

#E-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Pre-Print RECOMMENDATION

Hazardous Substance Account Recodification Act:
Conforming Revisions

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

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(As subsequently revised in December 2021
to reflect 2021 legislative and statutory changes)

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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 and subsequently updated pursuant to Resolution Chapter 108 of the Statutes of 2021.

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)); 2021 Cal. Stat. res. ch. 108 (ACR 24 (Chau)).

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 *Hazardous Substance Account Recodification Act*, 48 Cal. L. Revision Comm’n Reports __ (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 noted in the accompanying Comment.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*.

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 and deferred operation (at the end of the proposed legislation) *infra*.

14. See proposed uncodified provision on contingent and deferred operation *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~~ Section
40 78125 of the 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 a cross-reference to reflect the repeal of Health
39 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 a cross-reference 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 (n) of Section 25501 of the
7 Health and Safety Code.

8 (3) A regulated substance, as defined in subdivision (i) 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 (7) 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 a cross-reference 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 a cross-reference 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 a cross-reference 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)~~ Article 3 (commencing with Section
17 78035) of Chapter 1 of the state act.

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

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

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

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

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

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

12 (l) “Remedial action plan” means a plan approved by the Department of Toxic
13 Substances Control pursuant to ~~Section 25356.1~~ Article 12 (commencing with
14 Section 79195) of Chapter 5 of Part 2 of Division 45 of the Health and Safety Code.

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

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

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

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

23 17213. The governing board of a school district shall not approve a project
24 involving the acquisition of a schoolsite by a school district, unless all of the
25 following occur:

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

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

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

38 (3) A site that contains one or more pipelines, situated underground or
39 aboveground, that carries hazardous substances, extremely hazardous substances,
40 or hazardous wastes, unless the pipeline is a natural gas line that is used only to
41 supply natural gas to that school or neighborhood.

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

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

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

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

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

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

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

37 (D) The governing board finds that neither of the conditions set forth in
38 subparagraph (B) or (C) can be met, and the school district is unable to locate an
39 alternative site that is suitable due to a severe shortage of sites that meet the
40 requirements in subdivision (a). If the governing board makes this finding, the
41 governing board shall adopt a statement of overriding considerations pursuant to
42 Section 15093 of Title 14 of the California Code of Regulations.

43 (d) As used in this section:

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

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

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

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

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

16 (6) “Administering agency” means any agency designated pursuant to Section
17 25502 of the Health and Safety Code.

18 (7) “Handle” means handle as defined in Article 1 (commencing with Section
19 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

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

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

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

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

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

35 17213.1. As a condition of receiving state funding pursuant to Chapter 12.5
36 (commencing with Section 17070.10), the governing board of a school district shall
37 comply with subdivision (a), and is not required to comply with subdivision (a) of
38 Section 17213, prior to the acquisition of a schoolsite, or if the school district owns
39 or leases a schoolsite, prior to the construction of a project.

40 (a) Prior to acquiring a schoolsite, the governing board shall contract with an
41 environmental assessor to supervise the preparation of, and sign, a Phase I
42 environmental assessment of the proposed schoolsite unless the governing board

1 decides to proceed directly to a preliminary endangerment assessment, in which
2 case it shall comply with paragraph (4).

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

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

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

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

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

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

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

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

38 (4)(A) If the Department of Toxic Substances Control concludes after its review
39 of a Phase I environmental assessment pursuant to this section that a preliminary
40 endangerment assessment is needed, the Department of Toxic Substances Control
41 shall notify, in writing, the State Department of Education and the governing board
42 of the school district of that decision and the basis for that decision. The school
43 district shall submit to the State Department of Education the Phase I environmental

1 assessment and requested additional information, if any, that was reviewed by the
2 Department of Toxic Substances Control pursuant to that subparagraph. Submittal
3 of the Phase I assessment and additional information, if any, to the State Department
4 of Education shall be prior to the State Department of Education issuance of final
5 site or plan approvals ~~affected~~ affected by that Phase I assessment.

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

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

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

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

40 (6) At the same time a school district submits a preliminary endangerment
41 assessment to the Department of Toxic Substances Control pursuant to paragraph
42 (5), the school district shall publish a notice that the assessment has been submitted
43 to the department in a local newspaper of general circulation, and shall post the

1 notice in a prominent manner at the proposed schoolsite that is the subject of that
2 notice. The notice shall state the school district's determination to make the
3 preliminary endangerment assessment available for public review and comment
4 pursuant to subparagraph (A) or ~~(B)~~ (C):

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

12 (i) The preliminary endangerment assessment.

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

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

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

33 ~~(B)~~ (C) If the school district chooses to make the preliminary endangerment
34 assessment available for public review and comment pursuant to this subparagraph,
35 the Department of Toxic Substances Control shall complete its review of the
36 assessment within 60 calendar days of receipt of the assessment and shall either
37 return the assessment to the school district with comments and requested
38 modifications or requested further assessment or concur with the adequacy of the
39 assessment pending review of public comment. If the Department of Toxic
40 Substances Control concurs with the adequacy of the assessment, and the school
41 district proposes to proceed with site acquisition or a construction project, the school
42 district shall make the assessment available to the public on the same basis and at
43 the same time it makes available the draft environmental impact report or negative

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

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

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

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

37 (10) If the preliminary endangerment assessment determines that a release of
38 hazardous material has occurred, that there is the threat of a release of hazardous
39 materials, that a naturally occurring hazardous material is present, or any
40 combination thereof, that requires further investigation, and the Department of
41 Toxic Substances Control approves this determination, the school district may elect
42 not to pursue the acquisition or construction project. If the school district elects to
43 pursue the acquisition or construction project, it shall do all of the following:

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

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

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

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

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

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

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

24 (d) The changes made to this section by the act amending this section during the
25 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition
26 project or a school construction project, if either of the following occurred on or
27 before the effective date of the act amending this section during the 2001 portion of
28 the 2001–02 Regular Session:

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

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

35 **Comment.** Section 17213.1(a)(4)(B) and (a)(7) are amended to update cross-references in
36 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
37 25300) of Division 20 of the Health and Safety Code.

