation and
40 cleanup activities, the local agency has the right to enter that property, if, upon
41 providing notice to the owner of that property in accordance with subparagraph (A)

1 of paragraph (2) of subdivision (b), the owner of the property does not respond to
2 the notice or the local agency reasonably deems the response inadequate.

3 (B) The local agency shall contact the department or the appropriate regional
4 board prior to issuing a notice pursuant to paragraph (2) of subdivision (b) in
5 connection with a property on the National Priority List or a property or release
6 subject to any of the following:

7 (i) Chapter 6.5 (commencing with Section 25100).

8 (ii) A Cease and Desist Order issued under Section 13301 of the Water Code.

9 (iii) A Cleanup and Abatement Order issued under Section 13304 of the Water
10 Code.

11 (iv) An existing voluntary cleanup agreement between the regional board or the
12 department and a responsible party that requires a cleanup by a specified date.

13 (v) An order issued by a regional board pursuant to Section 13267 of the Water
14 Code, or an agreement entered into by the department pursuant to Article 1
15 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section
16 25187, ~~25355.5, or 25358.3~~, 78870, or 79055, for the investigation or cleanup at a
17 site.

18 (vi) A remedial action order, an imminent or substantial endangerment order or
19 agreement, a prospective purchase agreement, or an order on consent issued
20 pursuant to Section ~~25355.5, 25356.1.3, or 25358.3~~, 78660, 78870, 79020, or 79055,
21 as applicable.

22 (vii) An expedited remediation order issued pursuant to the former Chapter 6.86
23 (commencing with Section 25396), as that chapter read on January 1, 2012.

24 (viii) An agreement entered into pursuant to the California Land Reuse and
25 Revitalization Act (Chapter 6.82 (commencing with Section 25395.60)), as
26 specified in Section 25395.92.

27 (ix) An agreement for the environmental oversight of schools entered into
28 pursuant to Section 17213.1 of the Education Code and in accordance with Sections
29 17201 and 17210.1 of the Education Code.

30 (C)(i) If the department or the regional board objects within 30 days to the local
31 agency issuing the notice, the local agency and the department or regional board
32 shall promptly meet and confer to resolve the department's or regional board's
33 concerns. If the local agency and the department or the regional board cannot reach
34 a mutually acceptable resolution on sites identified in clause (iv) of subparagraph
35 (B) of paragraph (1), the matter shall be submitted to the site designation committee
36 created pursuant to Section 25261.

37 (ii) Notwithstanding subdivision (a) of Section 25261, the designee of the
38 department or the regional board on the site designation committee shall not
39 participate in the review of a dispute involving the department or a regional board,
40 respectively. The decision of the site designation committee shall resolve the matter
41 impartially, by majority vote, and within 45 days of the date on which the matter is
42 presented. Either party to the dispute may present the matter to the site designation
43 committee, and each party shall be given a reasonable opportunity to be heard.

1 (2) A local agency shall, before taking action to clean up the release, do all of the
2 following:

3 (A) If the investigation has not been completed or additional investigation is
4 necessary, have an investigation plan prepared by an independent qualified
5 contractor.

6 (B) Submit an investigation plan and cost recovery agreement to the regional
7 board or the department for review and approval.

8 (C) After completion of the investigation plan, have a cleanup plan prepared by
9 an independent qualified contractor.

10 (D) Submit a cleanup plan and existing applicable documents required pursuant
11 to the California Environmental Quality Act (Division 13 (commencing with
12 Section 21000) of the Public Resources Code) to the regional board or to the
13 department for approval.

14 (E) Comply with the public participation requirements specified in Section
15 25403.7.

16 (3) The regional board or the department shall act on the investigation plan within
17 30 days of receipt of the investigation plan.

18 (4) The regional board or the department shall respond to the local agency's
19 request for approval of a cleanup plan within 60 days of the receipt of the plan.

20 (5) Within 60 days after approval of the cleanup plan, pursuant to applicable
21 statutes and regulations, the director or the regional board, as appropriate, shall
22 acknowledge, in writing, that upon proper completion of the cleanup in accordance
23 with the cleanup plan, the immunity provided by Section 25403.2 shall apply.

24 (6) The local agency shall notify the department and local health and building
25 departments and the regional board of any cleanup activity pursuant to this section
26 at least 30 days before the commencement of the activity.

27 (7) If an action taken by a local agency or a responsible party to clean up a release
28 of a hazardous material does not meet, or is not consistent with, a cleanup plan
29 approved by the regional board or the department, the department or the regional
30 board that approved the cleanup plan may require the responsible party or local
31 agency to take, or cause the taking of, additional action to clean up the release, as
32 provided by applicable law.

33 (8) If an administering agency for the site has been designated pursuant to Section
34 25262, the department or the regional board may impose any requirements for
35 additional action pursuant to paragraph (7) only as provided in Sections 26263 and
36 25265.

37 (9) If methane or landfill gas is present, the local agency shall obtain written
38 approval from the Department of Resources Recycling and Recovery prior to taking
39 action authorized under this subdivision.

40 (b) Except as provided in subdivision (c), a local agency may take the actions
41 specified in subdivision (a) only under one of the following conditions:

42 (1) There is no responsible party for the release identified by the local agency.

43 (2) Both of the following apply:

1 (A) A party determined by the local agency to be a responsible party for the
2 release has been notified by the local agency, or has received adequate notice from
3 the department, a regional board, the California Environmental Protection Agency,
4 or other governmental agency with relevant authority, and has been given 60 days
5 to respond and to propose an investigation plan and schedule if in the opinion of the
6 responsible party's qualified independent contractor there is not enough site-
7 specific data to prepare a cleanup plan, and 60 days to propose a cleanup plan and
8 schedule following completion of the investigation plan in accordance with the
9 investigation plan schedule approved by the local agency.

10 (B) The responsible party specified in subparagraph (A) has not agreed within an
11 additional 60 days to implement an investigation plan and schedule to investigate or
12 clean up the release that meets both of the following requirements:

13 (i) The investigation plan and schedule and the cleanup plan and schedule are
14 acceptable to the local agency.

15 (ii) The local agency makes a finding that the investigation plan and schedule and
16 the cleanup plan and schedule are consistent with the intended development
17 schedule and use of the property.

18 (3)(A) The party determined by the local agency to be the responsible party for
19 the hazardous material release entered into an agreement with the local agency to
20 prepare an investigation plan or cleanup plan for approval by the department, the
21 regional board, or the appropriate local agency, and to implement the investigation
22 plan or cleanup plan in accordance with an agreed schedule, but failed to do any of
23 the following:

24 (i) Prepare the investigation plan or cleanup plan.

25 (ii) Implement the investigation plan or cleanup plan in accordance with the
26 agreed schedule.

27 (iii) Otherwise failed to carry out the investigation in an appropriate and timely
28 manner.

29 (B) An action taken by the local agency pursuant to this paragraph shall be
30 consistent with any agreement between the local agency and the responsible party
31 and with the requirements of the state agency or the designated agency that approved
32 or will approve the cleanup plan and is overseeing or will oversee the preparation
33 and implementation of the cleanup plan.

34 (c) The responsible party specified in subparagraph (A) of paragraph (2) of
35 subdivision (b) may appeal a 60-day notice issued pursuant to this section to the
36 local agency's governing body by filing a written request to appeal the notice with
37 the clerk of the local agency within 30 days of receipt of the notice. Filing an appeal
38 to the local agency's governing body tolls the 60-day notice period until the appeal
39 is heard and decided by the local agency's governing body. Any challenge to the
40 decision reached by the local agency's governing body shall be presented only as
41 part of a cost recovery or injunctive proceeding initiated by the local agency under
42 Section 25403.5. The local agency's decision shall be upheld if supported by
43 substantial evidence presented in the action commenced under Section 25403.5, and

1 shall not be invalidated on the grounds that the local agency failed to include all
2 responsible parties in a 60-day notice issued pursuant to this section. A claim of
3 failure to include all responsible parties in a 60-day notice issued pursuant to this
4 section shall not be a defense to the liability provided for in Section 25403.5.

5 (d) Subdivision (b) does not apply to either of the following:

6 (1) A local agency taking actions to conduct a Phase I or Phase II environmental
7 assessment in accordance with standard real estate practices.

8 (2) A local agency taking the actions specified in subdivision (a) if the local
9 agency determines that conditions require immediate action due to an imminent
10 threat to human health or the environment.

11 (e)(1) A local agency may designate another agency, in lieu of the department or
12 the regional board, to review and approve a cleanup plan and to oversee the cleanup
13 of hazardous materials from a specific hazardous material release site if the agency
14 is designated as the administering agency under Section 25262. In that event, the
15 designated agency shall conduct the oversight of the cleanup in accordance with
16 Chapter 6.65 (commencing with Section 25260), and all provisions of that chapter
17 shall apply to the cleanup.

18 (2) A local agency may designate another agency to review and approve a cleanup
19 plan for a site and oversee the cleanup at the site if all of the following conditions
20 exist:

21 (A) The designated agency is certified as a CUPA.

22 (B) The site is an underground storage tank site subject to Chapter 6.7
23 (commencing with Section 25280).

24 (C) The designated agency is certified pursuant to Section 25297.01 and the state
25 board has entered into an agreement with the designated agency pursuant to Section
26 25297.1.

27 (D) The designated agency determines that the site is within the guidelines and
28 protocols established in, and pursuant to, the agreement specified in subparagraph
29 (C).

30 (E) The designated agency consents to the designation.

31 (3) Within 60 days after approving a cleanup plan pursuant to paragraph (1) or
32 (2), the designated agency shall issue a notice that, upon proper completion of the
33 cleanup plan, the immunity specified in Section 25403.2 shall apply. If the
34 designated agency was formed by the local agency, the cleanup plan shall also be
35 subject to the approval of the department or regional board.

36 (4)(A) An agency may not consent to the designation pursuant to paragraph (1) or
37 (2) unless the designated agency determines that it has adequate staff resources and
38 the requisite technical expertise and capabilities available to adequately supervise
39 the cleanup.

40 (B) If an agency has been designated pursuant to paragraph (2), the department or
41 a regional board may require the designated agency to withdraw from the
42 designation or stop taking action pursuant to that designation, after providing the
43 designated agency with adequate notice, if both of the following conditions are met:

1 (i) The department or a regional board determines that the agency’s designation
2 was not consistent with paragraph (2), or makes one of the findings specified in
3 subdivision (d) of Section 101480.

4 (ii) The department or a regional board determines that it has adequate staff
5 resources and capabilities available to adequately supervise the cleanup, and
6 assumes that responsibility.

7 (C) This paragraph does not prevent a regional board from taking an action
8 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

9 (5) If an agency has been designated pursuant to paragraph (1) or (2), the
10 designated agency may, after providing the local agency with adequate notice,
11 withdraw from its designation or stop taking action pursuant to that designation after
12 making one of the findings specified in subdivision (d) of Section 101480.

13 (f)(1) To facilitate remedial planning, the local agency may require the owner or
14 operator of a site within the local agency’s jurisdictional boundaries to provide the
15 local agency with all existing environmental information pertaining to the site,
16 including the results of any phase I or subsequent environmental assessment, any
17 assessment conducted pursuant to an order from, or agreement with, any federal,
18 state, or local agency, and any other environmental assessment information, except
19 that which is determined to be privileged.

20 (2) A person requested to furnish the information pursuant to paragraph (1) shall
21 be required only to furnish that information that may be within that person’s
22 possession or control, including actual knowledge of information within the
23 possession or control of any other party. If environmental assessment information
24 is not available, the local agency may require the owner of the property to conduct,
25 and to pay the expenses of conducting, an assessment in accordance with standard
26 real estate practices for conducting phase I or phase II environmental assessments.
27 If the local agency conducts the phase I or phase II environmental assessment
28 because the owner or operator failed to provide this information, the local agency
29 shall have a right of entry, upon reasonable notice, to enter the property and conduct
30 the phase I or phase II environmental assessment. The local agency may recover the
31 costs of the phase I or phase II environmental assessment in accordance with Section
32 25403.5.

33 **Comment.** Section 25403.1(a)(1)(B)(v) and (vi) are amended to update cross-references in
34 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
35 25300) of Division 20 of the Health and Safety Code.

36 **Health & Safety Code § 25403.2 (amended). Liability of local agency for release addressed**
37 **by completed action**

38 SEC. __. Section 25403.2 of the Health and Safety Code is amended to read:

39 25403.2. (a)(1) Notwithstanding any other law, except as otherwise provided in
40 this chapter, a local agency that undertakes and completes an action, or causes
41 another person to undertake and complete an action pursuant to Section 25403.1 for
42 which a finding of completion is made pursuant to subdivision (b), to clean up a

1 hazardous material release on, under, or from property within the local agency's
2 boundaries, in accordance with a cleanup plan prepared by a qualified independent
3 contractor and approved by the department, a regional board, or the designated
4 agency, in accordance with Section 25403.1, is not liable, with respect to that release
5 only, pursuant to any of the following:

6 (A) Division 7 (commencing with Section 13000) of the Water Code.

7 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing
8 with Section 25280), or Chapter 6.75 (commencing with Section 25299.10), ~~or~~
9 ~~Chapter 6.8 (commencing with Section 25300)~~, of Division ~~20~~. 20, or Part 2
10 (commencing with Section 78000) of Division 45.

11 (C) Any other state or local law imposing liability for cleanup of releases of
12 hazardous materials.

13 (2) If the cleanup was also performed pursuant to Chapter 6.65 (commencing with
14 Section 25260) of Division 20, and a certificate of completion is issued pursuant to
15 subdivision (b) of Section 25264, the immunity from local agency action provided
16 by the certificate of completion, as specified in subdivision (c) of Section 25264,
17 shall apply to the local agency, in addition to the immunity conferred by this section.

18 (3) In the case of a cleanup performed pursuant to Chapter 6.65 (commencing
19 with Section 25260) of Division 20, and for which the administering agency is a
20 local agency, the limitations on the certificate of completion set forth in paragraphs
21 (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity
22 provided for by this section and subdivision (c) of Section 25264.

23 (b) Notwithstanding any provision of law or policy providing for certification by
24 a person conducting a cleanup that the action has been properly completed, a
25 determination that a cleanup has been properly completed pursuant to this section
26 shall be made only upon the affirmative approval of the director, the regional board,
27 or the designated agency, as appropriate. The department or regional board, as
28 appropriate, shall, within 60 days of the date it finds that a cleanup has been
29 completed, notify the local agency in writing that the immunity provided by this
30 section is in effect. If another agency is designated to oversee the cleanup pursuant
31 to paragraph (1) or (2) of subdivision (d) of Section 25403.1, the designated agency
32 shall issue a notice within 60 days of the date it finds that a cleanup has been
33 completed.

34 (c) Upon proper completion of a cleanup, as specified in subdivision (b), the
35 immunity from action provided by the certificate of completion provided pursuant
36 to subdivision (c) of Section 25264 and the immunity provided by this section
37 extends to all of the following, but only for the release or releases specifically
38 identified in the approved cleanup plan and not for any subsequent release or any
39 release not specifically identified in the approved cleanup plan:

40 (1) An employee or agent of the local agency, including an instrumentality of the
41 local agency authorized to exercise some, or all, of the powers of a local agency
42 within, or for the benefit of, a local agency and an employee or agent of the
43 instrumentality.

1 (2) A person that enters into an agreement with a local agency for the development
2 of property, if the agreement requires the person to acquire property affected by a
3 hazardous material release or to clean up a hazardous material release with respect
4 to that property.

5 (3) A person that acquires the property after a person has entered into an
6 agreement with a local agency for development of the property, as described in
7 paragraph (2).

8 (4) A person that provides financing to a person specified in paragraph (2) or (3).

9 (d) Notwithstanding any other law, the immunity provided by this section does
10 not extend to any of the following:

11 (1) A person that was a responsible party for the release before entering into an
12 agreement, acquiring property, or providing financing, as specified in subdivision
13 (c).

14 (2) A person specified in subdivision (a) or (c) for any subsequent release of a
15 hazardous material or any release of a hazardous material not specifically identified
16 in the approved cleanup plan.

17 (3) A contractor who prepares the cleanup plan or conducts the cleanup.

18 (4) A person that obtains an approval of a cleanup plan pursuant to Section
19 25403.1, or pursuant to a finding, as specified in subdivision (b), by fraud, negligent
20 or intentional nondisclosure, or misrepresentation, and a person that knows before
21 the approval or determination is obtained or before the person enters into an
22 agreement, acquires the property, or provides financing, as specified in subdivision
23 (c), that the approval or determination was obtained by these means.

24 (e) The immunity provided by this section is in addition to any other immunity
25 provided by law to a local agency.

26 (f) This section does not impair any cause of action by a local agency or any other
27 party against the person responsible for the hazardous material release that is the
28 subject of the cleanup taken by the local agency or other person immune from
29 liability pursuant to this section.

30 (g) This section does not apply to, or limit, alter, or restrict, an action for personal
31 injury or wrongful death.

32 (h) This section does not limit liability of a person described in paragraph (3) or
33 (4) of subdivision (d) for damages under the federal Comprehensive Environmental
34 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
35 9601 et seq.).

36 (i) This section does not establish, limit, or affect the liability of a local agency
37 for a release of a hazardous material that is not investigated or cleaned up pursuant
38 to this section or Chapter 6.65 (commencing with Section 25260).

39 **Comment.** Section 25403.2(a)(1)(B) is amended to update cross-references in accordance with
40 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
41 of the Health and Safety Code.

1 **Health & Safety Code § 25403.5 (amended). Local agency cost recovery**

2 SEC. __. Section 25403.5 of the Health and Safety Code is amended to read:

3 25403.5. (a) Except as otherwise provided in this chapter, if a local agency
4 undertakes action to investigate property or clean up, or to require others to
5 investigate or clean up, including compelling a responsible party through a civil
6 injunctive action, a release of hazardous material, the responsible party shall be
7 liable to the local agency for the costs incurred in the action. A local agency may
8 not recover the costs of goods and services that were not procured in accordance
9 with procurement procedures, where applicable. The amount of the costs shall
10 include the interest on the costs accrued from the date of expenditure and reasonable
11 attorney's fees and shall be recoverable in a civil action. Interest shall be calculated
12 based on the average annual rate of return on a local agency's investment of surplus
13 funds for the fiscal year in which costs were incurred.

14 (b) The only defenses available to a responsible party shall be the defenses
15 specified in subdivision (b) of Section ~~25323.5~~. 78145.

16 (c) A local agency may recover any costs incurred to develop and to implement a
17 cleanup plan approved pursuant to this chapter, to the same extent the department is
18 authorized to recover those costs. The scope and standard of liability for cost
19 recovery pursuant to this section shall be the scope and standard of liability under
20 the federal Comprehensive Environmental Response, Compensation, and Liability
21 Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to
22 the department. However, any reference to hazardous substance in that act shall be
23 deemed to refer to hazardous material as defined in Section 25403. It is the intent of
24 the Legislature that local agencies diligently pursue reimbursement for investigation
25 and cleanup costs incurred pursuant to this chapter, but each local agency is
26 authorized to assess whether and to what extent cost recovery is practicable.

27 (d) An action for recovery of the costs of a cleanup undertaken by a local agency
28 under this section shall be commenced within three years after completion of the
29 cleanup.

30 (e) The action to recover costs provided by this section is in addition to, and is not
31 to be construed as restricting, any other cause of action available to a local agency.

32 **Comment.** Section 25403.5(b) is amended to update cross-references in accordance with the
33 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
34 the Health and Safety Code.

35 **Health & Safety Code § 25404 (amended). Unified program general provisions**

36 SEC. __. Section 25404 of the Health and Safety Code is amended to read:

37 25404. (a) For purposes of this chapter, the following terms shall have the
38 following meanings:

39 (1)(A) "Certified Unified Program Agency" or "CUPA" means the agency
40 certified by the secretary to implement the unified program specified in this chapter
41 within a jurisdiction.