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

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

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

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

1 51881.5. (a) The Legislature finds and declares that hazardous substances, as
2 defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety
3 Code, are an integral part of daily life, and that some substances, which are routinely
4 found in and around homes, present potential hazards to the public and to the
5 environment because of the lack of public awareness and education on the hazards
6 of these substances and because of the lack of safe disposal options for hazardous
7 substances from households.

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

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

16 **Comment.** Section 51881.5 is amended to update a cross-reference 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 FISH AND GAME CODE

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

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

22 12015. (a) It is the intent of the Legislature that expeditious cleanup is the primary
23 interest of the people of the State of California in order to protect the people and the
24 environment of the state.

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

33 (c) Prior to taking any action committing the use of state funds pursuant to this
34 section or Section 5655, the department shall first make a reasonable effort to have
35 the person responsible, when that person is known and readily available, remove, or
36 agree to pay for the removal of, the substance causing the prohibited condition, if
37 the responsible person acts expeditiously and does not cause the prohibited
38 condition to be prolonged to the detriment of fish, plant, animal, or bird life in the
39 affected waters. When the responsible party is unknown or is not providing adequate
40 and timely cleanup, the emergency reserve account of the Toxic Substances Control
41 Account in the General Fund shall be used to provide funding for the cleanup

1 pursuant to Section ~~25354~~ 78875 of the Health and Safety Code. When those or
2 other funds are not available, moneys in the Fish and Wildlife Pollution Account
3 shall be available, in accordance with subdivision (b) of Section 12017, for funding
4 the cleanup expenses.

5 **Comment.** Section 12015 is amended to update a cross-reference 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 **Fish & Game Code § 12017 (amended). Fish and Wildlife Pollution Account**

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

10 12017. (a) Notwithstanding Section 13001, any recovery or settlement of money
11 received pursuant to the following sections shall be deposited in the Fish and
12 Wildlife Pollution Account:

13 (1) Section 2014.

14 (2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division
15 6.

16 (3) Section 12015 or 12016.

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

19 (5) Section 13442 of the Water Code.

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

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

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

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

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

26 (3) Resource injury determination.

27 (4) Resource damage assessment.

28 (5) Economic valuation of resources.

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

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

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

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

1 **Comment.** Section 12017 is amended to update a cross-reference 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 GOVERNMENT CODE

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

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

7 6103.10. (a) Section 6103 does not apply to any fee or charges required to be paid
8 to the Director of Toxic Substances Control or to the California Department of Tax
9 and Fee Administration pursuant to Chapter 6.5 (commencing with Section 25100)
10 of, ~~and Chapter 6.8 (commencing with Section 25300) of~~, Division 20 of , and Part
11 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code,
12 except as otherwise provided in subdivision (b) of Section 25205.1 of, and Section
13 25205.7 of, the Health and Safety Code.

14 (b) This section shall become operative on January 1, 2022.

15 **Comment.** Section 6103.10 is amended to update a cross-reference 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 **Gov't Code § 7930.155 (amended). Exemptions from disclosure, Hazardous substance tax**
19 **information to housing authority tenant application**

20 SEC. __. Section 7930.155 of the Government Code is amended to read:

21 7930.155. The following provisions may operate to exempt certain records, or
22 portions thereof, from disclosure pursuant to this division:

23 Hazardous substance tax information, prohibition against disclosure, Section
24 43651, Revenue and Taxation Code.

25 Hazardous waste control, business plans, public inspection, Section 25509, Health
26 and Safety Code.

27 Hazardous waste control, notice of unlawful hazardous waste disposal, Section
28 25180.5, Health and Safety Code.

29 Hazardous waste control, trade secrets, disclosure of information, Sections 25512,
30 25512.1, and 25538, Health and Safety Code.

31 Hazardous waste control, trade secrets, procedures for release of information,
32 ~~Section 25358.2, Sections 78480 to 78495, inclusive,~~ Health and Safety Code.

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

35 Hazardous waste licenseholder disclosure statement, confidentiality of, Section
36 25186.5, Health and Safety Code.

37 Hazardous waste recycling, information clearinghouse, confidentiality of trade
38 secrets, Section 25170, Health and Safety Code.

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

1 Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and
2 25180.5, Health and Safety Code.

3 Healing arts licensees, central files, confidentiality, Section 800, Business and
4 Professions Code.

5 Health authorities, special county, confidentiality of records, Sections 14087.35,
6 14087.36, and 14087.38, Welfare and Institutions Code.

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

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

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

14 Health facilities, patient's rights of confidentiality, subdivision (c) of Section
15 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and
16 Safety Code.

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

20 Health plan governed by a county board of supervisors, exemption from
21 disclosure for records relating to provider rates or payments for a three-year period
22 after execution of the provider contract, Sections 7926.205 and 54956.87, this code.

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

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

27 HIV, disclosures to blood banks by department or county health officers, Section
28 1603.1, Health and Safety Code.

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

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

33 Hospital district and municipal hospital records relating to contracts with insurers
34 and service plans, Section 7926.210, this code.

35 Hospital final accreditation report, Section 7926.000, this code.

36 Housing authorities, confidentiality of rosters of tenants, Section 34283, Health
37 and Safety Code.

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

40 **Comment.** Section 7930.155 is amended to update a cross-reference 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 **Gov't Code § 7930.205 (amended). Exemptions from disclosure, Taxpayer information to**
2 **trust company disclosure of confidential information of private trust**

3 SEC. __. Section 7930.205 of the Government Code is amended to read:

4 7930.205. The following provisions may operate to exempt certain records, or
5 portions thereof, from disclosure pursuant to this division:

6 Taxpayer information, confidentiality, local taxes, Section 7925.000, this code.

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

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

11 Teacher, certified school personnel examination results, confidentiality of,
12 Section 44289, Education Code.

13 Telephone answering service customer list, trade secret, Section 16606, Business
14 and Professions Code.

15 Timber yield tax, disclosure to county assessor, Section 38706, Revenue and
16 Taxation Code.

17 Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation
18 Code.

19 Title insurers, confidentiality of notice of noncompliance, Section 12414.14,
20 Insurance Code.

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

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

27 Toxic Substances Control, Department of, inspection of records of, Section
28 25152.5, Health and Safety Code.

29 Trade secrets, Section 1060, Evidence Code.

30 Trade secrets, confidentiality of, occupational safety and health inspections,
31 Section 6322, Labor Code.

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

33 Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and
34 110370, Health and Safety Code.

35 Trade secrets, protection by Director of Pesticide Regulation, Sections 7924.300
36 to 7924.335, inclusive, this code.

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

39 Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor
40 Code.

41 Trade secrets relating to hazardous substances, disclosure of, ~~Sections 25358.2~~
42 ~~and 25358.7, Sections 78480 to 78495, inclusive, and Section 78930, Health and~~
43 ~~Safety Code.~~

1 Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle
2 Code.

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

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

7 Tribal-state gaming compacts, exemption from disclosure for records of an Indian
8 tribe relating to securitization of annual payments, Section 63048.63, this code.

9 Trust companies, disclosure of private trust confidential information, Section
10 1602, Financial Code.

11 **Comment.** Section 7930.205 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 **Gov't Code § 53313 (amended). Services financed by community facilities district**

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

16 53313. A community facilities district may be established under this chapter to
17 finance any one or more of the following types of services within an area:

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

21 (b) Fire protection and suppression services, and ambulance and paramedic
22 services.

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

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

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

35 (f) Services with respect to removal or remedial action for the cleanup of any
36 hazardous substance released or threatened to be released into the environment. As
37 used in this subdivision, the terms "remedial action" and "removal" shall have the
38 meanings set forth in Sections ~~25322 and 25323~~, 78125 and 78135, respectively, of
39 the Health and Safety Code, and the term "hazardous substance" shall have the
40 meaning set forth in Section 25281 of the Health and Safety Code. Community
41 facilities districts shall provide the State Department of Health Care Services and

1 local health and building departments with notification of any cleanup activity
2 pursuant to this subdivision at least 30 days prior to commencement of the activity.

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

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

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

15 **Comment.** Section 53313 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 **Gov't Code § 53313.5, as amended by Section 4 of Chapter 837 of the Statutes of 2018**
19 **(amended). Purchase of property by community facilities district (effective until**
20 **January 1, 2029)**

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

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

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

39 (b) Elementary and secondary schoolsites and structures provided that the
40 facilities meet the building area and cost standards established by the State
41 Allocation Board.

42 (c) Libraries.

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

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

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

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

40 (h) Any other governmental facilities that the legislative body creating the
41 community facilities district is authorized by law to contribute revenue to, or
42 construct, own, or operate. However, the district shall not operate or maintain or,
43 except as otherwise provided in subdivisions (e) and (k), have any ownership

1 interest in any facilities for the transmission or distribution of natural gas, telephone
2 service, or electrical energy.

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

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

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

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

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

42 (1) Work deemed necessary to repair and abate damage caused to privately owned
43 buildings and structures by soil deterioration. "Soil deterioration" means a chemical

1 reaction by soils that causes structural damage or defects in construction materials
2 including concrete, steel, and ductile or cast iron. Only work certified as necessary
3 by local building officials may be financed. No project involving the dismantling of
4 an existing building or structure and its replacement by a new building or structure,
5 nor the construction of a new or substantially new building or structure may be
6 financed pursuant to this paragraph.

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

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

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

40 (m) Any improvement on private property authorized to be financed by this
41 section shall constitute a “public facility” for purposes of this chapter and a “public
42 improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2
43 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code,

1 whether the improvement is owned by a private entity, if the legislative body has
2 determined that the improvement provides a public benefit, or the improvement is
3 owned by a public agency.

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

6 **Comment.** Section 53313.5(k) 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 **Gov't Code § 53313.5, as repealed and added by Section 5 of Chapter 837 of the Statutes of**
10 **2018 (amended). Purchase of property by community facilities district (operative on**
11 **January 1, 2029)**

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

14 53313.5. A community facilities district may also finance the purchase,
15 construction, expansion, improvement, or rehabilitation of any real or other tangible
16 property with an estimated useful life of five years or longer or may finance planning
17 and design work that is directly related to the purchase, construction, expansion, or
18 rehabilitation of any real or tangible property. The facilities need not be physically
19 located within the district. A district may not lease out facilities that it has financed
20 except pursuant to a lease agreement or annexation agreement entered into prior to
21 January 1, 1988. A district may only finance the purchase of facilities whose
22 construction has been completed, as determined by the legislative body, before the
23 resolution of formation to establish the district is adopted pursuant to Section
24 53325.1, except that a district may finance the purchase of facilities completed after
25 the adoption of the resolution of formation if the facility was constructed as if it had
26 been constructed under the direction and supervision, or under the authority of, the
27 local agency that will own or operate the facility. For example, a community
28 facilities district may finance facilities, including, but not limited to, the following:

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

30 (b) Elementary and secondary schoolsites and structures provided that the
31 facilities meet the building area and cost standards established by the State
32 Allocation Board.

33 (c) Libraries.

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

39 (e) The district may also finance the construction or undergrounding of water
40 transmission and distribution facilities, natural gas pipeline facilities, telephone
41 lines, facilities for the transmission or distribution of electrical energy, and cable
42 television lines to provide access to those services to customers who do not have

1 access to those services or to mitigate existing visual blight. The district may enter
2 into an agreement with a public utility to utilize those facilities to provide a
3 particular service and for the conveyance of those facilities to the public utility.
4 “Public utility” shall include all utilities, whether public and regulated by the Public
5 Utilities Commission, or municipal. If the facilities are conveyed to the public
6 utility, the agreement shall provide that the cost or a portion of the cost of the
7 facilities that are the responsibility of the utility shall be refunded by the public
8 utility to the district or improvement area thereof, to the extent that refunds are
9 applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities
10 Commission, as to utilities regulated by the commission, or (2) other laws regulating
11 public utilities. Any reimbursement made to the district shall be utilized to reduce
12 or minimize the special tax levied within the district or improvement area, or to
13 construct or acquire additional facilities within the district or improvement area, as
14 specified in the resolution of formation.