1 (B) “Participating Agency” or “PA” means a state or local agency that has a
2 written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3,
3 and is approved by the secretary, to implement or enforce one or more of the unified
4 program elements specified in subdivision (c), in accordance with Sections 25404.1
5 and 25404.2.

6 (C) “Unified Program Agency” or “UPA” means the CUPA, or its participating
7 agencies to the extent each PA has been designated by the CUPA, pursuant to a
8 written agreement, to implement or enforce a particular unified program element
9 specified in subdivision (c). The UPAs have the responsibility and authority to
10 implement and enforce the requirements listed in subdivision (c), and the
11 regulations adopted to implement the requirements listed in subdivision (c), to the
12 extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67
13 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280),
14 Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 to 25404.2,
15 inclusive. After a CUPA has been certified by the secretary, the unified program
16 agencies and the state agencies carrying out responsibilities under this chapter shall
17 be the only agencies authorized to enforce the requirements listed in subdivision (c)
18 within the jurisdiction of the CUPA.

19 (2) “Department” means the Department of Toxic Substances Control.

20 (3) “Minor violation” means the failure of a person to comply with a requirement
21 or condition of an applicable law, regulation, permit, information request, order,
22 variance, or other requirement, whether procedural or substantive, of the unified
23 program that the UPA is authorized to implement or enforce pursuant to this chapter,
24 and that does not otherwise include any of the following:

25 (A) A violation that results in injury to persons or property, or that presents a
26 significant threat to human health or the environment.

27 (B) A knowing, willful, or intentional violation.

28 (C) A violation that is a chronic violation, or that is committed by a recalcitrant
29 violator. In determining whether a violation is chronic or a violator is recalcitrant,
30 the UPA shall consider whether there is evidence indicating that the violator has
31 engaged in a pattern of neglect or disregard with respect to applicable regulatory
32 requirements.

33 (D) A violation that results in an emergency response from a public safety agency.

34 (E) A violation that enables the violator to benefit economically from the
35 noncompliance, either by reduced costs or competitive advantage.

36 (F) A class I violation, as provided in Section 25110.8.5.

37 (G) A violation that hinders the ability of the UPA to determine compliance with
38 any other applicable local, state, or federal rule, regulation, information request,
39 order, variance, permit, or other requirement.

40 (4) “Secretary” means the Secretary for Environmental Protection.

41 (5) “Unified program facility” means all contiguous land and structures, other
42 appurtenances, and improvements on the land that are subject to the requirements
43 listed in subdivision (c).

1 (6) “Unified program facility permit” means a permit issued pursuant to this
2 chapter. For purposes of this chapter, a unified program facility permit encompasses
3 the permitting requirements of Section 25284, and permit or authorization
4 requirements under a local ordinance or regulation relating to the generation or
5 handling of hazardous waste or hazardous materials, but does not encompass the
6 permitting requirements of a local ordinance that incorporates provisions of the
7 California Fire Code or the California Building Code.

8 (b) The secretary shall adopt implementing regulations and implement a unified
9 hazardous waste and hazardous materials management regulatory program, which
10 shall be known as the unified program, after holding an appropriate number of
11 public hearings throughout the state. The unified program shall be developed in
12 close consultation with the director, the Director of Emergency Services, the State
13 Fire Marshal, the executive officers and chairpersons of the State Water Resources
14 Control Board and the California regional water quality control boards, the local
15 health officers, local fire services, and other appropriate officers of interested local
16 agencies, and affected businesses and interested members of the public, including
17 environmental organizations.

18 (c) The unified program shall consolidate the administration of the following
19 requirements and, to the maximum extent feasible within statutory constraints, shall
20 ensure the coordination and consistency of any regulations adopted pursuant to
21 those requirements:

22 (1)(A) Except as provided in subparagraphs (B) and (C), the requirements of
23 Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the
24 department pursuant to that chapter, that are applicable to all of the following:

25 (i) Hazardous waste generators, persons operating pursuant to a permit-by-rule,
26 conditional authorization, or conditional exemption, pursuant to Chapter 6.5
27 (commencing with Section 25100) or the regulations adopted by the department.

28 (ii) Persons managing perchlorate materials.

29 (iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter
30 6.5.

31 (iv) Persons operating a collection location that has been established under an
32 architectural paint stewardship plan approved by the Department of Resources
33 Recycling and Recovery pursuant to the architectural paint recovery program
34 established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of
35 Division 30 of the Public Resources Code.

36 (v) A transfer facility, as defined in paragraph (3) of subdivision (a) of Section
37 25123.3, that is operated by a door-to-door household hazardous waste collection
38 program or household hazardous waste residential pickup service, as defined in
39 subdivision (c) of Section 25218.1.

40 (vi) Persons who receive used oil from consumers pursuant to Section 25250.11.

41 (B) The unified program shall not include the requirements of paragraph (3) of
42 subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and
43 25200.14, and the authority to issue an order under Sections 25187 and 25187.1,

1 with regard to those portions of a unified program facility that are subject to one of
2 the following:

3 (i) A corrective action order issued by the department pursuant to Section 25187.

4 (ii) An order issued by the department pursuant to ~~Chapter 6.8 (commencing with~~
5 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~
6 ~~division or Part 2 (commencing with Section 78000) of Division 45.~~

7 (iii) A remedial action plan approved pursuant to ~~Chapter 6.8 (commencing with~~
8 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~
9 ~~division or Part 2 (commencing with Section 78000) of Division 45.~~

10 (iv) A cleanup and abatement order issued by a California regional water quality
11 control board pursuant to Section 13304 of the Water Code, to the extent that the
12 cleanup and abatement order addresses the requirements of the applicable section
13 or sections listed in this subparagraph.

14 (v) Corrective action required under subsection (u) of Section 6924 of Title 42 of
15 the United States Code or subsection (h) of Section 6928 of Title 42 of the United
16 States Code.

17 (vi) An environmental assessment pursuant to Section 25200.14 or a corrective
18 action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section
19 25200.3, that is being overseen by the department.

20 (C) The unified program shall not include the requirements of Chapter 6.5
21 (commencing with Section 25100), and the regulations adopted by the department
22 pursuant to that chapter, applicable to persons operating transportable treatment
23 units, except that any required notice regarding transportable treatment units shall
24 also be provided to the CUPAs.

25 (2) The requirements of Chapter 6.67 (commencing with Section 25270)
26 concerning aboveground storage tanks.

27 (3)(A) Except as provided in subparagraphs (B) and (C), the requirements of
28 Chapter 6.7 (commencing with Section 25280) concerning underground storage
29 tanks and the requirements of any underground storage tank ordinance adopted by
30 a city or county.

31 (B) The unified program shall not include the responsibilities assigned to the State
32 Water Resources Control Board pursuant to Section 25297.1.

33 (C) The unified program shall not include the corrective action requirements of
34 Sections 25296.10 to 25296.40, inclusive.

35 (4) The requirements of Article 1 (commencing with Section 25500) of Chapter
36 6.95 concerning hazardous material release response plans and inventories.

37 (5) The requirements of Article 2 (commencing with Section 25531) of Chapter
38 6.95, concerning the accidental release prevention program.

39 (6) The requirements for the hazardous materials plan and hazardous materials
40 inventory statement of the California Fire Code, as adopted by the State Fire
41 Marshal pursuant to Section 13143.9.

42 (d) To the maximum extent feasible within statutory constraints, the secretary
43 shall consolidate, coordinate, and make consistent these requirements of the unified

1 program with other requirements imposed by other federal, state, regional, or local
2 agencies upon facilities regulated by the unified program.

3 (e)(1) The secretary shall establish standards applicable to CUPAs, participating
4 agencies, state agencies, and businesses specifying the data to be collected and
5 submitted by unified program agencies in administering the programs listed in
6 subdivision (c).

7 (2)(A) The secretary shall establish a statewide information management system
8 capable of receiving all data collected by the unified program agencies and reported
9 by regulated businesses pursuant to this subdivision, in a manner that is most cost
10 efficient and effective for both the regulated businesses and state and local agencies.
11 The secretary shall prescribe an XML or other compatible web-based format for the
12 transfer of data from CUPAs and regulated businesses and make all nonconfidential
13 data available on the internet.

14 (B) The secretary shall establish milestones to measure the implementation of the
15 statewide information management system and shall provide periodic status updates
16 to interested parties.

17 (3)(A)(i) Except as provided in subparagraph (B), in addition to any other funding
18 that becomes available, the secretary shall increase the oversight surcharge provided
19 for in subdivision (b) of Section 25404.5 by an amount necessary to meet the
20 requirements of this subdivision for a period of three years, to establish the statewide
21 information management system, consistent with paragraph (2). The increase in the
22 oversight surcharge shall not exceed twenty-five dollars (\$25) in any one year of the
23 three-year period. The secretary shall thereafter maintain the statewide information
24 management system, funded by the assessment the secretary is authorized to impose
25 pursuant to Section 25404.5.

26 (ii) No less than 75 percent of the additional funding raised pursuant to clause (i)
27 shall be provided to CUPAs and PAs through grant funds or statewide contract
28 services, in the amounts determined by the secretary to assist these local agencies
29 in meeting these information management system requirements.

30 (B) A facility that is owned or operated by the federal government and that is
31 subject to the unified program shall pay the surcharge required by this paragraph to
32 the extent authorized by federal law.

33 (C) The secretary, or one or more of the boards, departments, or offices within the
34 California Environmental Protection Agency, shall seek available federal funding
35 for purposes of implementing this subdivision.

36 (4) No later than three years after the statewide information management system
37 is established, each CUPA, PA, and regulated business shall report program data
38 electronically. The secretary shall work with the CUPAs to develop a phase-in
39 schedule for the electronic collection and submittal of information to be included in
40 the statewide information management system, giving first priority to information
41 relating to those chemicals determined by the secretary to be of greatest concern.
42 The secretary, in making this determination shall consult with the CUPAs, the

1 California Emergency Management Agency, the State Fire Marshal, and the boards,
2 departments, and offices within the California Environmental Protection Agency.

3 (5) The secretary, in collaboration with the CUPAs, shall provide technical
4 assistance to regulated businesses to comply with the electronic reporting
5 requirements and may expend funds identified in clause (i) of subparagraph (A) of
6 paragraph (3) for that purpose.

7 **Comment.** Section 25404(c)(1)(B)(ii) and (iii) are amended to update cross-references in
8 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
9 25300) of Division 20 of the Health and Safety Code.

10 **Health & Safety Code § 25404.1 (amended). Agency responsibilities and certification for**
11 **unified program**

12 SEC. __. Section 25404.1 of the Health and Safety Code is amended to read:

13 25404.1. (a)(1) All aspects of the unified program related to the adoption and
14 interpretation of statewide standards and requirements shall be the responsibility of
15 the state agency which is charged with that responsibility under existing law. For
16 underground storage tanks, that agency shall be the State Water Resources Control
17 Board. The California regional water quality control boards shall have responsibility
18 for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The
19 Department of Toxic Substances Control shall have the sole responsibility for the
20 issuances of variances from the requirements of Chapter 6.5 (commencing with
21 Section 25100) and the regulations adopted pursuant thereto, for the determination
22 of whether or not a waste is hazardous or nonhazardous, for the determination of
23 whether or not a person is eligible to be deemed to be operating pursuant to a permit-
24 by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5
25 (commencing with Section 25100) or the regulations adopted by the department,
26 and for the suspension and revocation of permits-by-rule, conditional
27 authorizations, and conditional exemptions.

28 (2) Except as provided in paragraphs (1) and (3), those aspects of the unified
29 program related to the application of statewide standards to particular facilities,
30 including the issuance of unified program facility permits, the review of reports and
31 plans, environmental assessment, compliance and correction, and the enforcement
32 of those standards and requirements against particular facilities, shall be the
33 responsibility of the unified program agencies.

34 (3)(A) Except in those jurisdictions for which the UPA has been determined by
35 the department, in accordance with regulations adopted pursuant to subparagraph
36 (C), to be qualified to implement the environmental assessment and removal and
37 remediation corrective action aspects of the unified program, the department shall
38 have sole responsibility and authority under the unified program for all of the
39 following:

40 (i) Implementing and enforcing the requirements of paragraph (3) of subdivision
41 (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations
42 adopted by the department to implement those sections. As a pilot program in up to

1 10 counties, pending the adoption and implementation of regulations pursuant to
2 subparagraph (C), the department may delegate to the CUPA, through a delegation
3 agreement, responsibility and authority for implementing and enforcing the
4 requirements of Section 25200.14.

5 (ii) The issuance of orders under Section 25187 requiring removal or remedial
6 action.

7 (iii) The issuance of orders under Section 25187.1.

8 (B) Notwithstanding subparagraph (A), a UPA may issue an order under Section
9 25187 specifying a schedule for compliance or correction and imposing an
10 administrative penalty for any violation of the requirements of Chapter 6.5
11 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of
12 Section 25404, or the requirements of any permit, rule, regulation, standard or
13 requirement issued or adopted pursuant to the requirements of Chapter 6.5
14 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of
15 Section 25404, if one of the following applies:

16 (i) The order does not require removal or remedial action.

17 (ii) The only removal or remedial actions required by the order are those actions
18 determined to be necessary to address an imminent and substantial endangerment
19 based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

20 (C) The department shall adopt emergency regulations specifying the criteria and
21 procedures for implementing paragraph (3) of subdivision (c) of Section 25200.3
22 and Sections 25200.10 and 25200.14, including criteria and procedures for
23 determining whether or not a unified program agency is qualified to implement the
24 environmental assessment and removal and remediation corrective action portions
25 of the unified program under paragraph (3) of subdivision (c) of Section 25200.3
26 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining
27 whether a unified program agency is qualified shall, at a minimum, include
28 consideration of the following factors:

29 (i) Adequacy of the technical expertise possessed by the unified program agency.

30 (ii) Adequacy of staff resources.

31 (iii) Adequacy of budget resources and funding mechanisms.

32 (iv) Training requirements.

33 (v) Past performance in implementing and enforcing requirements related to
34 environmental assessments, and removal and remediation corrective actions.

35 (vi) Recordkeeping and accounting systems.

36 (D) The regulations adopted by the department pursuant to subparagraph (C) shall
37 include provisions to ensure coordinated and consistent application of paragraph (3)
38 of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and
39 25200.14, when both the department and the unified program agency are, or will be,
40 implementing and enforcing the requirements of one or more of these sections at the
41 same facility.

42 (E) For purposes of subparagraph (D), “facility” means the entire site that is under
43 the control of the owner or operator.

1 (F) If the department is designated as a unified program agency, the department
2 is deemed qualified to implement all of the following:

3 (i) The environmental assessment, removal and remedial action, and corrective
4 action aspects of the unified program.

5 (ii) Paragraph (3) of subdivision (c) of Section ~~25300.3~~, 25200.3, Sections
6 25200.10, 25200.14, 25187, and 25287.1, and the regulations adopted by the
7 department to implement those provisions.

8 (b)(1) On or before January 1, 1996, each county shall apply to the secretary to be
9 certified as a unified program agency to implement the unified program within the
10 unincorporated area of the county and within each city in the county, in which area
11 or city, as of January 1, 1996, the city or other local agency has not applied to be the
12 certified unified program agency.

13 (2)(A) Any city or other local agency which, as of December 31, 1995, has been
14 designated as an administering agency pursuant to Section 25502, or which has
15 assumed responsibility for the implementation of Chapter 6.7 (commencing with
16 Section 25280) pursuant to Section 25283, may apply to the secretary to become the
17 certified unified program agency to implement the unified program within the
18 jurisdictional boundaries of the city or local agency.

19 (B) A city or other local agency which, as of December 31, 1995, has not been
20 designated as an administering agency pursuant to Section 25502, or which has not
21 assumed responsibility for the implementation of Chapter 6.7 (commencing with
22 Section 25280) pursuant to Section 25283, may apply to the secretary to become the
23 certified unified program agency within the jurisdictional boundaries of the city or
24 local agency if it enters into an agreement with the county to become the certified
25 unified program agency within those boundaries. A county shall not refuse to enter
26 into an agreement unless it specifies in writing its reasons for failing to enter into
27 the agreement. However, if the city does not enter into the agreement with the
28 county, within 30 days of receiving a county's reasons for failing to enter into
29 agreement, a city may request that the secretary allow it to apply to be a certified
30 unified program agency and the secretary may, in ~~his or her~~ the secretary's
31 discretion, approve the request.

32 (3) A city, county, or other local agency may propose, in its application for
33 certification to the secretary, to allow other public agencies to implement certain
34 elements of the unified program, but the secretary shall accept that proposal only if
35 the secretary makes the findings specified in subdivision (d) of Section 25404.3.

36 (4) If a city or other local agency which, as of December 31, 1995, has been
37 designated as an administering agency pursuant to Section 25502, or has assumed
38 responsibility for the implementation of Chapter 6.7 (commencing with Section
39 25280) pursuant to Section 25283, requests that the county propose in its application
40 for certification to the secretary that the city or local agency implement, within the
41 jurisdictional boundaries of the city or local agency, those elements of the unified
42 program which, as of December 31, 1995, the city or local agency has authority to
43 administer, the county shall grant that request. If ~~such~~ an agency described in this

1 paragraph is subsequently removed or withdraws from the unified program, the
2 agency shall not act as an administering agency under Section 25502 or act as a
3 local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as
4 provided in subdivision (c) of Section 25283.

5 **Comment.** Section 25404.1(a)(3)(F)(ii) is amended to correct an erroneous cross-reference to
6 “Section 25300.3.” This cross-reference was corrected to refer to “Section 25200.3.”

7 This section is also amended to eliminate gendered pronouns and to make technical changes.

8 **Health & Safety Code § 25411 (amended). Definitions**

9 SEC. __. Section 25411 of the Health and Safety Code is amended to read:

10 25411. As used in this chapter:

11 ~~(a) “Agency” means the Environmental Affairs Agency.~~

12 ~~(b) “Handle” means to use, generate, process, produce, package, treat, store, or~~
13 ~~dispose of a hazardous material in any fashion.~~

14 ~~(c) (b) “Hazardous material” means any of the following materials:~~

15 (1) A material listed in subdivision (b) of Section 6382 of the Labor Code.

16 (2) A material defined in Section 25115, 25117, or ~~25316.~~ subdivision (a) of
17 Section 78075.

18 (3) Any other material which the director determines, because of its quantity,
19 concentration, or physical or chemical characteristics, poses a significant present or
20 potential hazard to human health and safety or to the environment if released into
21 the community.

22 ~~(d) (c) “Release” means any spilling, leaking, pumping, pouring, emitting,~~
23 ~~emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the~~
24 ~~environment.~~

25 ~~(e) “Secretary” means the Secretary of the Environmental Affairs Agency.~~

26 **Comment.** Section 25411 is amended to update cross-references in accordance with the
27 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
28 the Health and Safety Code.

29 This section is also amended to delete obsolete definitions for terms that are not used in the
30 chapter governed by the definitions.

31 **Health & Safety Code § 25416 (amended). Conduct of studies and information programs**

32 SEC. __. Section 25416 of the Health and Safety Code is amended to read:

33 25416. (a) All studies and community information programs conducted pursuant
34 to this section shall be done only if either subdivision (b) applies or if funds are
35 available without restructuring the department’s funding priorities. The department
36 shall conduct these studies and information programs in the following manner:

37 (1) The department shall, except as provided in subdivision (b), and in conjunction
38 with the local health officer, the State Department of Health Services, and the Office
39 of Environmental Health Hazard Assessment, conduct or contract for
40 epidemiological studies to identify and monitor health effects related to exposure to
41 hazardous materials, as defined in Section 66084 of Title 22 of the California Code
42 of Regulations. A study may be conducted in any area of the state identified by the

1 department or the local health officer as a site of potential exposure to hazardous
2 materials, including, but not limited to, any of the following areas:

3 (A) All communities located near hazardous waste disposal facilities.