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

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

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

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

38 (A) Work deemed necessary to bring buildings or real property, including
39 privately owned buildings or real property, into compliance with seismic safety
40 standards or regulations. Only work certified as necessary to comply with seismic
41 safety standards or regulations by local building officials may be financed. No
42 project involving the dismantling of an existing building and its replacement by a
43 new building, nor the construction of a new or substantially new building may be

1 financed pursuant to this subparagraph. Work on qualified historical buildings or
2 structures shall be done in accordance with the State Historical Building Code (Part
3 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety
4 Code).

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

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

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

33 (1) Work deemed necessary to repair and abate damage caused to privately owned
34 buildings and structures by soil deterioration. "Soil deterioration" means a chemical
35 reaction by soils that causes structural damage or defects in construction materials
36 including concrete, steel, and ductile or cast iron. Only work certified as necessary
37 by local building officials may be financed. No project involving the dismantling of
38 an existing building or structure and its replacement by a new building or structure,
39 nor the construction of a new or substantially new building or structure may be
40 financed pursuant to this paragraph.

41 (2) Work on privately owned buildings and structures pursuant to this subdivision,
42 including reconstruction, repair, and abatement of damage caused by soil
43 deterioration, may only be financed by a tax levy if all of the votes cast on the

1 question of levying the tax vote in favor of levying the tax. Any district created to
2 finance the work on privately owned buildings or structures, including
3 reconstruction, repair, and abatement of damage caused by soil deterioration, shall
4 consist only of lots or parcels on which the legislative body finds that the buildings
5 or structures to be worked on pursuant to this subdivision suffer from soil
6 deterioration.

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

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

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

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

35 **Comment.** Section 53313.5(k) 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 **Gov’t Code § 53314.7 (amended). Cost recovery and expenditures for hazardous substance**
39 **cleanup by community facilities district**

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

41 53314.7. (a) Any responsible party as defined by subdivision (a) of Section
42 ~~25323.5~~ 78145 of the Health and Safety Code shall be liable to the district for the

1 costs incurred in the removal or remedial action for the cleanup of any hazardous
2 substance released or threatened to be released into the environment. The amount
3 of the costs shall include interest on the costs accrued from the date of expenditure.
4 The interest shall be calculated based on the average annual rate of return on the
5 district's investment of surplus funds for the fiscal year in which the district incurred
6 the costs. Recovery of costs by a community facilities district under this section
7 shall be commenced before or immediately upon completion of the removal or
8 remedial action, and payments received hereunder by the district shall be deposited
9 in the revolving fund in accordance with Section 53314.6.

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

21 **Comment.** Section 53314.7 is amended to update a cross-reference 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 **Gov't Code § 53321.5 (amended). Required reports**

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

26 53321.5. At the time of the adoption of the resolution of intention to establish a
27 community facilities district, the legislative body shall direct each of its officers who
28 is or will be responsible for providing one or more of the proposed types of public
29 facilities or services to be financed by the district, if it is established, to study the
30 proposed district and, at or before the time of the hearing, file a report with the
31 legislative body containing a brief description of the public facilities and services
32 by type that will in ~~his or her~~ the officer's opinion be required to adequately meet
33 the needs of the district and ~~his or her~~ the officer's estimate of the cost of providing
34 those public facilities and services. If the purchase of completed public facilities or
35 the payment of incidental expenses is proposed, the legislative body shall direct its
36 appropriate officer to estimate the fair and reasonable cost of those facilities or
37 incidental expenses. If removal or remedial action for the cleanup of any hazardous
38 substance is proposed, the legislative body shall (a) direct its responsible officer to
39 prepare or cause to be prepared, a remedial action plan based upon factors
40 comparable to those described in ~~subdivision (d) of Section 25356.1~~ Section 79205
41 of the Health and Safety Code or (b) determine, on the basis of the particular facts
42 and circumstances, that shall be comparable to those described in ~~subdivision (h) of~~

1 ~~Section 25356.1~~ Section 79225 of the Health and Safety Code, that the remedial
2 action plan is not required or (c) condition financing of the removal or remedial
3 action upon approval of a remedial action plan pursuant to ~~Section 25356.1~~ Article
4 12 (commencing with Section 79190) of Chapter 5 of Part 2 of Division 45 of the
5 Health and Safety Code. All of those reports shall be made a part of the record of
6 the hearing on the resolution of intention to establish the district.

7 **Comment.** Section 53321.5 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 This section is also amended to eliminate gendered pronouns.

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

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

14 65913.4. (a) A development proponent may submit an application for a
15 development that is subject to the streamlined, ministerial approval process
16 provided by subdivision (c) and is not subject to a conditional use permit if the
17 development complies with subdivision (b) and satisfies all of the following
18 objective planning standards:

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

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

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

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

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

38 (3)(A) The development proponent has committed to record, prior to the issuance
39 of the first building permit, a land use restriction or covenant providing that any
40 lower or moderate income housing units required pursuant to subparagraph (B) of
41 paragraph (4) shall remain available at affordable housing costs or rent to persons

1 and families of lower or moderate income for no less than the following periods of
2 time:

3 (i) Fifty-five years for units that are rented.

4 (ii) Forty-five years for units that are owned.

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

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

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

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

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

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

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

39 (ib) For purposes of this subclause, "San Francisco Bay area" means the entire
40 area within the territorial boundaries of the Counties of Alameda, Contra Costa,
41 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County
42 of San Francisco.

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

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

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

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

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

28 (5) The development, excluding any additional density or any other concessions,
29 incentives, or waivers of development standards granted pursuant to the Density
30 Bonus Law in Section 65915, is consistent with objective zoning standards,
31 objective subdivision standards, and objective design review standards in effect at
32 the time that the development is submitted to the local government pursuant to this
33 section, or at the time a notice of intent is submitted pursuant to subdivision (b),
34 whichever occurs earlier. For purposes of this paragraph, “objective zoning
35 standards,” “objective subdivision standards,” and “objective design review
36 standards” mean standards that involve no personal or subjective judgment by a
37 public official and are uniformly verifiable by reference to an external and uniform
38 benchmark or criterion available and knowable by both the development applicant
39 or proponent and the public official before submittal. These standards may be
40 embodied in alternative objective land use specifications adopted by a city or
41 county, and may include, but are not limited to, housing overlay zones, specific
42 plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the
43 following:

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

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

10 (C) It is the intent of the Legislature that the objective zoning standards, objective
11 subdivision standards, and objective design review standards described in this
12 paragraph be adopted or amended in compliance with the requirements of Chapter
13 905 of the Statutes of 2004.

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

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

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

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

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

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

35 (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a
36 hazardous waste site designated by the Department of Toxic Substances Control
37 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
38 4 of Part 2 of Division 45 of the Health and Safety Code, unless the State
39 Department of Public Health, State Water Resources Control Board, or Department
40 of Toxic Substances Control has cleared the site for residential use or residential
41 mixed uses.

42 (F) Within a delineated earthquake fault zone as determined by the State Geologist
43 in any official maps published by the State Geologist, unless the development

1 complies with applicable seismic protection building code standards adopted by the
2 California Building Standards Commission under the California Building Standards
3 Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and
4 Safety Code), and by any local building department under Chapter 12.2
5 (commencing with Section 8875) of Division 1 of Title 2.

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

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

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

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

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

40 (J) Habitat for protected species identified as candidate, sensitive, or species of
41 special status by state or federal agencies, fully protected species, or species
42 protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
43 seq.), the California Endangered Species Act (Chapter 1.5 (commencing with

1 Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant
2 Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the
3 Fish and Game Code).

4 (K) Lands under conservation easement.

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

6 (A) The development would require the demolition of the following types of
7 housing:

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

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

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

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

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

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

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

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

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

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

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

37 (II) All contractors and subcontractors shall pay to all construction workers
38 employed in the execution of the work at least the general prevailing rate of per
39 diem wages, except that apprentices registered in programs approved by the Chief
40 of the Division of Apprenticeship Standards may be paid at least the applicable
41 apprentice prevailing rate.

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

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

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

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

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

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

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

40 (III) On and after January 1, 2018, until December 31, 2019, the development
41 consists of 75 or more units with a residential component that is not 100 percent
42 subsidized affordable housing and will be located within a jurisdiction with a
43 population of fewer than 550,000 and that is not located in a coastal or bay county.

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

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

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

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

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

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

20 (III) Except as provided in subclause (IV), the applicant shall provide to the
21 locality, on a monthly basis while the development or contract is being performed,
22 a report demonstrating compliance with Chapter 2.9 (commencing with Section
23 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report
24 provided to the locality pursuant to this subclause shall be a public record under the
25 California Public Records Act (~~Chapter 3.5 (Division 10 (commencing with Section~~
26 ~~6250) of Division 7 7920.000) of Title 1) and shall be open to public inspection. An~~
27 applicant that fails to provide a monthly report demonstrating compliance with
28 Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public
29 Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000)
30 per month for each month for which the report has not been provided. Any
31 contractor or subcontractor that fails to use a skilled and trained workforce shall be
32 subject to a civil penalty of two hundred dollars (\$200) per day for each worker
33 employed in contravention of the skilled and trained workforce requirement.
34 Penalties may be assessed by the Labor Commissioner within 18 months of
35 completion of the development using the same procedures for issuance of civil wage
36 and penalty assessments pursuant to Section 1741 of the Labor Code, and may be
37 reviewed pursuant to the same procedures in Section 1742 of the Labor Code.
38 Penalties shall be paid to the State Public Works Enforcement Fund.

39 (IV) Subclause (III) shall not apply if all contractors and subcontractors
40 performing work on the development are subject to a project labor agreement that
41 requires compliance with the skilled and trained workforce requirement and
42 provides for enforcement of that obligation through an arbitration procedure. For
43 purposes of this subparagraph, “project labor agreement” has the same meaning as

1 set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract
2 Code.

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

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

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

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

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

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

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

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

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

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

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

9 (ia) A description of the proposed development.

10 (ib) The location of the proposed development.

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

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

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

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

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

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

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

39 (iii) The California Native American tribe participating in the scoping
40 consultation approves the participation of the development proponent and its
41 consultants. The California Native American tribe may rescind its approval at any
42 time during the scoping consultation, either for the duration of the scoping

1 consultation or with respect to any particular meeting or discussion held as part of
2 the scoping consultation.

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

5 (i) ~~Subdivision (r) of Section 6254.~~ Section 7927.000.

6 (ii) ~~Section 6254.10.~~ 7927.005.

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

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

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

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

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

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

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

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

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

39 (ii) One or more parties to the scoping consultation, acting in good faith and after
40 reasonable effort, conclude that a mutual agreement on methods, measures, and
41 conditions to avoid or address impacts to tribal cultural resources that are or may be
42 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 satisfies
12 both of the following requirements:

13 (A) The project includes public investment in housing affordability, beyond tax
14 credits.

15 (B) At least 50 percent of the units affordable to households making at or below
16 80 percent of the area median income.

17 (2)(A) If a local government approves a development pursuant to this section, and
18 the project does not satisfy the requirements of subparagraphs (A) and (B) of
19 paragraph (1), that approval shall remain valid for three years from the date of the
20 final action establishing that approval, or if litigation is filed challenging that
21 approval, from the date of the final judgment upholding that approval. Approval
22 shall remain valid for a project provided construction activity, including demolition
23 and grading activity, on the development site has begun pursuant to a permit issued
24 by the local jurisdiction and is in progress. For purposes of this subdivision, “in
25 progress” means one of the following:

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

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

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

35 (3) If the development proponent requests a modification pursuant to subdivision
36 (g), then the time during which the approval shall remain valid shall be extended for
37 the number of days between the submittal of a modification request and the date of
38 its final approval, plus an additional 180 days to allow time to obtain a building
39 permit. If litigation is filed relating to the modification request, the time shall be
40 further extended during the pendency of the litigation. The extension required by
41 this paragraph shall only apply to the first request for a modification submitted by
42 the development proponent.