4 (B) In all communities containing hazardous substance release sites listed
5 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
6 4 of Part 2 of Division 45 or listed pursuant to the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

8 (C) In all areas around the location of major generators of hazardous waste.

9 (D) In all other areas identified by local health officers or the State Department of
10 Health Services as possible locations of public exposure to hazardous materials.

11 (2) The department, in consultation with the State Department of Health Services
12 and the Office of Environmental Health Hazard Assessment, shall determine which
13 epidemiological studies are to be conducted pursuant to this section based on the
14 potential for public exposure to hazardous materials. Studies in areas near Class I
15 hazardous waste disposal facilities, as defined in Section 2531 of Title 23 of the
16 California Code of Regulations, shall be given the highest priority for funding. If a
17 hearing is conducted pursuant to Section 25149 and the hearing officer determines
18 that there is a significant potential for endangerment to the public as a result of the
19 suspected or actual release of a hazardous material, the department shall give
20 priority to conducting an epidemiological study for that facility.

21 (3) If a local health officer determines that a study should be conducted pursuant
22 to this section because of a potential public exposure to hazardous materials, the
23 local health officer may request that the department initiate or contract for a study
24 pursuant to this section by demonstrating to the department that there is sufficient
25 evidence that justifies the need for a study. The department shall respond to the local
26 health officer's request within 90 days.

27 (4) A local health officer may contract with qualified persons or firms to produce
28 the epidemiological studies specified in paragraph (1).

29 (5) The design and methodology of any study conducted pursuant to this section
30 shall be reviewed and approved by the department, the State Department of Health
31 Services, and the Office of Environmental Health Hazard Assessment prior to the
32 initiation of the study.

33 (6) In any county in which hazardous waste disposal facilities are located and in
34 all other counties in which the State Department of Health Services identifies
35 significant actual or potential public exposure to hazardous materials, the
36 department shall, in conjunction with the local health officer, conduct or contract
37 for a community information program with respect to sites of potential exposure to
38 hazardous materials identified under paragraph (1) to do all of the following:

39 (A) Organize and conduct educational programs for local physicians and other
40 health professionals on the effects of exposure to hazardous materials and reporting
41 requirements.

42 (B) Disseminate information to high risk populations on the health effects of
43 exposure to hazardous materials.

1 (C) Conduct public forums on the health effects of exposure to hazardous
2 substances and methods of limiting exposure.

3 (7) Paragraph (6) does not apply to hazardous substance release sites listed on the
4 National Priorities List for which the Environmental Protection Agency has
5 assumed lead responsibility for community relations.

6 (b) If a county is authorized to impose a license tax pursuant to Section 25149.5
7 for revenue purposes, the department may require the county to provide funding for
8 carrying out epidemiological studies or the community information program
9 concerning the hazardous waste facility subject to the license tax. The department
10 shall provide the county with technical assistance to conduct an epidemiological
11 study pursuant to this subdivision. The department may exempt a county from the
12 requirements of this subdivision if the county demonstrates to the department that
13 the revenue potential from the facility would not be adequate to conduct an
14 epidemiological study or community information program. When considering a
15 county request for an exemption, the department shall consider the regulatory costs
16 and responsibilities of the county related to that facility.

17 (c) The department shall expend funds from the Toxic Substances Control
18 Account, upon appropriation by the Legislature, to conduct studies and community
19 information programs in counties containing a hazardous substance release site
20 listed pursuant to ~~Section 25356. Article 5 (commencing with Section 78760) of~~
21 Chapter 4 of Part 2 of Division 45. The department shall expend funds from the
22 Hazardous Waste Control Account, upon appropriation by the Legislature, to
23 conduct all other studies and community information programs conducted pursuant
24 to this section, except as provided in subdivision (b).

25 **Comment.** Section 25416(a)(1)(B) and (c) are amended to update cross-references in accordance
26 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
27 Division 20 of the Health and Safety Code.

28 **Health & Safety Code § 25501 (amended). Definitions**

29 SEC. __. Section 25501 of the Health and Safety Code is amended to read:

30 25501. Unless the context indicates otherwise, the following definitions govern
31 the construction of this article:

32 (a) “Agricultural handler” means a business operating a farm that is subject to the
33 exemption specified in Section 25507.1.

34 (b) “Area plan” means a plan established pursuant to Section 25503 by a unified
35 program agency for emergency response to a release or threatened release of a
36 hazardous material within a city or county.

37 (c) “Business” means all of the following:

38 (1) An employer, self-employed individual, trust, firm, joint stock company,
39 corporation, partnership, limited liability partnership or company, or other business
40 entity.

41 (2) A business organized for profit and a nonprofit business.

42 (3) The federal government, to the extent authorized by law.

1 (4) An agency, department, office, board, commission, or bureau of state
2 government, including, but not limited to, the campuses of the California
3 Community Colleges, the California State University, and the University of
4 California.

5 (5) An agency, department, office, board, commission, or bureau of a city, county,
6 or district.

7 (6) A handler that operates or owns a unified program facility.

8 (d) “Business plan” means a separate plan for each unified program facility, site,
9 or branch of a business that meets the requirements of Section 25505.

10 (e)(1) “Certified unified program agency” or “CUPA” means the agency certified
11 by the secretary to implement the unified program specified in Chapter 6.11
12 (commencing with Section 25404) within a jurisdiction.

13 (2) “Participating agency” or “PA” means an agency that has a written agreement
14 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by
15 the secretary, to implement or enforce one or more of the unified program elements
16 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in
17 accordance with Sections 25404.1 and 25404.2.

18 (3) “Unified program agency” or “UPA” means the CUPA, or its participating
19 agencies to the extent each PA has been designated by the CUPA, pursuant to a
20 written agreement, to implement or enforce a particular unified program element
21 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes
22 of this article and Article 2 (commencing with Section 25531), the UPAs have the
23 responsibility and authority, to the extent provided by this article and Article 2
24 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement
25 and enforce only those requirements of this article and Article 2 (commencing with
26 Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.

27 (4) The UPAs also have the responsibility and authority, to the extent provided by
28 this article and Article 2 (commencing with Section 25531) and Sections 25404.1
29 and 25404.2, to implement and enforce the regulations adopted to implement the
30 requirements of this article and Article 2 (commencing with Section 25531) listed
31 in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has
32 been certified by the secretary, the unified program agencies shall be the only local
33 agencies authorized to enforce the requirements of this article and Article 2
34 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision
35 (c) of Section 25404 within the jurisdiction of the CUPA.

36 (f) “City” includes any city and county.

37 (g) “Chemical name” means the scientific designation of a substance in
38 accordance with the nomenclature system developed by the International Union of
39 Pure and Applied Chemistry or the system developed by the Chemical Abstracts
40 Service.

41 (h) “Common name” means any designation or identification, such as a code
42 name, code number, trade name, or brand name, used to identify a substance by
43 other than its chemical name.

1 (i) “Compressed gas” means a material, or mixture of materials, that meets either
2 of the following:

3 (1) The definition of compressed gas or cryogenic fluid found in the California
4 Fire Code.

5 (2) Compressed gas that is regulated pursuant to Part 1 (commencing with Section
6 6300) of Division 5 of the Labor Code.

7 (j) “Consumer product” means a commodity used for personal, family, or
8 household purposes, or is present in the same form, concentration, and quantity as
9 a product prepackaged for distribution to and use by the general public.

10 (k) “Emergency response personnel” means a public employee, including, but not
11 limited to, a firefighter or emergency rescue personnel, as defined in Section 245.1
12 of the Penal Code, or personnel of a local emergency medical services (EMS)
13 agency, as designated pursuant to Section 1797.200, who is responsible for
14 response, mitigation, or recovery activities in a medical, fire, or hazardous material
15 incident, or natural disaster where public health, public safety, or the environment
16 may be impacted.

17 (l) “Handle” means all of the following:

18 (1)(A) To use, generate, process, produce, package, treat, store, emit, discharge,
19 or dispose of a hazardous material in any fashion.

20 (B) For purposes of subparagraph (A), “store” does not include the storage of
21 hazardous materials incidental to transportation, as defined in Title 49 of the Code
22 of Federal Regulations, with regard to the inventory requirements of Section 25506.

23 (2)(A) The use or potential use of a quantity of hazardous material by the
24 connection of a marine vessel, tank vehicle, tank car, or container to a system or
25 process for any purpose.

26 (B) For purposes of subparagraph (A), the use or potential use does not include
27 the immediate transfer to or from an approved atmospheric tank or approved
28 portable tank that is regulated as loading or unloading incidental to transportation
29 by Title 49 of the Code of Federal Regulations.

30 (m) “Handler” means a business that handles a hazardous material.

31 (n)(1) “Hazardous material” means a material listed in paragraph (2) that, because
32 of its quantity, concentration, or physical or chemical characteristics, poses a
33 significant present or potential hazard to human health and safety or to the
34 environment if released into the workplace or the environment, or a material
35 specified in an ordinance adopted pursuant to paragraph (3).

36 (2) Hazardous materials include all of the following:

37 (A) A substance or product for which the manufacturer or producer is required to
38 prepare a material safety data sheet pursuant to the Hazardous Substances
39 Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part
40 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or
41 regulation.

1 (B) A substance listed as a radioactive material in Appendix B of Part 30
2 (commencing with Section 30.1) of Title 10 of the Code of Federal Regulations, as
3 maintained and updated by the Nuclear Regulatory Commission.

4 (C) A substance listed pursuant to Title 49 of the Code of Federal Regulations.

5 (D) A substance listed in Section 339 of Title 8 of the California Code of
6 Regulations.

7 (E) A material listed as a hazardous waste, as defined by Sections 25115, 25117,
8 and ~~25316~~. subdivision (a) of Section 78075.

9 (3) The governing body of a unified program agency may adopt an ordinance that
10 provides that, within the jurisdiction of the unified program agency, a material not
11 listed in paragraph (2) is a hazardous material for purposes of this article if a handler
12 has a reasonable basis for believing that the material would be injurious to the health
13 and safety of persons or harmful to the environment if released into the workplace
14 or the environment, and requests the governing body of the unified program agency
15 to adopt that ordinance, or if the governing body of the unified program agency has
16 a reasonable basis for believing that the material would be injurious to the health
17 and safety of persons or harmful to the environment if released into the workplace
18 or the environment. The handler or the unified program agency shall notify the
19 secretary no later than 30 days after the date an ordinance is adopted pursuant to this
20 paragraph.

21 (o) “Office” means the Office of Emergency Services.

22 (p) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,
23 discharging, injecting, escaping, leaching, dumping, or disposing into the
24 environment, unless permitted or authorized by a regulatory agency.

25 (q) “Retail establishment” means a business that sells consumer products
26 prepackaged for distribution to, and intended for use by, the general public. A retail
27 establishment may include storage areas or storerooms in establishments that are
28 separated from shelves for display areas but maintained within the physical confines
29 of the retail establishments. A retail establishment does not include a pest control
30 dealer, as defined in Section 11407 of the Food and Agricultural Code.

31 (r) “Secretary” means the Secretary for Environmental Protection.

32 (s) “Statewide information management system” means the statewide information
33 management system established pursuant to subdivision (e) of Section 25404 that
34 provides for the combination of state and local information management systems
35 for the purposes of managing unified program data.

36 (t) “Threatened release” means a condition, circumstance, or incident making it
37 necessary to take immediate action to prevent, reduce, or mitigate a release with the
38 potential to cause damage or harm to persons, property, or the environment.

39 (u) “Trade secret” means trade secrets as defined in either subdivision (d) of
40 Section 6254.7 of the Government Code or Section 1061 of the Evidence Code.

41 (v) “Unified program facility” means all contiguous land and structures, other
42 appurtenances, and improvements on the land that are subject to the requirements

1 of paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this
2 article, “facility” has the same meaning as unified program facility.

3 **Comment.** Section 25501(n)(2)(E) is amended to update cross-references in accordance with
4 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
5 of the Health and Safety Code.

6 **Health & Safety Code § 25548 (amended). Findings and declarations**

7 SEC. __. Section 25548 of the Health and Safety Code is amended to read:

8 25548. (a) The Legislature hereby finds and declares all of the following:

9 (1) There is uncertainty in the law of this state with regard to the liability of lenders
10 for hazardous material contamination involving property that is owned or used by
11 borrowers, whether or not the property is collateral for the loan or obligation.

12 (2) There is also uncertainty in the law of this state with regard to the liability of
13 trustees, executors, and other fiduciaries for hazardous material contamination
14 involving property that is part of the fiduciary estate. Fiduciaries understand that the
15 fiduciary estate may have that liability, but are concerned that a fiduciary may have
16 independent personal liability, despite the absence of personal culpability for the
17 contamination.

18 (3) The uncertainty as to liability or potential liability is attributable to the failure
19 of existing law, except for the security interest exemption incorporated by reference
20 in Section ~~25323.5~~, 78145, to recognize that usually the credit or fiduciary
21 relationship is not sufficiently related to the hazardous material contamination to
22 warrant, as a policy matter, the imposition of liability on lenders and fiduciaries.

23 (b) It is the intent of the Legislature, in enacting this chapter, to specify the type
24 of lender and fiduciary conduct that will not incur liability for hazardous material
25 contamination. However, the liability exemption has appropriate boundaries. For
26 example, the exemption will not protect lenders or fiduciaries in transactions that
27 are structured for the purpose of evading liability for hazardous material
28 contamination if the lender or fiduciary is not acting within its respective capacity,
29 or if the contamination is caused by the lender or fiduciary.

30 (c) This chapter does not apply to judicial actions filed, or administrative orders
31 issued, before January 1, 1997, or to proceedings to enforce judicial or administrative
32 orders issued before January 1, 1997.

33 **Comment.** Section 25548 is amended to update cross-references in accordance with the
34 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
35 the Health and Safety Code.

36 **Health & Safety Code § 25548.1 (amended). Definitions**

37 SEC. __. Section 25548.1 of the Health and Safety Code is amended to read:

38 25548.1. As used in this chapter, the following terms have the following meaning:

39 (a) “Actual benefit” means the amount, if any, realized by the lender upon the
40 disposition of property acquired through foreclosure or its equivalent as a direct
41 result of a removal or remedial action undertaken by another person, not to exceed

1 the amount, if any, by which the disposition proceeds exceed the sum of the balance
2 of all of the following:

3 (1) The loan or obligation or the amount of the lien, evidenced by the loan or
4 obligation outstanding at foreclosure or its equivalent.

5 (2) The costs, including attorneys' fees, incurred by the lender in connection with
6 the foreclosure or its equivalent, subsequent ownership, any removal or remedial
7 action, and disposition of the property.

8 (b) "Borrower, debtor or obligor" means a person who is obligated to a lender
9 under a loan or obligation, whether or not the lender maintains a security interest in
10 that person's property.

11 (c) "Damages" includes compensatory damages, exemplary damages, punitive
12 damages, and costs of every kind and nature, including, but not limited to, costs of
13 a removal or remedial action.

14 (d) "Fiduciary" means a person who is acting in any of the following capacities:

15 (1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of
16 Section 82 of the Probate Code.

17 (2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive,
18 or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate
19 Code.

20 (3) A trustee appointed in proceedings under any state or federal bankruptcy law.

21 (4) An assignee or a trustee acting under an assignment made for the benefit of
22 creditors.

23 (5) A court-appointed receiver.

24 (e) "Finance lease" means a transaction with respect to which both of the
25 following apply:

26 (1) The lessor does not select or manufacture the goods or does not supply the
27 goods, except in the case of a re-lease, whether it is created by a new transaction or
28 substitution of the lessee.

29 (2) The lessor acquires the goods or right to possession and use of the goods in
30 connection with the lease or a prior lease transaction.

31 (f) "Foreclosure or its equivalent" means the acquisition of property by a lender
32 through any of the following:

33 (1) Judicial or nonjudicial foreclosure of the lender's security interest in the
34 property or acceptance of a deed or other conveyance in satisfaction thereto.

35 (2) Acceptance of a deed in lieu or other conveyance in satisfaction of a loan or
36 obligation previously contracted.

37 (3) Termination of a finance lease by consent or default.

38 (4) Any other formal or informal manner, whether pursuant to law or under
39 warranties, covenants, conditions, representations or promises from the borrower,
40 by which the lender acquires, for subsequent disposition, actual possession of the
41 property subject to a security interest.

42 (g) "Hazardous material" has the same meaning as defined in subdivision (d) of
43 Section 25260.

1 (h)(1) “Indicia of ownership” means evidence of a security interest, evidence of
2 an interest in a security interest, or evidence of an interest in real or personal
3 property securing a loan or other obligation, including, but not limited to, any legal
4 or equitable title to real or personal property acquired incident to foreclosure or its
5 equivalent.

6 (2) “Evidence of an interest” includes, but is not limited to, all of the following:

7 (A) Mortgages.

8 (B) Deeds of trust.

9 (C) Liens.

10 (D) Surety bonds and guarantees of obligations.

11 (E) Title held pursuant to a finance lease in which the lessor does not select
12 initially the leased property.

13 (F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

14 (G) Assignments, pledges, or other rights to, or other forms of, encumbrance
15 against property that are held primarily to protect a security interest.

16 (3) A person is not required to hold title or a security interest to maintain indicia
17 of ownership.

18 (i) “Lender” means a person to the extent of the capacity in which that person
19 maintains indicia of ownership primarily to protect a security interest or makes,
20 acquires, renews, modifies, or holds a loan or obligation from a borrower. “Lender”
21 includes either of the following persons:

22 (1) Any person who acts as, or on behalf of, a lender in connection with any aspect
23 of the solicitation, negotiation, consummation, disbursement, administration,
24 servicing, collection, enforcement, or foreclosure or its equivalent of a loan or
25 obligation or security interest in property such as a surety, escrow, or title company.

26 (2) Any person who makes, secures, acquires, or holds a loan or obligation or
27 security interest by assignment, sale, pledge, subrogation, succession, or operation
28 of law, or becomes the receiver for the holder of a loan or obligation or security
29 interest.

30 (j) “Loan or obligation” means a loan, revolving or nonrevolving line of credit,
31 finance lease, sale-leaseback that provides for a purchase option in favor of the
32 lessee, installment sale contract, sale on account, or other credit sale, letter of credit,
33 forbearance or guaranty, collateral pledge, or other suretyship obligation, and any
34 extension, renewal, or modification thereof. A loan or obligation may or may not
35 involve a security interest in property.

36 (k)(1) Except as provided in paragraphs (3) and (4), “participate (or participation)
37 in the management of the property” means actual participation in the management
38 or operational affairs of the property by the lender while the borrower, under the
39 loan or obligation, is in possession of the property, and the lender exercises
40 decisionmaking control over the environmental compliance by the borrower, so that
41 the lender assumes responsibility for the hazardous material handling or disposal
42 practices of the borrower, or exercises control at a level comparable to that of a
43 manager of the enterprise of the borrower, so that the lender assumes or manifests

1 responsibility for the overall management of the enterprise encompassing the day-
2 to-day decisionmaking of the enterprise with respect to either of the following:

3 (A) Environmental compliance.

4 (B) All, or substantially all, of the operational, as opposed to financial or
5 administrative, aspects of the enterprise other than environmental compliance.

6 (2) For purposes of paragraph (1), the following terms have the following
7 meaning:

8 (A) “Operational aspects of the enterprise” includes, but is not limited to,
9 functions such as that of facility or plant manager, operations manager, chief
10 operating officer, or chief executive officer.

11 (B) “Financial or administrative aspects” includes, but is not limited to, functions
12 such as that of a credit manager, accounts payable/receivable manager, personnel
13 manager, controller, or chief financial officer.