1 (4) The amendments made to this subdivision by the act that added this paragraph
2 shall also be retroactively applied to developments approved prior to January 1,
3 2022.

4 (g)(1)(A) A development proponent may request a modification to a development
5 that has been approved under the streamlined, ministerial approval process provided
6 in subdivision (c) if that request is submitted to the local government before the
7 issuance of the final building permit required for construction of the development.

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

12 (C) The local government shall evaluate any modifications requested pursuant to
13 this subdivision for consistency with the objective planning standards using the
14 same assumptions and analytical methodology that the local government originally
15 used to assess consistency for the development that was approved for streamlined,
16 ministerial approval pursuant to subdivision (c).

17 (D) A guideline that was adopted or amended by the department pursuant to
18 subdivision (l) after a development was approved through the streamlined,
19 ministerial approval process described in subdivision (c) shall not be used as a basis
20 to deny proposed modifications.

21 (2) Upon receipt of the development proponent's application requesting a
22 modification, the local government shall determine if the requested modification is
23 consistent with the objective planning standard and either approve or deny the
24 modification request within 60 days after submission of the modification, or within
25 90 days if design review is required.

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

29 (A) The development is revised such that the total number of residential units or
30 total square footage of construction changes by 15 percent or more. The calculation
31 of the square footage of construction changes shall not include underground space.

32 (B) The development is revised such that the total number of residential units or
33 total square footage of construction changes by 5 percent or more and it is necessary
34 to subject the development to an objective standard beyond those in effect when the
35 development application was submitted in order to mitigate or avoid a specific,
36 adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of
37 subdivision (j) of Section 65589.5, upon the public health or safety and there is no
38 feasible alternative method to satisfactorily mitigate or avoid the adverse impact.
39 The calculation of the square footage of construction changes shall not include
40 underground space.

41 (C)(i) Objective building standards contained in the California Building Standards
42 Code (Title 24 of the California Code of Regulations), including, but not limited to,
43 building plumbing, electrical, fire, and grading codes, may be applied to all

1 modification applications that are submitted prior to the first building permit
2 application. Those standards may be applied to modification applications submitted
3 after the first building permit application if agreed to by the development proponent.

4 (ii) The amendments made to clause (i) by the act that added clause (i) shall also
5 be retroactively applied to modification applications submitted prior to January 1,
6 2022.

7 (4) The local government’s review of a modification request pursuant to this
8 subdivision shall be strictly limited to determining whether the modification,
9 including any modification to previously approved density bonus concessions or
10 waivers, modify the development’s consistency with the objective planning
11 standards and shall not reconsider prior determinations that are not affected by the
12 modification.

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

17 (2)(A) A local government shall issue a subsequent permit required for a
18 development approved under this section if the application substantially complies
19 with the development as it was approved pursuant to subdivision (c). Upon receipt
20 of an application for a subsequent permit, the local government shall process the
21 permit without unreasonable delay and shall not impose any procedure or
22 requirement that is not imposed on projects that are not approved pursuant to this
23 section. The local government shall consider the application for subsequent permits
24 based upon the objective standards specified in any state or local laws that were in
25 effect when the original development application was submitted, unless the
26 development proponent agrees to a change in objective standards. Issuance of
27 subsequent permits shall implement the approved development, and review of the
28 permit application shall not inhibit, chill, or preclude the development. For purposes
29 of this paragraph, a “subsequent permit” means a permit required subsequent to
30 receiving approval under subdivision (c), and includes, but is not limited to,
31 demolition, grading, encroachment, and building permits and final maps, if
32 necessary.

33 (B) The amendments made to subparagraph (A) by the act that added this
34 subparagraph shall also be retroactively applied to subsequent permit applications
35 submitted prior to January 1, 2022.

36 (3)(A) If a public improvement is necessary to implement a development that is
37 subject to the streamlined, ministerial approval pursuant to this section, including,
38 but not limited to, a bicycle lane, sidewalk or walkway, public transit stop,
39 driveway, street paving or overlay, a curb or gutter, a modified intersection, a street
40 sign or street light, landscape or hardscape, an above-ground or underground utility
41 connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining
42 wall, and any related work, and that public improvement is located on land owned
43 by the local government, to the extent that the public improvement requires approval

1 from the local government, the local government shall not exercise its discretion
2 over any approval relating to the public improvement in a manner that would inhibit,
3 chill, or preclude the development.

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

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

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

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

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

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

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

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

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

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

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

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

2 (1) “Affordable housing cost” has the same meaning as set forth in Section
3 50052.5 of the Health and Safety Code.

4 (2)(A) Subject to the qualification provided by subparagraph (B), “affordable
5 rent” has the same meaning as set forth in Section 50053 of the Health and Safety
6 Code.

7 (B) For a development for which an application pursuant to this section was
8 submitted prior to January 1, 2019, that includes 500 units or more of housing, and
9 that dedicates 50 percent of the total number of units to housing affordable to
10 households making at, or below, 80 percent of the area median income, affordable
11 rent for at least 30 percent of these units shall be set at an affordable rent as defined
12 in subparagraph (A) and “affordable rent” for the remainder of these units shall
13 mean a rent that is consistent with the maximum rent levels for a housing
14 development that receives an allocation of state or federal low-income housing tax
15 credits from the California Tax Credit Allocation Committee.

16 (3) “Department” means the Department of Housing and Community
17 Development.