14 (3) Notwithstanding paragraph (1), “participation in the management of the
15 property” does not include an act or omission by a prospective lender prior to
16 making, acquiring, or holding a loan or obligation. “Participation in the management
17 of the property” also does not include the actions taken by a prospective lender who
18 undertakes or requires an environmental inspection of property prior to making,
19 acquiring, or holding a loan or obligation. A lender or prospective lender does not
20 “participate in the management of the property” if the lender or prospective lender
21 requires the borrower to clean up the property or requires the borrower to comply
22 or come into compliance with any applicable law or regulation. This chapter does
23 not require a lender to conduct or require an inspection prior to foreclosure or its
24 equivalent to qualify for the exemption provided by this chapter, and the liability of
25 a lender shall not be based on or affected by whether the lender conducts or requires
26 an inspection prior to foreclosure or its equivalent.

27 (4) Loan policing and work out activities, as specified in paragraphs (5) and (6),
28 that are consistent with holding ownership indicia primarily to protect a security
29 interest and consistent with a loan or obligation made, acquired, or held primarily
30 for purposes other than investment purposes, do not constitute participation in the
31 management of the property. The authority for the lender to take those actions may,
32 but are not required to, be contained in contractual or other documents specifying
33 requirements for financial, environmental, and other warranties, covenants,
34 conditions, representations, or promises from the borrower. Loan policing and work
35 out activities include all activities up to foreclosure or its equivalent.

36 (5) A lender who engages in loan policing activities prior to foreclosure or its
37 equivalent is exempt from liability pursuant to this chapter if the lender does not, by
38 those actions, participate in the management of the property. Those actions include,
39 but are not limited to, all of the following:

40 (A) Requiring the borrower to conduct a removal or remedial action during the
41 term of the security interest or loan or obligation.

1 (B) Requiring the borrower to comply or come into compliance with applicable
2 federal, state, and local environmental and other laws during the term of the security
3 interest or loan or obligation.

4 (C) Securing or exercising authority to monitor or inspect the property, including
5 onsite inspections, or the business or financial condition of the borrower during the
6 term of the security interest or loan or obligation.

7 (D) Taking other actions to adequately police the loan, obligation, or security
8 interest, such as requiring the borrower to comply with any warranties, covenants,
9 conditions, representations, or promises in connection with the security interest or
10 loan or obligation.

11 (6)(A) A lender who engages in work out activities prior to foreclosure or its
12 equivalents is exempt from liability pursuant to this chapter if the lender does not,
13 by those actions, participate in the management of the property.

14 (B) “Work out” means those actions by which a lender, at any time prior to
15 foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the
16 borrower, or to preserve or prevent the diminution of the value of the property,
17 security interest, or loan or obligation.

18 (C) Work out activities include, but are not limited to, all of the following:

19 (i) Restructuring or renegotiating the terms of the loan, obligation, or security
20 interest.

21 (ii) Requiring payment of additional rent or interest.

22 (iii) Exercising rights pursuant to an assignment of accounts or other amounts
23 owing to a lender.

24 (iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to
25 amounts owing to a lender.

26 (v) Exercising forbearance.

27 (vi) Providing specific or general financial or other advice, suggestions,
28 counseling, or guidance.

29 (vii) Exercising any right or remedy the lender is entitled to by law or under any
30 warranties, covenants, conditions, representations, or promises from the borrower.

31 (7) A lender does not participate in the management of the property by taking any
32 response action under Section 107(d)(1) of the Comprehensive Environmental
33 Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).
34 However, the lender may be liable for damages, as defined by this chapter, that
35 occur as a result of the gross negligence or willful misconduct of the lender in ~~his~~
36 ~~or her~~ the lender’s performance of a response action under Section 107 (d)(1) of the
37 Comprehensive Environmental Response, Compensation and Liability Act of 1980
38 (42 U.S.C. Sec. 9607(d)(1)).

39 (I) “Person” means any entity, including, but not limited to, an individual, estate,
40 trust, firm, business trust, joint stock company, corporation, partnership, joint
41 venture, limited liability company, association, or government. “Person” includes,
42 but is not limited to, any city, county, district, the state, or the federal government,
43 or any department, subdivision, or agency thereof.

1 (m)(1) “Primarily to protect a security interest” means that the indicia of
2 ownership of a lender are held primarily for the purpose of securing payment or
3 performance of an obligation.

4 (2) “Primarily to protect a security interest” does not include indicia of ownership
5 held primarily for investment purposes or indicia of ownership held primarily for
6 purposes other than as protection for a security interest. A lender may have other,
7 secondary reasons for maintaining indicia of ownership, but the primary reason that
8 any indicia of ownership are held shall be as protection for a security interest.

9 (n) “Property” means any real or personal property where hazardous materials are
10 or were generated, handled, managed, deposited, stored, disposed of, placed,
11 released, or otherwise have come to be located. In the context of a loan or obligation,
12 “property” includes any real or personal property in which the obligor has or had an
13 ownership, leasehold, or possessory interest, whether or not it was the subject of a
14 security interest for the loan or obligation.

15 (o) “Release” has the same meaning as defined in ~~Section 25320~~, subdivision (a)
16 of Section 78105.

17 (p) “Remedial action” has the same meaning as defined in subdivision (g) of
18 Section 25260.

19 (q) “Removal” means the cleanup or removal of released hazardous materials
20 from the environment or the taking of other actions that may be necessary to prevent,
21 minimize, or mitigate damages that may otherwise result from a release or
22 threatened release, as further defined in Section 101(23) of the Comprehensive
23 Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec.
24 9601(23)).

25 (r) “Security interest” means an interest in a property created or established for
26 the purpose of securing a loan or obligation. Security interests include, but are not
27 limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease.
28 Security interests may also arise from transactions such as sale and leasebacks,
29 conditional sales, installment sales, trust receipt transactions, certain assignments,
30 factoring agreements, and accounts receivable financing arrangements and
31 consignments if the transaction creates or establishes an interest in a property for
32 the purpose of securing a loan or other obligation.

33 **Comment.** Section 25548.1(o) is amended to update cross-references in accordance with the
34 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
35 the Health and Safety Code.

36 This section is also amended to eliminate gendered pronouns.

37 **Health & Safety Code § 25548.4 (amended). Limitations of chapter**

38 SEC. __. Section 25548.4 of the Health and Safety Code is amended to read:

39 25548.4. This chapter does not do any of the following:

40 (a) Affect any rights, defenses, or immunities that are available to any lender or
41 fiduciary under any applicable law.

42 (b) Create any liability for any lender or fiduciary.

- 1 (c) Create any private right of action against any lender or fiduciary.
- 2 (d) Exempt or excuse a lender or fiduciary who operates or directs the operation,
3 or maintains the operation, of the property from compliance with the operational
4 requirements of applicable laws. Those operational requirements include, but are
5 not limited to, permitting, reporting, monitoring, emission limitation, corrective
6 action, financial responsibility and assurance requirements, requirements to take
7 removal or remedial action to respond to a release or threatened release of hazardous
8 materials caused by the lender or fiduciary and the requirements of Division 26
9 (commencing with Section 39000) of this code or of Division 7 (commencing with
10 Section 13000) of the Water Code. Operational requirements include the payment
11 of fees, fines, and penalties, and compliance with any other enforcement provisions
12 that are applicable as a result of the operation, or the direction of the operation, or
13 the maintenance of the operation, of the property by the lender or fiduciary.
- 14 (e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for
15 breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of
16 Division 9 of the Probate Code.
- 17 (f) Affect any liabilities of a fiduciary estate.
- 18 (g) Exempt a lender from liability imposed by ~~Chapter 6.8 (commencing with~~
19 ~~Section 25300) Part 2 (commencing with Section 78000) of Division 45~~ for a
20 removal or remedial action or the recovery of damages relating to a release or
21 threatened release of hazardous material, to the extent that the lender is a responsible
22 party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental
23 Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or
24 (4)).
- 25 (h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5
26 (commencing with Section 25100).
- 27 (i) Exempt or excuse a lender from liability under any state or local statute,
28 regulation, or ordinance for a known or suspected release or known or suspected
29 threatened release of hazardous materials caused by events or conditions occurring
30 prior to foreclosure or its equivalent, unless, after taking possession of the property,
31 the lender promptly takes each of the following actions in accordance with
32 applicable law:
- 33 (1) Suspends operations with respect to that portion of the property where the
34 known or suspected release or known or suspected threatened release occurred or
35 may occur.
- 36 (2) Removes from the suspended operations and affected areas on the property,
37 all hazardous material not released into the environment and secures the suspended
38 operations.
- 39 (3) Reports any known or suspected releases of hazardous material.
- 40 (j) Limit the application or enforcement of ~~Section 25359.4 or 25359.5~~ Article 2
41 (commencing with Section 78675) or Article 4 (commencing with Section 78720)
42 of Chapter 4 of Part 2 of Division 45 or other state or local fencing, posting,
43 securing, notification, or reporting laws with regard to property that is acquired by

1 a lender through foreclosure or its equivalent, to the extent that those requirements
2 are otherwise applicable to the property.

3 (k) Exempt a lender from compliance with an administrative order requiring
4 immediate and temporary measures to prevent, abate, or minimize an emergency
5 caused by a release or threatened release of hazardous material at, from, or in
6 connection with, any property that has been acquired by the lender through
7 foreclosure or its equivalent, when all of the following circumstances exist:

8 (1) The release or threatened release presents an imminent and substantial
9 endangerment to the public health or welfare or the environment.

10 (2) No other person who is viable and potentially responsible for the release or
11 threatened release has been identified and located by the agency issuing the order,
12 following a reasonable effort by the agency to identify and locate any ~~such person.~~
13 person who is viable and potentially responsible.

14 (3) The costs and expenses incurred by the lender to comply with the
15 administrative order do not exceed twenty-five thousand dollars (\$25,000).

16 (4) If the lender complies with the administrative order, the compliance would
17 not, in and of itself, subject the lender to liability for a removal or remedial action
18 or damages, fines, penalties, impositions, or assessments relating to the release or
19 threatened release under any federal law.

20 (l)(1) Exempt a lender who has acquired title to property through foreclosure or
21 its equivalent from operation and maintenance requirements that were established
22 on the property as a result of a removal or remedial action conducted on the property.

23 (2) “Operation and maintenance requirements” include, but are not limited to,
24 deed restrictions and requirements to maintain passive exposure controls and to
25 perform monitoring. If there are requirements other than operation and maintenance
26 requirements, which are applicable to the property to maintain the effectiveness of
27 the removal or remediation action, the lender shall comply with those requirements
28 unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency
29 that it does not intend to comply with the requirements and the agency concurs.

30 (m) Require a lender to conduct, or require a lender to direct the taking of, an
31 inspection of the property after foreclosure or its equivalent to qualify for the
32 exemption provided by this chapter, and the liability of a lender shall not be based
33 on, or affected by, the lender not conducting, or not requiring, an inspection of the
34 property after foreclosure or its equivalent.

35 (n) Require a fiduciary to conduct or require an inspection of the property in a
36 fiduciary estate to qualify for the exemption provided by this chapter and the
37 liability of the fiduciary shall not be based on, or affected by, the fiduciary not
38 conducting or not requiring an inspection prior to holding the property as part of the
39 fiduciary estate.

40 **Comment.** Subdivisions (g) and (j) of Section 25548.4 are amended to update cross-references
41 in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
42 25300) of Division 20 of the Health and Safety Code.

43 This section is also amended to make a technical change.

1 **Health & Safety Code § 33459 (amended). Definitions**

2 SEC. __. Section 33459 of the Health and Safety Code is amended to read:
3 33459. For purposes of this article, the following terms shall have the following
4 meanings:

5 (a) “Department” means the Department of Toxic Substances Control.

6 (b) “Director” means the Director of Toxic Substances Control.

7 (c) “Hazardous substance” means any hazardous substance as defined in
8 subdivision (h) of Section 25281, and any reference to hazardous substance in the
9 definitions referenced in this section shall be deemed to refer to hazardous
10 substance, as defined in this subdivision.

11 (d) “Local agency” means a single local agency that is one of the following:

12 (1) A local agency authorized pursuant to Section 25283 to implement Chapter
13 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with
14 Section 25299.10) of, Division 20.

15 (2) A local officer who is authorized pursuant to Section 101087 to supervise a
16 remedial action.

17 (3) An infrastructure and revitalization financing district created pursuant to
18 Chapter 2.6 (commencing with Section 53369) or Chapter 2.10 (commencing with
19 Section 53399) of Part 1 of Division 2 of Title 5 of the Government Code.

20 (e) “Qualified independent contractor” means an independent contractor who is
21 any of the following:

22 (1) An engineering geologist who is certified pursuant to Section 7842 of the
23 Business and Professions Code.

24 (2) A geologist who is registered pursuant to Section 7850 of the Business and
25 Professions Code.

26 (3) A civil engineer who is registered pursuant to Section 6762 of the Business
27 and Professions Code.

28 (f) “Release” means any release, as defined in ~~Section 25320~~, subdivision (a) of
29 Section 78105.

30 (g) “Remedy” or “remove” means any action to assess, evaluate, investigate,
31 monitor, remove, correct, clean up, or abate a release of a hazardous substance or to
32 develop plans for those actions. “Remedy” includes any action set forth in Section
33 ~~25322~~ 78125 and “remove” includes any action set forth in Section ~~25323~~. 78135.

34 (h) “Responsible party” means any person described in subdivision (a) of Section
35 ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

36 **Comment.** Section 33459 is amended to update cross-references in accordance with the
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
38 the Health and Safety Code.

39 **Health & Safety Code § 33459.3 (amended). Liability of agency for release addressed by**
40 **completed action on property within a redevelopment project**

41 SEC. __. Section 33459.3 of the Health and Safety Code is amended to read:

1 33459.3. (a) Notwithstanding any other provision of law, except as provided in
2 Section 33459.7, an agency that undertakes and completes an action, or causes
3 another person to undertake and complete an action pursuant to Section 33459.1, as
4 specified in subdivision (c), to remedy or remove a hazardous substance release on,
5 under, or from property within a redevelopment project, in accordance with a
6 cleanup or remedial action plan prepared by a qualified independent contractor and
7 approved by the department or a California regional water quality control board or
8 the local agency, as appropriate, pursuant to subdivision (b), is not liable, with
9 respect to that release only, under Division 7 (commencing with Section 13000) of
10 the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7
11 (commencing with Section 25280), or Chapter 6.75 (commencing with Section
12 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20 of, or
13 Part 2 (commencing with Section 78000) of Division 45 of, this code, or any other
14 state or local law providing liability for remedial or removal actions for releases of
15 hazardous substances. If the remedial action was also performed pursuant to Chapter
16 6.65 (commencing with Section 25260) of Division 20, and a certificate of
17 completion is issued pursuant to subdivision (b) of Section 25264, the immunity
18 from agency action provided by the certificate of completion, as specified in
19 subdivision (c) of Section 25264, shall apply to the agency, in addition to the
20 immunity conferred by this section. In the case of a remedial action performed
21 pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for
22 which the administering agency is a local agency, the limitations on the certificate
23 of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of
24 Section 25264 are limits on any immunity provided for by this section and
25 subdivision (c) of Section 25264.

26 (b) Upon approval of any cleanup or remedial action plan, pursuant to applicable
27 statutes and regulations, the director or the California regional water quality control
28 board or the local agency, as appropriate, shall acknowledge, in writing, within 60
29 days of the date of approval, that upon proper completion of the remedial or removal
30 action in accordance with the plan, the immunity provided by this section shall apply
31 to the agency.

32 (c) Notwithstanding any provision of law or policy providing for certification by
33 a person conducting a remedial or removal action that the action has been properly
34 completed, a determination that a remedial or removal action has been properly
35 completed pursuant to this section shall be made only upon the affirmative approval
36 of the director or the California regional water quality control board or the local
37 agency, as appropriate. The department, California regional water quality control
38 board, or local agency, as appropriate, shall, within 60 days of the date it finds that
39 a remedial action has been completed, notify the agency in writing that the immunity
40 provided by this section is in effect.

41 (d) The approval of a cleanup or remedial action plan under this section by a local
42 agency shall also be subject to the concurrent approval of the department or a

1 California regional water quality control board when the agency receiving the
2 approval was formed by the same entity of which the local agency is a part.

3 (e) Upon proper completion of a remedial or removal action, as specified in
4 subdivision (c), the immunity from agency action provided by the certificate of
5 completion provided pursuant to subdivision (c) of Section 25264 and the immunity
6 provided by this section extends to all of the following, but only for the release or
7 releases specifically identified in the approved cleanup or remedial action plan and
8 not for any subsequent release or any release not specifically identified in the
9 approved cleanup or remedial action plan:

10 (1) Any employee or agent of the agency, including an instrumentality of the
11 agency authorized to exercise some, or all, of the powers of an agency within, or for
12 the benefit of, a redevelopment project and any employee or agent of the
13 instrumentality.

14 (2) Any person who enters into an agreement with an agency for the
15 redevelopment of property, if the agreement requires the person to acquire property
16 affected by a hazardous substance release or to remove or remedy a hazardous
17 substance release with respect to that property.

18 (3) Any person who acquires the property after a person has entered into an
19 agreement with an agency for redevelopment of the property as described in
20 paragraph (2).

21 (4) Any person who provided financing to a person specified in paragraph (2) or
22 (3).

23 (f) Notwithstanding any other provision of law, the immunity provided by this
24 section does not extend to any of the following:

25 (1) Any person who was a responsible party for the release before entering into
26 an agreement, acquiring property, or providing financing, as specified in subdivision
27 (e).

28 (2) Any person specified in subdivision (a) or (e) for any subsequent release of a
29 hazardous substance or any release of a hazardous substance not specifically
30 identified in the approved cleanup or remedial action plan.

31 (3) Any contractor who prepares the cleanup or remedial action plan, or conducts
32 the removal or remedial action.

33 (4) Any person who obtains an approval, as specified in subdivision (b), or a
34 determination, as specified in subdivision (c), by fraud, negligent or intentional
35 nondisclosure, or misrepresentation, and any person who knows before the approval
36 or determination is obtained or before the person enters into an agreement, acquires
37 the property or provides financing, as specified in subdivision (e), that the approval
38 or determination was obtained by these means.

39 (g) The immunity provided by this section is in addition to any other immunity of
40 an agency provided by law.

41 (h) This section does not impair any cause of action by an agency or any other
42 party against the person, firm, or entity responsible for the hazardous substance

1 release which is the subject of the removal or remedial action taken by the agency
2 or other person immune from liability pursuant to this section.

3 (i) This section does not apply to, or limit, alter, or restrict, any action for personal
4 injury, property damage, or wrongful death.

5 (j) This section does not limit liability of a person described in paragraph (3) or
6 (4) of subdivision (e) for damages under the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
8 9601 et seq.).

9 (k) This section does not establish, limit, or affect the liability of an agency for
10 any release of a hazardous substance that is not investigated or remediated pursuant
11 to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.

12 (l) The immunity provided for by this section is only conferred if both of the
13 following apply:

14 (1) The action is in accordance with a cleanup or remedial action plan prepared
15 by a qualified independent contractor and approved by the department or a
16 California regional water quality control board or the local agency, as appropriate,
17 pursuant to subdivision (b).

18 (2) The remedial or removal action is undertaken and properly completed, as
19 specified in subdivision (c).

20 (m) The agency shall reimburse the department, the California regional water
21 quality control board, and the local agency for costs incurred in reviewing or
22 approving cleanup or remedial action plans pursuant to this section.

23 **Comment.** Section 33459.3(a) is amended to update cross-references in accordance with the
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
25 the Health and Safety Code.

26 **Health & Safety Code § 33459.4 (amended). Redevelopment agency cost recovery**

27 SEC. __. Section 33459.4 of the Health and Safety Code is amended to read:

28 33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency
29 undertakes action to remedy or remove, or to require others to remedy or remove,
30 including compelling a responsible party through a civil action, to remedy or remove
31 a release of hazardous substance, any responsible party or parties shall be liable to
32 the redevelopment agency for the costs incurred in the action. An agency may not
33 recover the costs of goods and services that were not procured in accordance with
34 applicable procurement procedures. The amount of the costs shall include the
35 interest on the costs accrued from the date of expenditure and reasonable attorney's
36 fees and shall be recoverable in a civil action. Interest shall be calculated based on
37 the average annual rate of return on an agency's investment of surplus funds for the
38 fiscal year in which costs were incurred.