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

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

23 (6) “Locality” or “local government” means a city, including a charter city, a
24 county, including a charter county, or a city and county, including a charter city and
25 county.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Subparagraphs (a)(8)(B) and (b)(1)(D) are amended to reflect nonsubstantive reorganization of
18 the California Public Records Act. See 2021 Cal. Stat. ch. 614; *California Public Records Act*
19 *Clean-Up*, 46 Cal. L. Revision Comm’n Reports 207 (2019).

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

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

23 65913.15. (a) Notwithstanding Section 65913.4, a development proponent may
24 submit an application for a development that is subject to the streamlined,
25 ministerial approval process provided by subdivision (b) and is not subject to a
26 conditional use permit if the development satisfies all of the following objective
27 planning standards:

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

31 (A) The City of Biggs.

32 (B) The City of Corning.

33 (C) The City of Gridley.

34 (D) The City of Live Oak.

35 (E) The City of Orland.

36 (F) The City of Oroville.

37 (G) The City of Willows.

38 (H) The City of Yuba City.

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

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

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

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

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

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

9 (6) The development, excluding any additional density or any other concessions,
10 incentives, or waivers of development standards granted pursuant to the Density
11 Bonus Law in Section 65915, is consistent with objective zoning standards,
12 objective subdivision standards, and objective design review standards in effect at
13 the time that the development is submitted to the local government pursuant to this
14 section.

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

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

23 (A) 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 that
27 is protected pursuant to the California Land Conservation Act of 1965 (Chapter 7
28 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), or land zoned
29 or designated for agricultural protection or preservation by a local ballot measure
30 that was approved by the voters of that jurisdiction.

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

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

37 (D) A hazardous waste site that is listed pursuant to Section 65962.5 or a
38 hazardous waste site designated by the Department of Toxic Substances Control
39 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
40 4 of Part 2 of Division 45 of the Health and Safety Code, unless the Department of
41 Toxic Substances Control has cleared the site for residential use or residential mixed
42 uses.

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

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

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

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

26 (G) Within a regulatory floodway as determined by the Federal Emergency
27 Management Agency in any official maps published by the Federal Emergency
28 Management Agency.

29 (H) Lands identified for conservation in an adopted natural community
30 conservation plan adopted on or before January 1, 2019, pursuant to the Natural
31 Community Conservation Planning Act (Chapter 10 (commencing with Section
32 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant
33 to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or
34 other adopted natural resource protection plan.

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

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

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

41 (iii) The Native Plant Protection Act (Chapter 10 (commencing with Section
42 1900) of Division 2 of the Fish and Game Code).

43 (J) Lands under conservation easement.

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

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

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

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

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

11 (D) The Special Occupancy Parks Act (Part 2.3 (commencing with Section
12 18860) of Division 13 of the Health and Safety Code).

13 (11)(A) If the development would require the demolition of any affordable
14 housing units, the development shall replace those units by providing at least the
15 same number of units of equivalent size to be made available at affordable housing
16 cost to, and occupied by, persons and families in the same income category as those
17 households in occupancy. If the income category of the household in occupancy is
18 not known, it shall be rebuttably presumed that lower income households occupied
19 the units in the same proportion of lower income households to all households
20 within the jurisdiction, as determined by the most recently available data from the
21 United States Department of Housing and Urban Development’s Comprehensive
22 Housing Affordability Strategy database. All replacement calculations resulting in
23 fractional units shall be rounded to the next whole number.

24 (B) For purposes of this paragraph, “equivalent size” means that the replacement
25 units contain at least the same total number of bedrooms as the units being replaced.

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

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

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

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

39 (c) Any design review or public oversight of the development may be conducted
40 by the local government’s planning commission or any equivalent commission
41 responsible for review and approval of development projects or the city council, as
42 appropriate. That design review or public oversight shall be objective and be strictly
43 focused on assessing compliance with criteria required for streamlined projects, as

1 well as any reasonable objective design standards published and adopted by
2 ordinance or resolution by a local government before submission of a development
3 application, and shall be broadly applicable to development within the jurisdiction.
4 That design review or public oversight shall be completed as follows and shall not
5 in any way inhibit, chill, or preclude the ministerial approval provided by this
6 section or its effect, as applicable:

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

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

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

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

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

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

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

41 (f)(1) A local government shall not adopt any requirement, including, but not
42 limited to, increased fees or inclusionary housing requirements, that applies to a

1 project solely or partially on the basis that the project is eligible to receive
2 ministerial or streamlined approval pursuant to this section.

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

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

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

11 (1) “Affordable housing” means housing available at affordable housing cost, and
12 occupied by, persons and families of low or moderate income as defined by Section
13 50093 of the Health and Safety Code, lower income households as defined by
14 Section 50079.5 of the Health and Safety Code, very low income households as
15 defined by Section 50105 of the Health and Safety Code, and extremely low income
16 households as defined by Section 50106 of the Health and Safety Code, for a period
17 of 55 years for rental housing and 45 years for owner-occupied housing.

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

20 (3) “Area median income” means area median income as periodically established
21 by the Department of Housing and Community Development pursuant to Section
22 50093 of the Health and Safety Code.

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

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

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

30 (7) “Major transit stop” means a site containing an existing rail transit station, a
31 ferry terminal served by either a bus or rail transit service, or the intersection of two
32 or more major bus routes with a frequency of service interval of 15 minutes or less
33 during the morning and afternoon peak commute periods. “Major transit stop” shall
34 also include major transit stops included in a regional transportation plan adopted
35 pursuant to Chapter 2.5 (commencing with Section 65080).

36 (8)(A) “Objective zoning standards,” “objective subdivision standards,” and
37 “objective design review standards” mean standards that involve no personal or
38 subjective judgment by a public official and are uniformly verifiable by reference
39 to an external and uniform benchmark or criterion available and knowable by both
40 the development applicant or proponent and the public official before submittal.
41 These standards may be embodied in alternative objective land use specifications
42 adopted by a local government, and may include, but are not limited to, housing

1 overlay zones, specific plans, inclusionary zoning ordinances, and density bonus
2 ordinances, subject to subparagraph (B).