39 (b) The only defenses available to a responsible party shall be the defenses
40 specified in subdivision (b) of Section ~~25323.5~~ 78145.

41 (c) An agency may recover any costs incurred to develop and to implement a
42 cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3,

1 to the same extent the department is authorized to recover those costs. The scope
2 and standard of liability for cost recovery pursuant to this section shall be the scope
3 and standard of liability under the Comprehensive Environmental Response,
4 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)
5 as that act would apply to the department; provided, however, that any reference to
6 hazardous substance therein shall be deemed to refer to hazardous substance as
7 defined in subdivision (c) of Section 33459.

8 (d) An action for recovery of costs of a remedy or removal undertaken by a
9 redevelopment agency under this section shall be commenced within three years
10 after completion of the remedy or removal.

11 (e) The action to recover costs provided by this section is in addition to, and is not
12 to be construed as restricting, any other cause of action available to a redevelopment
13 agency.

14 (f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any
15 other provision of state law or policy, an agency that undertakes and completes a
16 remedial action, or otherwise causes a remedial action to be undertaken and
17 completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on
18 its ownership of property after a release occurred, for any costs that any responsible
19 party for that release incurs to investigate or remediate the release or to compensate
20 others for the effects of that release.

21 **Comment.** Section 33459.4 is amended to update cross-references in accordance with the
22 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
23 the Health and Safety Code.

24 **Health & Safety Code § 57008 (amended). Screening numbers**

25 SEC. __. Section 57008 of the Health and Safety Code is amended to read:

26 57008. (a) For purposes of this section, the following definitions apply:

27 (1) “Agency” means the California Environmental Protection Agency.

28 (2) “Contaminant” means all of the following:

29 (A) A substance listed in Tables II and III of subparagraphs (A) and (B) of
30 paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California
31 Code of Regulations.

32 (B) The five halogenated hydrocarbon industrial solvents that, in the experience
33 of the State Water Resources Control Board and the Department of Toxic
34 Substances Control are most commonly found as contaminants at sites subject to
35 remediation under the Carpenter-Presley-Tanner Hazardous Substances Account
36 Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part 2
37 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water
38 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
39 Code).

40 (C) Ten hazardous substances not included under subparagraphs (A) and (B) that,
41 in the experience of the Department of Toxic Substances Control and the State
42 Water Resources Control Board, are most commonly found as contaminants at sites

1 subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances
2 Account Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part
3 2 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water
4 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
5 Code).

6 (3) “Screening number” means the concentration of a contaminant published by
7 the agency as an advisory number pursuant to the process established in
8 subdivisions (b) and (c). A screening number is solely an advisory number, and has
9 no regulatory effect, and is published solely as a reference value that may be used
10 by citizen groups, community organizations, property owners, developers, and local
11 government officials to estimate the degree of effort that may be necessary to
12 remediate a contaminated property. A screening number may not be construed as,
13 and may not serve as, a level that can be used to require an agency to determine that
14 no further action is required or a substitute for the cleanup level that is required to
15 be achieved for a contaminant on a contaminated property. The public agency with
16 jurisdiction over the remediation of a contaminated site shall establish the cleanup
17 level for a contaminant pursuant to the requirements and the procedures of the
18 applicable laws and regulations that govern the remediation of that contaminated
19 property and the cleanup level may be higher or lower than a published screening
20 number.

21 (b)(1) During the same period when the agency is carrying out the pilot study
22 required by Section 57009 and preparing the informational document required by
23 Section 57010, the agency shall initiate a scientific peer review of the screening
24 levels published in Appendix 1 of Volume 2 of the technical report published by the
25 San Francisco Regional Water Quality Control Board entitled “Application of Risk-
26 Based Screening Levels and Decision-Making to Sites with Impacted Soil and
27 Groundwater (Interim Final-August 2000).” The agency shall conduct the scientific
28 peer review process in accordance with Section 57004, and shall limit the review to
29 those substances specified in paragraph (2) of subdivision (a). The agency shall
30 complete the peer review process on or before December 31, 2004.

31 (2) The agency, in cooperation with the Department of Toxic Substances Control,
32 the State Water Resources Control Board, and the Office of Environmental Health
33 Hazard Assessment, shall publish a list of screening numbers for contaminants listed
34 in paragraph (2) of subdivision (a) for the protection of human health and safety,
35 and shall report on the feasibility of establishing screening numbers to protect water
36 quality and ecological resources. The agency shall determine the screening numbers
37 using the evaluation set forth in ~~Section 25356.1.5~~ Article 13 (commencing with
38 Section 79260) of Chapter 5 of Part 2 of Division 45 and the results of the peer
39 review, and shall use the most stringent hazard criterion established pursuant to
40 Subpart E of the National Oil and Hazardous Substances Pollution Contingency
41 Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate
42 screening levels for unrestricted land uses and a restricted, nonresidential use of

1 land. In determining each screening number, the agency shall consider all of the
2 following:

3 (A) The toxicology of the contaminant, its adverse effects on human health and
4 safety, biota, and its potential for causing environmental damage to natural
5 resources, including, but not limited to, beneficial uses of the water of the state,
6 including sources of drinking water.

7 (B) Risk assessments that have been prepared for the contaminant by federal or
8 state agencies pursuant to environmental or public health laws, evaluations of the
9 contaminant that have been prepared by epidemiological studies and occupational
10 health programs, and risk assessments or other evaluations of the contaminant that
11 have been prepared by governmental agencies or responsible parties as part of a
12 project to remediate a contaminated property.

13 (C) Cleanup levels that have been established for the contaminant at sites that
14 have been, or are being, investigated or remediated under ~~Chapter 6.8 (commencing~~
15 ~~with Section 25300) of Division 20, Part 2 (commencing with Section 78000) of~~
16 Division 45, or cleaned up or abated under Division 7 (commencing with Section
17 13000) of the Water Code or under any other remediation program administered by
18 a federal or local agency.

19 (D) Screening numbers that have been published by other agencies in the state, in
20 other states, and by federal agencies.

21 (E) The results of external scientific peer review of the screening numbers made
22 pursuant to Section 57004.

23 (c)(1) Before publishing the screening numbers pursuant to subdivision (b), the
24 agency shall conduct two public workshops, one in the northern part of the state and
25 the other in the southern part of the state, to brief interested parties on the scientific
26 and policy bases for the development of the proposed screening numbers and to
27 receive public comments.

28 (2) Following publication of the screening numbers pursuant to subdivision (b),
29 the agency shall conduct three public workshops in various regions of the state to
30 discuss the screening numbers and to receive public comments. The agency shall
31 select an agency representative who shall serve as the chairperson for the
32 workshops, and the agency shall ensure that ample opportunity is available for
33 public involvement in the workshops. The deputy secretary for external affairs shall
34 actively seek out participation in the workshops by citizen groups, environmental
35 organizations, community-based organizations that restore and redevelop
36 contaminated properties for park, school, residential, commercial, open-space or
37 other community purposes, property owners, developers, and local government
38 officials.

39 (d) Following the workshops required by subdivision (c), the agency shall revise
40 the screening numbers as appropriate. The agency shall, from time to time, revise
41 the screening numbers as necessary as experience is gained with their use and shall
42 add screening numbers for contaminants to the list as information concerning
43 remediation problems becomes available.

1 (e) The agency shall publish a guidance document for distribution to citizen
2 groups, community-based organizations, property owners, developers, and local
3 government officials that explains how screening numbers may be used to make
4 judgments about the degree of effort that may be necessary to remediate
5 contaminated properties, to facilitate the restoration and revitalization of
6 contaminated property, to protect the waters of the state, and to make more efficient
7 and effective decisions in local-level remediation programs.

8 (f) Nothing in this section affects the authority of the Department of Toxic
9 Substances Control, the State Water Resources Control Board, or a regional water
10 quality control board to take action under any applicable law or regulation regarding
11 a release or threatened release of hazardous materials.

12 **Comment.** Section 57008(a)(2)(B), (a)(2)(C), (b)(2), and (b)(2)(C) are amended to update cross-
13 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
14 Section 25300) of Division 20 of the Health and Safety Code.

15 **Health & Safety Code § 57010 (amended). Informational document regarding site**
16 **investigation and remediation decisions**

17 SEC. __. Section 57010 of the Health and Safety Code is amended to read:

18 57010. (a) On or before January 1, 2003, the California Environmental Protection
19 Agency shall publish an informational document to assist citizen groups,
20 community-based organizations, interested laypersons, property owners, local
21 government officials, developers, environmental organizations, and environmental
22 consultants to understand the factors that are taken into account, and the procedures
23 that are followed, in making site investigation and remediation decisions under the
24 Carpenter-Presley-Tanner Hazardous Substances Account Act (~~Chapter 6.8~~
25 ~~(commencing with Section 25300) of Division 20~~) (Part 2 (commencing with
26 Section 78000) of Division 45) and under the Porter-Cologne Water Quality Control
27 Act (Division 7 (commencing with Section 13000) of the Water Code).

28 (b) The agency shall make the informational document required by this section
29 available to any person who requests it at no charge and shall also post the public
30 information manual on the agency's ~~Internet Web site.~~ internet website. The agency
31 shall update both the printed informational document and the Web site at
32 appropriate intervals as new legislation or revised policies affect the administration
33 of the Carpenter-Presley-Tanner Hazardous Substances Account Act (~~Chapter 6.8~~
34 ~~(commencing with Section 25300) of Division 20~~) (Part 2 (commencing with
35 Section 78000) of Division 45) and the Porter-Cologne Water Quality Control Act
36 (Division 7 (commencing with Section 13000) of the Water Code).

37 **Comment.** Section 57010 is amended to update cross-references in accordance with the
38 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
39 the Health and Safety Code.

40 This section is also amended to make a technical change.

41 **Health & Safety Code § 100885 (amended). Injunctive relief**

42 SEC. __. Section 100885 of the Health and Safety Code is amended to read:

1 100885. (a) Any person who operates a laboratory that performs work that
2 requires certification or TNI accreditation under Section 25198, 25298.5, ~~25358.4,~~
3 78510, 110490, or 116390 of this code, or Section 13176 of the Water Code, who
4 is not certified or TNI accredited to do so, may be enjoined from so doing by any
5 court of competent jurisdiction upon suit by the state board.

6 (b) When the state board determines that any person has engaged in, or is engaged
7 in, any act or practice that constitutes a violation of this article, or any regulation or
8 order issued or adopted thereunder, the state board may bring an action in the
9 superior court for an order enjoining these practices or for an order directing
10 compliance and affording any further relief that may be required to ensure
11 compliance with this article.

12 **Comment.** Section 100885 is amended to update cross-references in accordance with the
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
14 the Health and Safety Code.

15 **Health & Safety Code § 100886 (amended). Report by laboratory operator**

16 SEC. __. Section 100886 of the Health and Safety Code is amended to read:

17 100886. Any person who operates a laboratory for the purposes specified in
18 Section 25198, 25298.5, ~~25358.4,~~ 78510, or 116390 of this code, or Section 13176
19 of the Water Code, shall report the full and complete results of all detected
20 contamination and pollutants to the person or entity that submitted the material for
21 testing.

22 **Comment.** Section 100886 is amended to update cross-references in accordance with the
23 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
24 the Health and Safety Code.

25 **Health & Safety Code § 100890 (amended). Civil penalties**

26 SEC. __. Section 100890 of the Health and Safety Code is amended to read:

27 100890. (a) Any person who knowingly makes any false statement or
28 representation in any application, record, or other document submitted, maintained,
29 or used for purposes of compliance with this article, may be liable, as determined
30 by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each
31 separate violation or, for continuing violations, for each day that violation continues.

32 (b) Any person who operates a laboratory for purposes specified pursuant to
33 Section 25198, 25298.5, ~~25358.4,~~ 78510, 110490, or 116390 of this code, or Section
34 13176 of the Water Code that requires certification, who is not certified by the
35 department pursuant to this article, may be liable, as determined by the court, for a
36 civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation
37 or, for continuing violations, for each day that violation continues.

38 (c) A laboratory that advertises or holds itself out to the public or its clients as
39 having been certified for any field of testing without having a valid and current
40 certificate in each field of testing identified by the advertisement or other
41 representation may be liable, as determined by the court, for a civil penalty not to

1 exceed one thousand dollars (\$1,000) or, for continuing violations, for each day that
2 violation continues.

3 (d) Each civil penalty imposed for any separate violation pursuant to this section
4 shall be separate and in addition to any other civil penalty imposed pursuant to this
5 section or any other provision of law.

6 **Comment.** Section 100890 is amended to update cross-references in accordance with the
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
8 the Health and Safety Code.

9 **Health & Safety Code § 101480 (amended). Supervision of remedial action by local officer**

10 SEC. __. Section 101480 of the Health and Safety Code is amended to read:

11 101480. (a) For purposes of this article, the following definitions apply:

12 (1) “Local officer” means a county health officer, city health officer, or county
13 director of environmental health.

14 (2) “Person” has the same meaning as set forth in Section 25118.

15 (3) “Release” has the same meaning as set forth in ~~Section 25320.~~ subdivision (a)
16 of Section 78105.

17 (4) “Remedial action” means any action taken by a responsible party to clean up
18 a released waste, to abate the effects of a released waste, or to prevent, minimize, or
19 mitigate damages that may result from the release of a waste. “Remedial action”
20 includes the restoration, rehabilitation, or replacement of any natural resource
21 damaged or lost as a result of the release of a waste.

22 (5) “Responsible party” means a person who, pursuant to this section, requests the
23 local officer to supervise remedial action with respect to a released waste.

24 (6) “Waste” has the same meaning as set forth in subdivision (b) of Section
25 101075.

26 (b) Whenever a release of waste occurs and remedial action is required, the
27 responsible party for the release may request the local officer to supervise the
28 remedial action. The local officer may agree to supervise the remedial action if ~~he~~
29 ~~or she~~ the local officer determines, based on available information, that adequate
30 staff resources and the requisite technical expertise and capabilities are available to
31 adequately supervise the remedial action.

32 (c) Remedial action carried out under this section shall be carried out only
33 pursuant to a remedial action agreement entered into by the local officer and the
34 responsible party. The remedial action agreement shall specify the testing,
35 monitoring, and analysis the responsible party will carry out to determine the type
36 and extent of the contamination caused by the released waste that is the subject of
37 the remedial action, the remedial actions that will be taken, and the cleanup goals
38 that the local officer determines are necessary to protect human health or safety or
39 the environment, and that, if met, constitute a permanent remedy to the release of
40 the waste.

1 (d) A local officer who enters into a remedial action agreement, as described in
2 subdivision (c), may, after giving the responsible party adequate notice, withdraw
3 from the agreement at any time after making one of the following findings:

4 (1) The responsible party is not in compliance with the remedial action agreement.

5 (2) Appropriate staff resources, technical expertise, or technical capabilities are
6 not available to adequately supervise the remedial action.

7 (3) The release of the waste that is the subject of the remedial action is of a
8 sufficiently complex nature or may present such a significant potential hazard to
9 human health or the environment that it should be referred to the Department of
10 Toxic Substances Control or a California regional water quality control board.

11 (e) After determining that a responsible party has completed the actions required
12 by the remedial action agreement and that a permanent remedy for the release of
13 waste has been achieved, the local officer may provide the responsible party with a
14 letter or other document that describes the release of waste that occurred and the
15 remedial action taken, and certifies that the cleanup goals embodied in the remedial
16 action agreement were accomplished.

17 **Comment.** Section 101480 is amended to update cross-references in accordance with the
18 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
19 the Health and Safety Code.

20 This section is also amended to eliminate gendered pronouns.

21 **Health & Safety Code § 101483 (amended). Sites not subject to article**

22 SEC. __. Section 101483 of the Health and Safety Code is amended to read:

23 101483. This article shall not apply to any of the following:

24 (a) A hazardous substance release site listed pursuant to ~~Section 25356~~, Article 5
25 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45, a site
26 subject to an order or enforceable agreement issued pursuant to Article 1
27 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section
28 ~~25355.5 or 25358.3~~, 78870 or 79055, or a site where the Department of Toxic
29 Substances Control has initiated action pursuant to ~~Section 25355~~. Article 10
30 (commencing with Section 79130) of Chapter 5 of Part 2 of Division 45.

31 (b) A site subject to a corrective action order issued pursuant to Section 25187 or
32 25187.7.

33 (c) A site subject to a cleanup and abatement order issued pursuant to Section
34 13304 of the Water Code.

35 (d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

36 **Comment.** Section 101483 is amended to update cross-references in accordance with the
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
38 the Health and Safety Code.

39 **Health & Safety Code § 101485 (amended). Construction of article**

40 SEC. __. Section 101485 of the Health and Safety Code is amended to read:

41 101485. Nothing in this article shall be construed as prohibiting the Department
42 of Toxic Substances Control from assuming jurisdiction over a release pursuant to

1 ~~Chapter 6.8 (commencing with Section 25300) of Division 20, Part 2 (commencing~~
2 ~~with Section 78000) of Division 45, or a California regional water quality control~~
3 ~~board, or the State Water Resources Control Board from taking enforcement action~~
4 ~~against a release pursuant to Division 7 (commencing with Section 13000) of the~~
5 ~~Water Code.~~

6 **Comment.** Section 101485 is amended to update cross-references in accordance with the
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
8 the Health and Safety Code.

9 LABOR CODE

10 **Lab. Code § 142.7 (amended). Occupational standard concerning hazardous substance**
11 **removal work**

12 SEC. __. Section 142.7 of the Labor Code is amended to read:

13 142.7. (a) On or before October 1, 1987, the board shall adopt an occupational
14 safety and health standard concerning hazardous substance removal work, so as to
15 protect most effectively the health and safety of employees. The standard shall
16 include, but not be limited to, requirements for all of the following:

17 (1) Specific work practices.

18 (2) Certification of all employees engaged in hazardous substance removal-related
19 work, except that no certification shall be required for an employee whose only
20 activity is the transportation of hazardous substances which are subject to the
21 requirement for a certificate under Section 12804.1 of the Vehicle Code.

22 (3) Certification of supervisors with sufficient experience and authority to be
23 responsible for hazardous substance removal work.

24 (4) Designation of a qualified person who shall be responsible for scheduling any
25 air sampling, laboratory calibration of sampling equipment, evaluation of soil or
26 other contaminated materials sampling results, and for conducting any equipment
27 testing and evaluating the results of the tests.

28 (5) Requiring that a safety and health conference be held for all hazardous
29 substance removal jobs before the start of actual work. The conference shall include
30 representatives of the owner or contracting agency, the contractor, the employer,
31 employees, and employee representatives, and shall include a discussion of the
32 employer's safety and health program and the means, methods, devices, processes,
33 practices, conditions, or operations which the employer intends to use in providing
34 a safe and healthy place of employment.

35 (b) For purposes of this section, "hazardous substance removal work" means
36 cleanup work at any of the following:

37 (1) A site where removal or remedial action is taken pursuant to either of the
38 following:

39 (A) ~~Chapter 6.8 (commencing with Section 25300) of Division 20 Part 2~~
40 ~~(commencing with Section 78000) of Division 45 of the Health and Safety Code,~~
41 ~~regardless of whether the site is listed pursuant to Section 25356 Article 5~~

1 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
2 Health and Safety Code.

3 (B) The federal Comprehensive Environmental Response, Compensation, and
4 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

5 (2) A site where corrective action is taken pursuant to Section 25187 or 25200.10
6 of the Health and Safety Code or the federal Resource Conservation and Recovery
7 Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

8 (3) A site where cleanup of a discharge of a hazardous substance is required
9 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

10 (4) A site where removal or remedial action is taken because a hazardous
11 substance has been discharged or released in an amount that is reportable pursuant
12 to Section 13271 of the Water Code or the federal Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).
14 “Hazardous substance removal work” does not include work related to a hazardous
15 substance spill on a highway.

16 (c) Until the occupational safety and health standard required by subdivision (a)
17 is adopted by the board and becomes effective, the occupational safety and health
18 standard concerning hazardous substance removal work shall be the standard
19 adopted by the federal government and codified in Section 1910.120 of Title 29 of
20 the Code of Federal Regulations. In addition, before actual work is started on a
21 hazardous substance removal job, a safety and health conference shall be held that
22 shall include the participants and involve a discussion of the subjects described in
23 paragraph (5) of subdivision (a).

24 **Comment.** Section 142.7(b)(1)(A) is amended to update cross-references in accordance with the
25 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
26 the Health and Safety Code.

27 PENAL CODE

28 **Penal Code § 803 (amended). Tolling or extension of limitation of time**

29 SEC. __. Section 803 of the Penal Code is amended to read:

30 803. (a) Except as provided in this section, a limitation of time prescribed in this
31 chapter is not tolled or extended for any reason.

32 (b) The time during which prosecution of the same person for the same conduct
33 is pending in a court of this state is not a part of a limitation of time prescribed in
34 this chapter.

35 (c) A limitation of time prescribed in this chapter does not commence to run until
36 the discovery of an offense described in this subdivision. This subdivision applies
37 to an offense punishable by imprisonment in the state prison or imprisonment
38 pursuant to subdivision (h) of Section 1170, a material element of which is fraud or
39 breach of a fiduciary obligation, the commission of the crimes of theft or
40 embezzlement upon an elder or dependent adult, or the basis of which is misconduct

1 in office by a public officer, employee, or appointee, including, but not limited to,
2 the following offenses:

3 (1) Grand theft of any type, forgery, falsification of public records, or acceptance
4 of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a
5 public employee, including, but not limited to, a violation of Section 68, 86, or 93.

6 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

7 (3) A violation of Section 25540, of any type, or Section 25541 of the
8 Corporations Code.

9 (4) A violation of Section 1090 or 27443 of the Government Code.

10 (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107
11 of the Welfare and Institutions Code.

12 (6) Felony insurance fraud in violation of Section 548 or 550 of this code or
13 former Section 1871.1, or Section 1871.4, of the Insurance Code.

14 (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and
15 Professions Code.

16 (8) A violation of Section 22430 of the Business and Professions Code.

17 (9) A violation of Section 103800 of the Health and Safety Code.

18 (10) A violation of Section 529a.

19 (11) A violation of subdivision (d) or (e) of Section 368.

20 (d) If the defendant is out of the state when or after the offense is committed, the
21 prosecution may be commenced as provided in Section 804 within the limitations
22 of time prescribed by this chapter, and no time up to a maximum of three years
23 during which the defendant is not within the state shall be a part of those limitations.

24 (e) A limitation of time prescribed in this chapter does not commence to run until
25 the offense has been discovered, or could have reasonably been discovered, with
26 regard to offenses under Division 7 (commencing with Section 13000) of the Water
27 Code, under Chapter 6.5 (commencing with Section 25100) ~~of~~, or Chapter 6.7
28 (commencing with Section 25280) ~~of, or Chapter 6.8 (commencing with Section~~
29 ~~25300) of~~, Division 20 of, or Part 4 (commencing with Section 41500) of Division
30 26 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and
31 Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with
32 Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of
33 Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of
34 Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of,
35 the Business and Professions Code.

36 (f)(1) Notwithstanding any other limitation of time described in this chapter, if
37 subdivision (b) of Section 799 does not apply, a criminal complaint may be filed
38 within one year of the date of a report to a California law enforcement agency by a
39 person of any age alleging that the person, while under 18 years of age, was the
40 victim of a crime described in Section 261, 286, 287, 288, 288.5, or 289, former
41 Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991
42 relating to penetration by an unknown object.

43 (2) This subdivision applies only if all of the following occur:

1 (A) The limitation period specified in Section 800, 801, or 801.1, whichever is
2 later, has expired.

3 (B) The crime involved substantial sexual conduct, as described in subdivision (b)
4 of Section 1203.066, excluding masturbation that is not mutual.

5 (C) There is independent evidence that corroborates the victim’s allegation. If the
6 victim was 21 years of age or older at the time of the report, the independent
7 evidence shall clearly and convincingly corroborate the victim’s allegation.

8 (3) Evidence may not be used to corroborate the victim’s allegation if that
9 evidence would otherwise be inadmissible during trial. Independent evidence
10 excludes the opinions of mental health professionals.

11 (4)(A) In a criminal investigation involving any of the crimes listed in paragraph
12 (1) committed against a child, when the applicable limitations period has not
13 expired, that period shall be tolled from the time a party initiates litigation
14 challenging a grand jury subpoena until the end of the litigation, including any
15 associated writ or appellate proceeding, or until the final disclosure of evidence to
16 the investigating or prosecuting agency, if that disclosure is ordered pursuant to the
17 subpoena after the litigation.

18 (B) This subdivision does not affect the definition or applicability of any
19 evidentiary privilege.

20 (C) This subdivision shall not apply if a court finds that the grand jury subpoena
21 was issued or caused to be issued in bad faith.

22 (g)(1) Notwithstanding any other limitation of time described in this chapter, a
23 criminal complaint may be filed within one year of the date on which the identity of
24 the suspect is conclusively established by DNA testing, if both of the following
25 conditions are met:

26 (A) The crime is one that is described in subdivision (c) of Section 290.

27 (B) The offense was committed before January 1, 2001, and biological evidence
28 collected in connection with the offense is analyzed for DNA type no later than
29 January 1, 2004, or the offense was committed on or after January 1, 2001, and
30 biological evidence collected in connection with the offense is analyzed for DNA
31 type no later than two years from the date of the offense.

32 (2) For purposes of this section, “DNA” means deoxyribonucleic acid.

33 (h) For any crime, the proof of which depends substantially upon evidence that
34 was seized under a warrant, but which is unavailable to the prosecuting authority
35 under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
36 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or
37 subdivision (c) of Section 1524, relating to claims of evidentiary privilege or
38 attorney work product, the limitation of time prescribed in this chapter shall be
39 tolled from the time of the seizure until final disclosure of the evidence to the
40 prosecuting authority. This section does not otherwise affect the definition or
41 applicability of any evidentiary privilege or attorney work product.

42 (i) Notwithstanding any other limitation of time described in this chapter, a
43 criminal complaint may be filed within one year of the date on which a hidden

1 recording is discovered related to a violation of paragraph (2) or (3) of subdivision
2 (j) of Section 647.

3 (j) Notwithstanding any other limitation of time described in this chapter, if a
4 person flees the scene of an accident that caused death or permanent, serious injury,
5 as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal
6 complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of
7 the Vehicle Code may be filed within the applicable time period described in Section
8 801 or 802 or one year after the person is initially identified by law enforcement as
9 a suspect in the commission of the offense, whichever is later, but in no case later
10 than six years after the commission of the offense.

11 (k) Notwithstanding any other limitation of time described in this chapter, if a
12 person flees the scene of an accident, a criminal complaint brought pursuant to
13 paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the
14 applicable time period described in Section 801 or 802, or one year after the person
15 is initially identified by law enforcement as a suspect in the commission of that
16 offense, whichever is later, but in no case later than six years after the commission
17 of the offense.

18 (l) A limitation of time prescribed in this chapter does not commence to run until
19 the discovery of an offense involving the offering or giving of a bribe to a public
20 official or public employee, including, but not limited to, a violation of Section 67,
21 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

22 (m) Notwithstanding any other limitation of time prescribed in this chapter, if a
23 person actively conceals or attempts to conceal an accidental death in violation of
24 Section 152, a criminal complaint may be filed within one year after the person is
25 initially identified by law enforcement as a suspect in the commission of that
26 offense, provided, however, that in any case a complaint may not be filed more than
27 four years after the commission of the offense.

28 (n)(1) Notwithstanding any other limitation of time described in this chapter, a
29 criminal complaint brought pursuant to a violation of Section 367g may be filed
30 within one year of the discovery of the offense or within one year after the offense
31 could have reasonably been discovered.

32 (2) This subdivision applies to crimes that were committed on or after January 1,
33 2021, and to crimes for which the statute of limitations that was in effect before
34 January 1, 2021, has not run as of January 1, 2021.

35 **Comment.** Section 803(e) is amended to update cross-references in accordance with the
36 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
37 the Health and Safety Code.

38 PUBLIC RESOURCES CODE

39 **Pub. Res. Code § 21083.8.1 (amended). Environmental review of reuse plan for military**
40 **base**

41 SEC. __. Section 21083.8.1 of the Public Resources Code is amended to read:

1 21083.8.1. (a)(1) For purposes of this section, “reuse plan” for a military base
2 means an initial plan for the reuse of a military base adopted by a local government
3 or a redevelopment agency in the form of a general plan, general plan amendment,
4 specific plan, redevelopment plan, or other planning document, except that the reuse
5 plan shall also consist of a statement of development policies, include a diagram or
6 diagrams illustrating its provisions, and make the designation required in paragraph
7 (2). “Military base” or “base” means a military base or reservation either closed or
8 realigned by, or scheduled for closure or realignment by, the federal government.

9 (2) The reuse plan shall designate the proposed general distribution and general
10 location of development intensity for housing, business, industry, open space,
11 recreation, natural resources, public buildings and grounds, roads and other
12 transportation facilities, infrastructure, and other categories of public and private
13 uses of land.

14 (b)(1) When preparing and certifying an environmental impact report for a reuse
15 plan, including when utilizing an environmental impact statement pursuant to
16 Section 21083.5, the determination of whether the reuse plan may have a significant
17 effect on the environment may be made in the context of the physical conditions
18 that were present at the time that the federal decision became final for the closure
19 or realignment of the base. The no project alternative analyzed in the environmental
20 impact report shall discuss the existing conditions on the base, as they exist at the
21 time that the environmental impact report is prepared, as well as what could be
22 reasonably expected to occur in the foreseeable future if the reuse plan were not
23 approved, based on current plans and consistent with available infrastructure and
24 services.

25 (2) For purposes of this division, all public and private activities taken pursuant
26 to, or in furtherance of, a reuse plan shall be deemed to be a single project. However,
27 further environmental review of any ~~such~~ public or private activity taken pursuant
28 to, or in furtherance of, a reuse plan shall be conducted if any of the events specified
29 in Section 21166 have occurred.

30 (c) Prior to preparing an environmental impact report for which a lead agency
31 chooses to utilize the provisions of this section, the lead agency shall do all of the
32 following:

33 (A) Hold a public hearing at which is discussed the federal environmental impact
34 statement prepared for, or in the process of being prepared for, the closure of the
35 military base. The discussion shall include the significant effects on the environment
36 examined in the environmental impact statement, potential methods of mitigating
37 those effects, including feasible alternatives, and the mitigative effects of federal,
38 state, and local laws applicable to future nonmilitary activities. Prior to the close of
39 the hearing, the lead agency may specify the baseline conditions for the reuse plan
40 environmental impact report prepared, or in the process of being prepared, for the
41 closure of the base. The lead agency may specify particular physical conditions that
42 it will examine in greater detail than were examined in the environmental impact

1 statement. Notice of the hearing shall be given as provided in Section 21092. The
2 hearing may be continued from time to time.

3 (B) Identify pertinent responsible agencies and trustee agencies and consult with
4 those agencies prior to the public hearing as to the application of their regulatory
5 policies and permitting standards to the proposed baseline for environmental
6 analysis, as well as to the reuse plan and planned future nonmilitary land uses of the
7 base. The affected agencies shall have not less than 30 days prior to the public
8 hearing to review the proposed reuse plan and to submit their comments to the lead
9 agency.

10 (C) At the close of the hearing, the lead agency shall state in writing how the lead
11 agency intends to integrate the baseline for analysis with the reuse planning and
12 environmental review process, taking into account the adopted environmental
13 standards of the community, including, but not limited to, the applicable general
14 plan, specific plan, and redevelopment plan, and including other applicable
15 provisions of adopted congestion management plans, habitat conservation or natural
16 communities conservation plans, integrated waste management plans, and county
17 hazardous waste management plans.

18 (D) At the close of the hearing, the lead agency shall state, in writing, the specific
19 economic or social reasons, including, but not limited to, new job creation,
20 opportunities for employment of skilled workers, availability of low- and moderate-
21 income housing, and economic continuity, which support the selection of the
22 baseline.

23 (d)(1) Nothing in this section shall in any way limit the scope of a review or
24 determination of significance of the presence of hazardous or toxic wastes,
25 substances, or materials including, but not limited to, contaminated soils and
26 groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or
27 materials be constrained by prior levels of activity that existed at the time that the
28 federal agency decision to close the military base became final.

29 (2) This section does not apply to any project undertaken pursuant to Chapter 6.5
30 (commencing with Section 25100) of, ~~or Chapter 6.8 (commencing with Section~~
31 ~~25300) of~~, Division 20 of, or Part 2 (commencing with Section 78000) of Division
32 45 of, the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality
33 Control Act (Division 7 (commencing with Section 13000) of the Water Code).

34 (3) This section may apply to any reuse plan environmental impact report for
35 which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued
36 within one year from the date that the federal record of decision was rendered for
37 the military base closure or realignment and reuse, or prior to January 1, 1997,
38 whichever is later, if the environmental impact report is completed and certified
39 within five years from the date that the federal record of decision was rendered.

40 (e) All subsequent development at the military base shall be subject to all
41 applicable federal, state, or local laws, including, but not limited to, those relating
42 to air quality, water quality, traffic, threatened and endangered species, noise, and
43 hazardous or toxic wastes, substances, or materials.

1 **Comment.** Section 21083.8.1(d)(2) is amended to update cross-references in accordance with
2 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
3 of the Health and Safety Code.

4 This section is also amended to make a technical change.

5 **Pub. Res. Code § 21098 (amended). Notices to military service**

6 SEC. __. Section 21098 of the Public Resources Code is amended to read:

7 21098. (a) For the purposes of this section, the following terms have the following
8 meanings:

9 (1) “Low-level flight path” includes any flight path for any aircraft owned,
10 maintained, or that is under the jurisdiction of the United States Department of
11 Defense that flies lower than 1,500 feet above ground level, as indicated in the
12 United States Department of Defense Flight Information Publication, “Area
13 Planning Military Training Routes: North and South America (AP/1B)” published
14 by the United States National Imagery and Mapping Agency.

15 (2) “Military impact zone” includes any area, including airspace, that meets both
16 of the following criteria:

17 (A) Is within two miles of a military installation, including, but not limited to, any
18 base, military airport, camp, post, station, yard, center, homeport facility for a ship,
19 or any other military activity center that is under the jurisdiction of the United States
20 Department of Defense.

21 (B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres
22 of city incorporated land.

23 (3) “Military service” means any branch of the United States Armed Forces.

24 (4) “Special use airspace” means the area underlying the airspace that is
25 designated for training, research, development, or evaluation for a military service,
26 as that area is established by the United States Department of Defense Flight
27 Information Publication, “Area Planning: Special Use Airspace: North and South
28 America (AP/1A)” published by the United States National Imagery and Mapping
29 Agency.

30 (b) If the United States Department of Defense or a military service notifies a lead
31 agency of the contact office and address for the military service and the specific
32 boundaries of a low-level flight path, military impact zone, or special use airspace,
33 the lead agency shall submit notices, as required pursuant to Sections 21080.4 and
34 21092, to the military service if the project is within those boundaries and any of
35 the following apply:

36 (1) The project includes a general plan amendment.

37 (2) The project is of statewide, regional, or areawide significance.

38 (3) The project is required to be referred to the airport land use commission, or
39 appropriately designated body, pursuant to Article 3.5 (commencing with Section
40 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

41 (c) The requirement to submit notices imposed by this section does not apply to
42 any of the following:

1 (1) Response actions taken pursuant to ~~Chapter 6.8 (commencing with Section~~
2 ~~25300) of Division 20 Part 2 (commencing with Section 78000) of Division 45~~
3 the Health and Safety Code.

4 (2) Response actions taken pursuant to Chapter 6.85 (commencing with Section
5 25396) of Division 20 of the Health and Safety Code.

6 (3) Sites subject to corrective action orders issued pursuant to Section 25187 of
7 the Health and Safety Code.

8 (d)(1) The effect or potential effect that a project may have on military activities
9 does not itself constitute an adverse effect on the environment for the purposes of
10 this division.

11 (2) Notwithstanding paragraph (1), a project's impact on military activities may
12 cause, or be associated with, adverse effects on the environment that are subject to
13 the requirements of this division, including, but not limited to, Section 21081.

14 **Comment.** Section 21098(c)(1) is amended to update cross-references in accordance with the
15 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
16 the Health and Safety Code.

17 **Pub. Res. Code § 21151.8 (amended). Environmental review for schoolsite purchase or**
18 **school construction**

19 SEC. __. Section 21151.8 of the Public Resources Code is amended to read:

20 21151.8. (a) An environmental impact report shall not be certified or a negative
21 declaration shall not be approved for a project involving the purchase of a schoolsite
22 or the construction of a new elementary or secondary school by a school district
23 unless all of the following occur:

24 (1) The environmental impact report or negative declaration includes information
25 that is needed to determine if the property proposed to be purchased, or to be
26 constructed upon, is any of the following:

27 (A) The site of a current or former hazardous waste disposal site or solid waste
28 disposal site and, if so, whether the wastes have been removed.

29 (B) A hazardous substance release site identified by the Department of Toxic
30 Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5
31 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
32 Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8~~
33 ~~(commencing with Section 25300) of Division 20 Part 2 (commencing with Section~~
34 ~~78000) of Division 45~~ of the Health and Safety Code.

35 (C) A site that contains one or more pipelines, situated underground or
36 aboveground, that carries hazardous substances, extremely hazardous substances,
37 or hazardous wastes, unless the pipeline is a natural gas line that is used only to
38 supply natural gas to that school or neighborhood, or other nearby schools.

39 (D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway
40 or other busy traffic corridor.

41 (2)(A) The school district, as the lead agency, in preparing the environmental
42 impact report or negative declaration has notified in writing and consulted with the

1 administering agency in which the proposed schoolsite is located, pursuant to
2 Section 2735.3 of Title 19 of the California Code of Regulations, and with any air
3 pollution control district or air quality management district having jurisdiction in
4 the area, to identify both permitted and nonpermitted facilities within that district's
5 authority, including, but not limited to, freeways and busy traffic corridors, large
6 agricultural operations, and railyards, within one-fourth of a mile of the proposed
7 schoolsite, that might reasonably be anticipated to emit hazardous emissions or
8 handle hazardous or extremely hazardous substances or waste. The notification by
9 the school district, as the lead agency, shall include a list of the locations for which
10 information is sought.

11 (B) Each administering agency, air pollution control district, or air quality
12 management district receiving written notification from a lead agency to identify
13 facilities pursuant to subparagraph (A) shall provide the requested information and
14 provide a written response to the lead agency within 30 days of receiving the
15 notification. The environmental impact report or negative declaration shall be
16 conclusively presumed to comply with subparagraph (A) as to the area of
17 responsibility of an agency that does not respond within 30 days.

18 (C) If the school district, as a lead agency, has carried out the consultation required
19 by subparagraph (A), the environmental impact report or the negative declaration
20 shall be conclusively presumed to comply with subparagraph (A), notwithstanding
21 any failure of the consultation to identify an existing facility or other pollution
22 source specified in subparagraph (A).

23 (3) The governing board of the school district makes one of the following written
24 findings:

25 (A) Consultation identified no facilities of this type or other significant pollution
26 sources specified in paragraph (2).

27 (B) The facilities or other pollution sources specified in paragraph (2) exist, but
28 one of the following conditions applies:

29 (i) The health risks from the facilities or other pollution sources do not and will
30 not constitute an actual or potential endangerment of public health to persons who
31 would attend or be employed at the proposed school.

32 (ii) Corrective measures required under an existing order by another agency
33 having jurisdiction over the facilities or other pollution sources will, before the
34 school is occupied, result in the mitigation of all chronic or accidental hazardous air
35 emissions to levels that do not constitute an actual or potential endangerment of
36 public health to persons who would attend or be employed at the proposed school.
37 If the governing board makes a finding pursuant to this clause, it shall also make a
38 subsequent finding, prior to occupancy of the school, that the emissions have been
39 so mitigated.

40 (iii) For a schoolsite with a boundary that is within 500 feet of the edge of the
41 closest traffic lane of a freeway or other busy traffic corridor, the governing board
42 of the school district determines, through analysis pursuant to paragraph (2) of
43 subdivision (b) of Section 44360 of the Health and Safety Code, based on

1 appropriate air dispersion modeling, and after considering any potential mitigation
2 measures, that the air quality at the proposed site is such that neither short-term nor
3 long-term exposure poses significant health risks to pupils.

4 (C) The facilities or other pollution sources specified in paragraph (2) exist, but
5 conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the
6 school district is unable to locate an alternative site that is suitable due to a severe
7 shortage of sites that meet the requirements in subdivision (a) of Section 17213 of
8 the Education Code. If the governing board makes this finding, the governing board
9 shall adopt a statement of overriding considerations pursuant to Section 15093 of
10 Title 14 of the California Code of Regulations.

11 (b) As used in this section, the following definitions shall apply:

12 (1) “Hazardous substance” means any substance defined in ~~Section 25316~~
13 subdivision (a) of Section 78075 of the Health and Safety Code.

14 (2) “Extremely hazardous substances” means an extremely hazardous substance
15 as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the
16 Health and Safety Code.

17 (3) “Hazardous waste” means any waste defined in Section 25117 of the Health
18 and Safety Code.

19 (4) “Hazardous waste disposal site” means any site defined in Section 25114 of
20 the Health and Safety Code.

21 (5) “Hazardous air emissions” means emissions into the ambient air of air
22 contaminants that have been identified as a toxic air contaminant by the State Air
23 Resources Board or by the air pollution control officer for the jurisdiction in which
24 the project is located. As determined by the air pollution control officer, hazardous
25 air emissions also means emissions into the ambient air from any substances
26 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and
27 Safety Code.

28 (6) “Administering agency” means an agency authorized pursuant to Section
29 25502 of the Health and Safety Code to implement and enforce Chapter 6.95
30 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

31 (7) “Handle” means handle as defined in Article 1 (commencing with Section
32 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

33 (8) “Facilities” means any source with a potential to use, generate, emit, or
34 discharge hazardous air pollutants, including, but not limited to, pollutants that meet
35 the definition of a hazardous substance, and whose process or operation is identified
36 as an emission source pursuant to the most recent list of source categories published
37 by the California Air Resources Board.

38 (9) “Freeway or other busy traffic corridors” means those roadways that, on an
39 average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in
40 Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area,
41 as defined in Section 50104.7 of the Health and Safety Code.

1 **Comment.** Section 21151.8(a)(1)(B) and (b)(1) are amended to update cross-references in
2 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
3 25300) of Division 20 of the Health and Safety Code.

4 **Pub. Res. Code § 37016 (amended). Approval of proposed property contribution**

5 SEC. __. Section 37016 of the Public Resources Code is amended to read:

6 37016. (a) The board shall grant approval of a proposed contribution of property
7 under the program only upon a determination that:

8 (1)(A) The donation of property satisfies the requirements for a qualified
9 contribution pursuant to Section 170 of Title 26 of the United States Code. If only
10 a portion (either an undivided fractional interest in the entire property or one or more
11 discrete parcels) of a proposed conveyance of property satisfies the requirements of
12 Section 170 of Title 26 of the United States Code, or if the property is sold for less
13 than fair market value, only that portion, or the amount representing the difference
14 between the amount paid by the donee and the fair market value, shall be eligible
15 for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United
16 States Code. The board may segregate eligible and ineligible interests in property
17 proposed to be contributed pursuant to this division. The donor shall receive no
18 other valuable consideration for the donation of property subject to the tax credit.

19 (B) For purposes of this division, if the property is proposed to be donated to
20 satisfy a condition imposed upon the donor by any lease, permit, license, certificate,
21 or other entitlement for use issued by one or more public agencies, including, but
22 not limited to, the mitigation of significant effects on the environment of a project
23 pursuant to an approved environmental impact report or mitigated negative
24 declaration required pursuant to the California Environmental Quality Act (Division
25 13 (commencing with Section 21000)), that property shall not qualify for the credit
26 provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

27 (2) There has been no release or threatened release of a hazardous material on the
28 property, unless all of the following occur:

29 (i) (A) A final remedy in response to the release has been approved by the
30 Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with
31 Section 25100) of, ~~Chapter 6.8 (commencing with Section 25300) of,~~ or Chapter
32 6.85 (commencing with Section 25396) of, Division 20 of, or Part 2 (commencing
33 with Section 78000) of Division 45 of, the Health and Safety Code, or the
34 appropriate California regional water quality control board pursuant to Chapter 6.7
35 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

36 (ii) (B) The donor or donee have agreed to implement the final remedy approved
37 pursuant to ~~clause (i).~~ subparagraph (A).

38 (iii) (C) The donor or donee have agreed to fund and have made adequate funding
39 available to pay for the response action, as defined by Section ~~25323.3~~ 78140 of the
40 Health and Safety Code.

41 (b) Notwithstanding paragraph (2) of subdivision (a), a donation of property
42 containing hazardous materials may be accepted under the program without

1 satisfying the requirements of paragraph (2) of subdivision (a) if the donee
2 determines, based on written findings from the Department of Toxic Substances
3 Control and the California regional water quality control board with jurisdiction
4 over the property, that the hazardous materials present will pose no substantial risk
5 to human health or the environment and no substantial risk of liability on the donee
6 under the conditions under which the property will be used. The Department of
7 Toxic Substances Control and the California regional water quality control board
8 with jurisdiction over the property shall carry out their normal due diligence when
9 developing the written findings that will be the basis for the written determination
10 regarding the presence and risk of toxic materials on the property by the Department
11 of Toxic Substances Control or the regional board, whichever is applicable. As used
12 in this subdivision, “hazardous materials” has the same meaning as contained in
13 subdivision (d) of Section 25260 of the Health and Safety Code.

14 **Comment.** Section 37016(a)(2) is amended to update cross-references in accordance with the
15 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
16 the Health and Safety Code.

17 This section is also amended to make a technical change.

18 **Pub. Res. Code § 47004 (amended). “Hazardous waste”**

19 SEC. __. Section 47004 of the Public Resources Code is amended to read:

20 47004. For purposes of this chapter, “hazardous waste” has the same meaning as
21 defined in Section 25117 of the Health and Safety Code, and “hazardous substance”
22 has the same meaning as defined in ~~Section 25316~~ subdivision (a) of Section 78075
23 of the Health and Safety Code.

24 **Comment.** Section 47004 is amended to update cross-references in accordance with the
25 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
26 the Health and Safety Code.

27 **Pub. Res. Code § 48020 (amended). General provisions regarding codisposal site cleanup**

28 SEC. __. Section 48020 of the Public Resources Code is amended to read:

29 48020. (a) For purposes of this article, the following terms have the following
30 meaning:

31 (1) “Codisposal site” means a hazardous substance release site listed pursuant to
32 ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2
33 of Division 45 of the Health and Safety Code, where the disposal of hazardous
34 substances, hazardous waste, and solid waste has occurred.

35 (2) “Trust fund” means the Solid Waste Disposal Site Cleanup Trust Fund created
36 pursuant to Section 48027.

37 (b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid
38 waste disposal sites and for the cleanup of solid waste at codisposal sites where the
39 responsible party either cannot be identified or is unable or unwilling to pay for
40 timely remediation, and where cleanup is needed to protect public health and safety
41 or the environment.

1 (c) The board shall not expend more than 5 percent of the funds appropriated for
2 the purpose of the program by a statute other than the Budget Act to administer that
3 program, unless a different amount is otherwise appropriated to administer the
4 program in the annual Budget Act. If a different amount is appropriated to
5 administer the program in the annual Budget Act, it shall be set forth in a separate
6 line item. All remaining funds appropriated for the purposes of the program shall be
7 expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid
8 waste facilities, disposal sites, sites involving solid waste handling, and for solid
9 waste at codisposal sites.

10 **Comment.** Section 48020 is amended to update cross-references in accordance with the
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
12 the Health and Safety Code.

13 REVENUE AND TAXATION CODE

14 **Rev. & Tax Code § 402.3 (amended). Reassessment of land subject to land use restrictions**

15 SEC. __. Section 402.3 of the Revenue and Taxation Code is amended to read:

16 402.3. An assessor shall consider any restrictive covenant, easement, restriction,
17 or servitude adopted pursuant to Section 25202.5, 25222.1, or ~~25355.5~~ 79055 of the
18 Health and Safety Code or any restriction, easement, covenant, or servitude imposed
19 pursuant to Section 25230 of the Health and Safety Code as an enforceable
20 restriction, easement, covenant, or servitude subject to Section 402.1 and shall
21 appropriately reassess any land, the use of which has been so restricted, at the lien
22 date following the adoption or imposition of the covenant, easement, servitude, or
23 restriction.

24 **Comment.** Section 402.3 is amended to update cross-references in accordance with the
25 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
26 the Health and Safety Code.

27 **Rev. & Tax Code § 43002 (amended). Governing definitions for fees and taxes imposed by**
28 **Health and Safety Code provisions**

29 SEC. __. Section 43002 of the Revenue and Taxation Code is amended to read:

30 43002. The collection and administration of the fees and taxes imposed by
31 Chapter 6.5 (commencing with Section 25100) ~~and Chapter 6.8 (commencing with~~
32 ~~Section 25300), respectively,~~ of Division 20 of, and Part 2 (commencing with
33 Section 78000) of Division 45 of, the Health and Safety Code, respectively, shall be
34 governed by the definitions in those provisions, unless expressly superseded by the
35 definitions contained in this part.

36 **Comment.** Section 43002 is amended to update cross-references in accordance with the
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
38 the Health and Safety Code.

WATER CODE

Water Code § 13263.2 (amended). Exemption from hazardous waste facility permit for groundwater treatment

SEC. __. Section 13263.2 of the Water Code is amended to read:

13263.2. The owner or operator of a facility that treats groundwater which qualifies as a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code is exempt from the requirement to obtain a hazardous waste facility permit pursuant to Section 25201 of the Health and Safety Code for the treatment of groundwater if all of the following conditions are met:

(a) The facility treats groundwater which is extracted for the purposes of complying with one or more of the following:

(1) Waste discharge requirements prescribed pursuant to Section 13263.

(2) A cleanup or abatement order issued pursuant to Section 13304.

(3) A written authorization issued by a regional board or local agency designated pursuant to Section 25283 of the Health and Safety Code.

(4) An order or approved remedial action plan issued pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ of Division 20 Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(b) The facility meets, at a minimum, all of the following operating standards:

(1) The treatment does not require a hazardous waste facilities permit pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901 et seq.).

(2) The facility operator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(3) The facility operator prepares and maintains a written inspection schedule and log of inspections conducted.

(4) The records specified in paragraphs (2) and (3) are maintained by the owner or operator of the facility for a period of three years.

(5) The owner or operator maintains adequate records to demonstrate that it is in compliance with all of the pretreatment standards and with all of the applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(6)(A) Upon terminating the operation of any treatment process or unit exempted pursuant to this section, the owner or operator that conducted the treatment removes or decontaminates all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

1 (ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate,
2 contaminated runoff, or waste decomposition products to the environment after the
3 treatment process ceases operation.

4 (B) Any owner or operator who permanently ceases operation of a treatment
5 process or unit that is exempted pursuant to this section shall provide written
6 notification to the regional board or local agency upon completion of all activities
7 required by this subdivision.

8 (7) The waste is managed in accordance with all applicable requirements for
9 generators of hazardous waste under Chapter 6.5 (commencing with Section 25100)
10 of Division 20 of the Health and Safety Code and the regulations adopted by the
11 Department of Toxic Substances Control pursuant to that chapter.

12 (c) The groundwater is treated at the site where it is extracted in compliance with
13 one or more of paragraphs (1), (2), (3), and (4) of subdivision (a).

14 (d) All other regulatory requirements applicable to the facility pursuant to Chapter
15 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code
16 are met by the owner or operator.

17 (e) The treatment of the contaminated groundwater is not performed under
18 corrective action required by Section 25200.10 of the Health and Safety Code.

19 **Comment.** Section 13263.2(a)(4) is amended to update cross-references in accordance with the
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
21 the Health and Safety Code.

22 **Water Code § 13275 (amended). Rights and remedies against responsible party**

23 SEC. __. Section 13275 of the Water Code is amended to read:

24 13275. (a) Notwithstanding any other law, a public water system regulated by the
25 state board pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of
26 Division 104 of the Health and Safety Code shall have the same legal rights and
27 remedies against a responsible party, when the water supply used by that public
28 water system is contaminated, as those of a private land owner whose groundwater
29 has been contaminated.

30 (b) For purposes of this section, “responsible party” has the same meaning as
31 defined in Section ~~25323.5~~ 78140 of the Health and Safety Code.

32 **Comment.** Section 13275 is amended to update cross-references in accordance with the
33 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
34 the Health and Safety Code.

35 **Water Code § 13307 (amended). Policies and procedures for hazardous substance discharge**
36 **investigation and cleanup or abatement**

37 SEC. __. Section 13307 of the Water Code is amended to read:

38 13307. (a) The state board and the Department of Toxic Substances Control shall
39 concurrently establish policies and procedures consistent with this division that the
40 state board’s representatives and the representatives of regional boards shall follow
41 in overseeing and supervising the activities of persons who are carrying out the
42 investigation of, and cleaning up or abating the effects of, a discharge of a hazardous

1 substance which creates, or threatens to create, a condition of contamination,
2 pollution, or nuisance. The policies and procedures shall be consistent with the
3 policies and procedures established pursuant to Section ~~25355.7~~ 79000 of the Health
4 and Safety Code and shall include, but are not limited to, all of the following:

5 (1) The procedures the state board and the regional boards will follow in making
6 decisions as to when a person may be required to undertake an investigation to
7 determine if an unauthorized hazardous substance discharge has occurred.

8 (2) Policies for carrying out a phased, step-by-step investigation to determine the
9 nature and extent of possible soil and groundwater contamination or pollution at a
10 site.

11 (3) Procedures for identifying and utilizing the most cost-effective methods for
12 detecting contamination or pollution and cleaning up or abating the effects of
13 contamination or pollution.

14 (4) Policies for determining reasonable schedules for investigation and cleanup,
15 abatement, or other remedial action at a site. The policies shall recognize the dangers
16 to public health and the waters of the state posed by an unauthorized discharge and
17 the need to mitigate those dangers while at the same time taking into account, to the
18 extent possible, the resources, both financial and technical, available to the person
19 responsible for the discharge.

20 (b) The state board and the Department of Toxic Substances Control shall jointly
21 review the policies and procedures that were established pursuant to this section and
22 Section ~~25355.7~~ 79000 of the Health and Safety Code prior to the enactment of this
23 subdivision and shall concurrently revise those policies and procedures as necessary
24 to make them as consistent as possible. Where they cannot be made consistent
25 because of the differing requirements of this chapter and ~~Chapter 6.8 (commencing~~
26 ~~with Section 25300) of Division 20 Part 2 (commencing with Section 78000) of~~
27 Division 45 of the Health and Safety Code, the state board and the Department of
28 Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the
29 Legislature, recommendations for revising this chapter and ~~Chapter 6.8~~
30 ~~(commencing with Section 25300) of Division 20 Part 2 (commencing with Section~~
31 78000) of Division 45 of the Health and Safety Code in order to make consistent the
32 hazardous substance release cleanup policies and procedures followed by the state
33 board, the Department of Toxic Substances Control, and the regional boards.

34 **Comment.** Section 13307 is amended to update cross-references in accordance with the
35 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
36 the Health and Safety Code.

37 **Water Code § 13365 (amended). Billing system and charges for cost recovery**

38 SEC. __. Section 13365 of the Water Code is amended to read:

39 13365. (a)(1) For purposes of this article, unless the context otherwise requires,
40 “agency” means the state board or a regional board.

41 (2) The terms used in this article shall have the same meaning as the definitions
42 specified in the statutory authority under which the agency takes any action subject

1 to this article, except that, notwithstanding ~~Section 25317~~ subdivision (b) of Section
2 78075 of the Health and Safety Code, for purposes of this article, “hazardous
3 substance” includes a hazardous substance specified in subdivision (h) of Section
4 25281 of the Health and Safety Code.

5 (b) On or before July 1, 1997, the agency shall adopt a billing system for the
6 agency’s cost recovery of investigation, analysis, planning, implementation,
7 oversight, or other activity related to the removal or remedial or corrective action of
8 a release of a hazardous substance that includes both of the following:

9 (1) Billing rates and overhead rates by employee job classification.

10 (2) Standardized description of work tasks.

11 (c) Notwithstanding any other provision of law, after July 1, 1997, any charge
12 imposed upon a responsible party by the agency, to compensate the agency for
13 some, or all, of its costs incurred in connection with the agency’s investigation,
14 analysis, planning, implementation, oversight, or other activity related to a removal
15 or remedial action or a corrective action to a release of a hazardous substance, shall
16 not be assessed or collected unless all of the following requirements are met:

17 (1) Except as provided in subdivision (f), prior to commencing the work or service
18 for which the charge is assessed, and at least annually thereafter if the work or
19 service is continuing, the agency shall provide all of the following information to
20 the responsible party:

21 (A) A detailed estimate of the work to be performed or services to be provided,
22 including a statement of the expected outcome of that work, based upon data
23 available to the agency at the time.

24 (B) The billing rates for all individuals and classes of employees expected to
25 engage in the work or service.

26 (C) An estimate of all expected charges to be billed to the responsible party by the
27 agency, including, but not limited to, any overhead assessments that the agency may
28 be authorized to levy.

29 (2)(A) Invoices shall be issued not less than semiannually with appropriate
30 incentives for prompt payment.

31 (B) Invoices shall be mailed to the correct person or persons for the responsible
32 party or parties.

33 (C) Invoices shall provide a daily detail of work performed and time spent by each
34 employee and contractor employee using the billing and overhead rates and the
35 standardized description of work tasks adopted pursuant to subdivision (b).

36 (D) Invoices shall include the source and amount of all other charges.

37 (E) Invoices shall be supplemented with statements of any changes in rates and a
38 justification for any changes.

39 (F) Invoices shall be reviewed for accuracy and appropriateness.

40 (3) Upon request and within a reasonable time, not to exceed 30 working days
41 from the date of receipt of a request, the agency shall provide the responsible party
42 with copies of time records and other materials supporting the invoice described in

1 paragraph (2). No fees or charges may be assessed for the preparation and delivery
2 of those copies pursuant to this section.

3 (4) The agency shall identify a party who is responsible for resolving disputes
4 regarding the charges subject to this section and who is not responsible for, or
5 performing, the work or service for which the charges are assessed.

6 (d) The agency may adjust the scope of the work or service, type of studies, or
7 other tasks to be performed, based upon analyses necessary to accommodate new
8 information regarding the extent of contamination of the site, and only after
9 providing written notice of the change to the responsible party containing the
10 information specified in paragraph (1) of subdivision (c).

11 (e) The agency may increase billing rates not more than once each calendar year,
12 to the extent authorized by law. Any increase in billing rates or other charges,
13 including, but not limited to, overhead charges, shall operate prospectively only,
14 and shall take effect not sooner than 10 days from the date that written notice has
15 been provided to the responsible party.

16 (f)(1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that
17 requires prompt action to protect human health or safety or the environment.

18 (2) Paragraph (1) of subdivision (c) does not apply with respect to those
19 responsible parties who are not identified until after the beginning of a removal or
20 remedial action or corrective action to a release of a hazardous substance.

21 **Comment.** Section 13365(a)(2) is amended to update cross-references in accordance with the
22 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
23 the Health and Safety Code.

24 **Water Code § 13611.5 (amended). Information required from facilities that store**
25 **perchlorate**

26 SEC. __. Section 13611.5 of the Water Code is amended to read:

27 13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the
28 owner or operator has met the alternative compliance requirements of subdivision
29 (b), an owner or operator of a storage facility that has stored in any calendar year
30 since January 1, 1950, over 500 pounds of perchlorate shall submit to the state
31 board, to the extent feasible, all of the following information:

32 (1) The volume of perchlorate stored each year.

33 (2) The method of storage.

34 (3) The location of storage. To the extent authorized by federal law, in the case of
35 a perchlorate storage facility under the control of the Armed Forces of the United
36 States, “location” means the name and address of the property within which the
37 perchlorate storage facility is located.

38 (4) Copies of documents relating to any monitoring undertaken for potential leaks
39 into the water bodies of the state.

40 (b) The owner or operator of a storage facility that has stored in any calendar year
41 since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this
42 section if both of the following conditions are met:

1 (1) The owner or operator has provided substantially similar information as
2 required pursuant to subdivision (a) to a state, local, or federal agency pursuant to
3 any of the following:

4 (A) An order issued by a regional board pursuant to Chapter 5 (commencing with
5 Section 13300) of Division 7.

6 (B) An order, consent order, or consent decree issued or entered into by the
7 Department of Toxic Substances Control pursuant to ~~Chapter 6.8 (commencing with~~
8 ~~Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division
9 45 of the Health and Safety Code.

10 (C) An order, consent order, or consent decree issued or entered into by the United
11 States Environmental Protection Agency pursuant to the Comprehensive
12 Environmental Response, Compensation, and Liability Act of 1980, as amended (42
13 U.S.C. Sec. 9601 et seq.).

14 (D) The requirement under Section 25504.1 of the Health and Safety Code, as
15 added by Assembly Bill 826 of the 2003–04 Regular Session.

16 (2) The owner or operator, on or before January 1, 2005, and annually thereafter,
17 notifies the state board of the governmental entity to which the information is
18 provided and the state board determines the information supplied is substantially
19 similar as the information required to be reported pursuant to subdivision (a). In the
20 case of any information submitted to a federal or local agency, the state board may
21 require the owner or operator, in addition, to submit that information to the state
22 board if the state board determines that the information is not otherwise reasonably
23 available to the state board.

24 (c) This section shall not be administered or implemented if the state board
25 receives notification from the Secretary for Environmental Protection pursuant to
26 Section 13613 that the Secretary for Environmental Protection has established a
27 database that is able to receive perchlorate inventory information.

28 (d) Information on perchlorate storage need only be submitted pursuant to this
29 section one time, unless information originally submitted pursuant to this section
30 has changed.

31 **Comment.** Section 13611.5(b)(1)(B) is amended to update cross-references in accordance with
32 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
33 of the Health and Safety Code.

34 **Water Code § 83002 (amended). Schedule of appropriation**

35 SEC. __. Section 83002 of the Water Code is amended to read:

36 83002. The sum of eight hundred twenty million nine hundred seventy-three
37 thousand dollars (\$820,973,000) is hereby appropriated in accordance with the
38 following schedule:

39 (a) Of the funds made available pursuant to Chapter 1.699 (commencing with
40 Section 5096.800) of Division 5 of the Public Resources Code, the sum of two
41 hundred eighty-five million dollars (\$285,000,000) is hereby appropriated as
42 follows:

1 (1) Pursuant to subdivision (c) of Section 5096.821 of the Public Resources Code,
2 the sum of one hundred thirty-five million dollars (\$135,000,000) to the department
3 for the acquisition, design, and construction of essential emergency preparedness
4 supplies and projects. Prior to the design or construction of any project funded
5 pursuant to this paragraph, the California Bay-Delta Authority, or its successor,
6 shall approve the specific project or program. Preference shall be given to projects
7 that protect and improve Delta water quality and drinking water supplies. Of the
8 amount made available pursuant to this paragraph, not less than thirty-five million
9 dollars (\$35,000,000) shall be expended by the department for projects to reinforce
10 those sections of the levees that have the highest potential to suffer breaches or
11 failure and cause harm to municipal and industrial water supply aqueducts that cross
12 the Delta and which are vulnerable to flood damage, including the installation of
13 scour protection on the supports of the aqueducts in those areas located adjacent to
14 the sections of the levees that have been identified as having the highest risk for
15 breaches or failure.

16 (2) Pursuant to Section 5096.827 of the Public Resources Code, the sum of one
17 hundred fifty million dollars (\$150,000,000) to the department for grants for
18 stormwater flood management projects that reduce flood damage and provide other
19 benefits, including groundwater recharge, water quality improvement, and
20 ecosystem restoration. Not less than one hundred million dollars (\$100,000,000) of
21 this amount shall be available for projects that address immediate public health and
22 safety needs or strengthen existing flood control facilities to address seismic safety
23 issues. Twenty million dollars (\$20,000,000) shall be available for local agencies to
24 meet immediate water quality needs related to combined municipal sewer and
25 stormwater systems to prevent sewage discharges into state waters. Twenty million
26 dollars (\$20,000,000) shall be available for urban stream stormwater flood
27 management projects to reduce the frequency and impacts of flooding in watersheds
28 that drain to the San Francisco Bay.

29 (b) Of the funds made available pursuant to Division 43 (commencing with
30 Section 75001) of the Public Resources Code, the sum of five hundred twenty-six
31 million four hundred ninety-one thousand dollars (\$526,491,000) is hereby
32 appropriated as follows:

33 (1) Pursuant to Section 75022 of the Public Resources Code, the sum of fifty
34 million dollars (\$50,000,000) to the State Department of Public Health for grants
35 for small community drinking water system infrastructure improvements and
36 related action to meet safe drinking water standards. First priority for these funds
37 shall be given to disadvantaged or severely disadvantaged communities lacking
38 resources to provide safe drinking water to residents. Small community drinking
39 water systems that are dependent on surface water and are under orders from the
40 State Department of Public Health to boil water from existing treatment systems for
41 parasites, viruses, or giardia shall be eligible for grants for drinking water system
42 infrastructure improvements.

1 (2) Pursuant to Section 75025 of the Public Resources Code, the sum of fifty
2 million four hundred thousand dollars (\$50,400,000) to the State Department of
3 Public Health for grants for projects to prevent or reduce the contamination of
4 groundwater that serves as a source of drinking water. Funds appropriated by this
5 paragraph shall be available for immediate projects needed to protect public health
6 by preventing or reducing the contamination of groundwater that serves as a major
7 source of drinking water for a community.

8 (A) The State Department of Public Health shall prioritize project funding based
9 on the following criteria:

10 (i) The threat posed by groundwater contamination to the affected community's
11 overall drinking water supplies, including the need for the treatment or construction
12 of alternative supplies if groundwater is not available due to contamination.

13 (ii) The potential for groundwater contamination to spread and reduce drinking
14 water supply and water storage capacity for major population areas.

15 (iii) The potential of the project, if fully implemented, to enhance local water
16 supply reliability.

17 (iv) The potential of the project to increase opportunities for groundwater recharge
18 and optimization of groundwater supplies.

19 (B) The State Department of Public Health shall give additional consideration to
20 projects that meet any of the following criteria:

21 (i) The project is implemented pursuant to a comprehensive basinwide
22 groundwater quality management and remediation plan or is necessary to develop a
23 comprehensive groundwater plan.

24 (ii) Affected groundwater provides a local supply that, if contaminated, will
25 require the importation of additional water from the Sacramento-San Joaquin Delta
26 or the Colorado River.

27 (iii) The project will serve an economically disadvantaged community.

28 (iv) Multiple contaminants affect more than one-third of the well capacity of a
29 local water system.

30 (C) Of the amount made available by this paragraph, up to ten million dollars
31 (\$10,000,000) shall be allocated for projects that meet the criteria of this paragraph
32 and both of the following criteria:

33 (i) The project has the potential to leverage funds.

34 (ii) The project addresses contamination at a site on the list maintained by the
35 Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5
36 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
37 Health and Safety Code or a site listed on the National Priorities List pursuant to the
38 federal Comprehensive Environmental Response, Compensation, and Liability Act
39 of 1980 (42 U.S.C. Sec. 9601 et seq.).

40 (D) Of the funds made available by this paragraph, two million dollars
41 (\$2,000,000) shall be allocated to the State Department of Public Health to contract
42 with the State Water Resources Control Board for the purposes of Section 83002.5.

1 (3)(A) Pursuant to Section 75026 of the Public Resources Code, the sum of one
2 hundred eighty-one million seven hundred ninety-one thousand dollars
3 (\$181,791,000) to the department for integrated regional water management
4 activities as follows:

5 (i) One hundred million dollars (\$100,000,000) for implementation grants.

6 (ii) Thirty-nine million dollars (\$39,000,000) for planning grants, local
7 groundwater assistance grants, and CALFED scientific research grants.

8 (iii)(I) Twenty-two million ninety-one thousand dollars (\$22,091,000) for projects
9 with interregional or statewide benefits.

10 (II) Of the amount made available pursuant to this paragraph, not less than ten
11 million dollars (\$10,000,000) shall be made available for expenditure to
12 interconnect municipal and industrial water supply aqueducts that cross the Delta
13 and that are vulnerable to flood damage, including the design and construction of
14 interties among aqueducts that provide at least 90 percent of a regional water supply
15 that would be threatened in the event of levee failure or other disaster, and that
16 support an integrated regional emergency water supply system.

17 (iv) Twenty million seven hundred thousand dollars (\$20,700,000) for program
18 delivery costs.

19 (B) An implementation grant pursuant to clause (i) of subparagraph (A) shall be
20 available only for projects included in an integrated regional water management
21 plan that meets one of the following conditions:

22 (i) The plan complies with Part 2.2 (commencing with Section 10530) of Division
23 6.

24 (ii) For a plan adopted before the date on which this section is enacted, both of the
25 following apply:

26 (I) The regional water management group that prepared the plan enters into a
27 binding agreement with the department to update the plan to comply with Part 2.2
28 (commencing with Section 10530) of Division 6 within two years of the date on
29 which the agreement was entered into.

30 (II) The regional water management group undertakes all reasonable and feasible
31 efforts to take into account water-related needs of disadvantaged communities in the
32 area within the boundaries of the plan.

33 (C)(i) Of the funds described in clauses (i) and (ii) of subparagraph (A), the
34 department shall allocate not less than 10 percent to facilitate and support the
35 participation of disadvantaged communities in integrated regional water
36 management planning and for projects that address critical water supply or water
37 quality needs for disadvantaged communities.

38 (ii) Except as otherwise specified in clause (iii), the department shall achieve the
39 allocation described in clause (i) by awarding grants for those purposes to
40 disadvantaged communities within a hydrologic region in a total dollar amount that
41 is not less than 10 percent of the total dollar amount of grants awarded within the
42 region.

1 (iii) The department shall implement this subparagraph with due diligence, but
2 shall implement clause (ii) only to the extent that the implementation does not affect
3 the expeditious allocation of funds for integrated regional water management grants.

4 (iv) The department shall submit a report to the Legislature with regard to the
5 implementation of this subparagraph on or before July 1, 2010.

6 (D) Of the funds described in clause (iii) of subparagraph (A), the department
7 shall allocate two million dollars (\$2,000,000) to Tulare County for development of
8 an integrated water quality and wastewater treatment program plan to address the
9 drinking water and wastewater needs of disadvantaged communities in the Tulare
10 Lake Basin. Funds allocated pursuant to this paragraph shall be available for
11 assessment and feasibility studies necessary to develop the plan, and the plan shall
12 include recommendations for planning, infrastructure, and other water management
13 actions, and shall include specific recommendations for regional drinking water
14 treatment facilities, regional wastewater treatment facilities, conjunctive use sites
15 and groundwater recharge, groundwater for surface water exchanges, related
16 infrastructure, and cost-sharing mechanisms. Tulare County shall consult with
17 appropriate stakeholders, including representatives of disadvantaged communities,
18 when preparing the plan. The department, in consultation with the State Department
19 of Public Health, shall submit the plan to the Legislature by January 1, 2011.

20 (E) Of the funds described in clause (i) of subparagraph (A), the department shall
21 allocate not less than twenty million dollars (\$20,000,000) to support urban and
22 agricultural water conservation projects necessary to meet a 20-percent reduction in
23 per capita water use by the year 2020.

24 (4) Pursuant to Section 75029 of the Public Resources Code, the sum of ninety
25 million dollars (90,000,000) to the department for the implementation of Delta water
26 quality improvement projects that protect drinking water supplies as follows:

27 (A) Pursuant to subdivision (d) of Section 75029 of the Public Resources Code,
28 the sum of fifty million dollars (\$50,000,000) for drinking water intake facility
29 projects to improve the quality of drinking water supply from the Sacramento-San
30 Joaquin Delta that are identified in the June 2005 Delta Region Drinking Water
31 Quality Management Plan. Funding shall be made available for environmental
32 review, design, and construction. Project proponents seeking funding for
33 construction shall meet all of the following criteria:

34 (i) Have completed documentation required under the California Environmental
35 Quality Act (Division 13 (commencing with Section 21000) of the Public Resources
36 Code) and a notice of determination has been filed prior to June 30, 2008.

37 (ii) Have demonstrated multiple benefits in conveyance and Delta operation to
38 achieve protection or improvement to Delta pelagic fisheries, as well as drinking
39 water quality improvement and public health protection.

40 (iii) Are able to complete design and commence construction before June 30,
41 2009.

42 (iv) Have local or federal cost-sharing funds immediately available.

1 (B) The sum of forty million dollars (\$40,000,000) for projects consistent with
2 subdivision (c) of Section 75029 of the Public Resources Code.

3 (5) Pursuant to Section 75033 of the Public Resources Code, the sum of one
4 hundred million dollars (\$100,000,000) to the department for the acquisition,
5 preservation, protection, and restoration of Sacramento-San Joaquin Delta resources
6 in accordance with Section 75033 of the Public Resources Code. The department
7 shall expend these funds pursuant to priorities that reflect the value of the resources
8 and land uses protected by the levees to the state as a whole, consistent with the
9 Delta Vision Strategic Plan. Projects shall be selected to improve the stability of the
10 Delta levee system, reduce subsidence, and assist in restoring the ecosystem of the
11 Delta. Priority shall be given to projects that improve conditions for Delta smelt and
12 other native fish. Up to five million dollars (\$5,000,000) made available pursuant to
13 this paragraph shall be available as grants and direct expenditures for emergency
14 communications equipment to improve emergency response preparedness.

15 (6) Pursuant to Chapter 4 (commencing with Section 75041) of Division 43 of the
16 Public Resources Code, the sum of thirty-seven million dollars (\$37,000,000) to the
17 department as follows:

18 (A)(i) Twelve million dollars (\$12,000,000) to complete the planning and
19 feasibility studies associated with new surface storage under the California Bay-
20 Delta Program.

21 (ii) The planning and feasibility studies shall include the following information:

22 (I) The identification of specific construction and operation conditions proposed
23 for each surface storage facility, including consideration of climate change, an
24 estimated schedule for the construction and completion of each project funded under
25 Section 75041, and the total costs of constructing each project.

26 (II) A description of the estimated total costs to construct each project and an
27 allocation of the costs to public and private beneficiaries.

28 (iii) Any feasibility study conducted by or funded by the state for new surface
29 storage under the California Bay-Delta Program shall evaluate funded projects
30 consistent with all statutory and other legally established requirements for
31 protection of environmental and natural resources, including protections for the
32 McCloud River pursuant to Section 5093.542 of the Public Resources Code.

33 (iv) The feasibility studies shall be prepared and submitted to the Governor and
34 the Legislature no later than December 31, 2009.

35 (B)(i) Fifteen million dollars (\$15,000,000) for planning and feasibility studies to
36 identify potential options for the reoperation of the state's flood protection and water
37 supply systems that will optimize the use of existing facilities and groundwater
38 storage capacity.

39 (ii) The studies shall incorporate appropriate climate change scenarios and be
40 designed to determine the potential to achieve the following objectives:

41 (I) Integration of flood protection and water supply systems to increase water
42 supply reliability and flood protection, improve water quality, and provide for
43 ecosystem protection and restoration.

1 (II) Reoperation of existing reservoirs, flood facilities, and other water facilities
2 in conjunction with groundwater storage to improve water supply reliability, flood
3 control, and ecosystem protection and to reduce groundwater overdraft.

4 (III) Promotion of more effective groundwater management and protection and
5 greater integration of groundwater and surface water resource uses.

6 (IV) Improvement of existing water conveyance systems to increase water supply
7 reliability, improve water quality, expand flood protection, and protect and restore
8 ecosystems.

9 (C) Ten million dollars (\$10,000,000) to update the California Water Plan,
10 including evaluation of climate change impacts, the development of strategies to
11 adapt to climate change impacts, technical assistance to local agencies that
12 incorporate climate change into their studies, reports, and plans, and the
13 identification of strategies to reduce greenhouse gas emissions related to the storage,
14 conveyance, and distribution of water.

15 (D) Of the money made available pursuant to subparagraphs (A), (B), and (C), up
16 to two million dollars (\$2,000,000) may be expended for planning and feasibility
17 studies necessary to implement the Delta Vision Strategic Plan, developed pursuant
18 to Executive Order No. S-17-06, dated September 28, 2006, establishing the Delta
19 Vision process.

20 (7) Pursuant to Section 75050 of the Public Resources Code, the sum of seventeen
21 million three hundred thousand dollars (\$17,300,000) for the protection and
22 restoration of rivers and streams as follows:

23 (A) Ten million dollars (\$10,000,000) to the State Coastal Conservancy for the
24 purposes of subdivision (i) of Section 75050 of the Public Resources Code.

25 (B) Seven million three hundred thousand dollars (\$7,300,000) to the department
26 for the purposes of subdivision (e) of Section 75050 of the Public Resources Code.

27 (c) Of the funds made available pursuant to subdivision (a) of Section 79550, the
28 sum of three million seven hundred sixty thousand dollars (\$3,760,000) is hereby
29 appropriated to the department for planning and feasibility studies associated with
30 surface storage under the California Bay-Delta Program.

31 (d)(1) Of the funds available pursuant to Section 79101, the sum of two million
32 two hundred seventy-two thousand dollars (\$2,272,000) is appropriated to the
33 department for the Sacramento River Hamilton City Area Flood Damage Reduction
34 Project.

35 (2) Of the funds available pursuant to subdivision (c) of Section 79196.5, the sum
36 of three million four hundred fifty thousand dollars (\$3,450,000) is appropriated to
37 the department for the Franks Tract Pilot Project under the CALFED Drinking
38 Water Quality Program.

39 **Comment.** Section 83002(b)(2)(C)(ii) is amended to update cross-references in accordance with
40 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
41 of the Health and Safety Code.

42 This section was also amended to insert subclause labels.

1

UNCODIFIED

2 **Contingent and deferred operation**

3 SEC. _____. This act shall only become operative if [**the Hazardous Substance**
4 **Account recodification bill**] is enacted and becomes operative on January 1, 2024,
5 and that bill would reorganize and make other nonsubstantive changes to the
6 Carpenter-Presley-Tanner Hazardous Substance Account Act, in which case this act
7 shall also become operative on January 1, 2024.

8 **Subordination clause**

9 SEC. _____. Any section of any act enacted by the Legislature during the 2022
10 calendar year, other than a section of the annual maintenance of the codes bill or
11 another bill with a subordination clause, that takes effect on or before January 1,
12 2024, and that amends, amends and renumbers, amends and repeals, adds, repeals
13 and adds, or repeals a section that is amended, amended and renumbered, amended
14 and repealed, added, repealed and added, or repealed by this act, shall prevail over
15 this act, whether that act is chaptered before or after this act.