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

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

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

12 **Gov't Code § 65941.1 (amended). Submission of preliminary application for housing**
13 **development project**

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

15 65941.1. (a) An applicant for a housing development project, as defined in
16 paragraph (3) of subdivision (b) of Section 65905.5, shall be deemed to have
17 submitted a preliminary application upon providing all of the following information
18 about the proposed project to the city, county, or city and county from which
19 approval for the project is being sought and upon payment of the permit processing
20 fee:

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

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

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

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

30 (5) The proposed number of parking spaces.

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

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

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

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

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

38 (C) A hazardous waste site that is listed pursuant to Section 65962.5 or a
39 hazardous waste site designated by the Department of Toxic Substances Control
40 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
41 4 of Part 2 of Division 45 of the Health and Safety Code.

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

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

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

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

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

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

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

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

25 (14) For a housing development project proposed to be located within the coastal
26 zone, whether any portion of the property contains any of the following:

27 (A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the
28 California Code of Regulations.

29 (B) Environmentally sensitive habitat areas, as defined in Section 30240 of the
30 Public Resources Code.

31 (C) A tsunami run-up zone.

32 (D) Use of the site for public access to or along the coast.

33 (15) The number of existing residential units on the project site that will be
34 demolished and whether each existing unit is occupied or unoccupied.

35 (16) A site map showing a stream or other resource that may be subject to a
36 streambed alteration agreement pursuant to Chapter 6 (commencing with Section
37 1600) of Division 2 of the Fish and Game Code and an aerial site photograph
38 showing existing site conditions of environmental site features that would be subject
39 to regulations by a public agency, including creeks and wetlands.

40 (17) The location of any recorded public easement, such as easements for storm
41 drains, water lines, and other public rights of way.

1 (b)(1) Each local agency shall compile a checklist and application form that
2 applicants for housing development projects may use for the purpose of satisfying
3 the requirements for submittal of a preliminary application.

4 (2) The Department of Housing and Community Development shall adopt a
5 standardized form that applicants for housing development projects may use for the
6 purpose of satisfying the requirements for submittal of a preliminary application if
7 a local agency has not developed its own application form pursuant to paragraph
8 (1). Adoption of the standardized form shall not be subject to Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
10 Government Code.

11 (3) A checklist or form shall not require or request any information beyond that
12 expressly identified in subdivision (a).

13 (c) After submittal of all of the information required by subdivision (a), if the
14 development proponent revises the project such that the number of residential units
15 or square footage of construction changes by 20 percent or more, exclusive of any
16 increase resulting from the receipt of a density bonus, incentive, concession, waiver,
17 or similar provision, the housing development project shall not be deemed to have
18 submitted a preliminary application that satisfies this section until the development
19 proponent resubmits the information required by subdivision (a) so that it reflects
20 the revisions. For purposes of this subdivision, “square footage of construction”
21 means the building area, as defined by the California Building Standards Code (Title
22 24 of the California Code of Regulations).

23 (d)(1) Within 180 calendar days after submitting a preliminary application with
24 all of the information required by subdivision (a) to a city, county, or city and
25 county, the development proponent shall submit an application for a development
26 project that includes all of the information required to process the development
27 application consistent with Sections 65940, 65941, and 65941.5.

28 (2) If the public agency determines that the application for the development
29 project is not complete pursuant to Section 65943, the development proponent shall
30 submit the specific information needed to complete the application within 90 days
31 of receiving the agency’s written identification of the necessary information. If the
32 development proponent does not submit this information within the 90-day period,
33 then the preliminary application shall expire and have no further force or effect.

34 (3) This section shall not require an affirmative determination by a city, county,
35 or city and county regarding the completeness of a preliminary application or a
36 development application for purposes of compliance with this section.

37 (e) Notwithstanding any other law, submission of a preliminary application in
38 accordance with this section shall not preclude the listing of a tribal cultural resource
39 on a national, state, tribal, or local historic register list on or after the date that the
40 preliminary application is submitted. For purposes of Section 65589.5 or any other
41 law, the listing of a tribal cultural site on a national, state, tribal, or local historic
42 register on or after the date the preliminary application was submitted shall not be

1 deemed to be a change to the ordinances, policies, and standards adopted and in
2 effect at the time that the preliminary application was submitted.

3 (f) This section shall remain in effect only until January 1, 2030, and as of that
4 date is repealed.

5 **Comment.** Section 65941.1(a)(8)(C) is amended to update a cross-reference in accordance with
6 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
7 of the Health and Safety Code.

8 **Gov't Code § 65962.5 (amended). Information related to hazardous waste and substances**

9 SEC. __. Section 65962.5 of the Government Code is amended to read:

10 65962.5. (a) The Department of Toxic Substances Control shall compile and
11 update as appropriate, but at least annually, and shall submit to the Secretary for
12 Environmental Protection, a list of all of the following:

13 (1) All hazardous waste facilities subject to corrective action pursuant to Section
14 25187.5 of the Health and Safety Code.

15 (2) All land designated as hazardous waste property or border zone property
16 pursuant to former Article 11 (commencing with Section 25220) of Chapter 6.5 of
17 Division 20 of the Health and Safety Code.

18 (3) All information received by the Department of Toxic Substances Control
19 pursuant to Section 25242 of the Health and Safety Code on hazardous waste
20 disposals on public land.

21 (4) All sites listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section
22 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

23 (b) The State Department of Health Services shall compile and update as
24 appropriate, but at least annually, and shall submit to the Secretary for
25 Environmental Protection, a list of all public drinking water wells that contain
26 detectable levels of organic contaminants and that are subject to water analysis
27 pursuant to Section 116395 of the Health and Safety Code.

28 (c) The State Water Resources Control Board shall compile and update as
29 appropriate, but at least annually, and shall submit to the Secretary for
30 Environmental Protection, a list of all of the following:

31 (1) All underground storage tanks for which an unauthorized release report is filed
32 pursuant to Section 25295 of the Health and Safety Code.

33 (2) All solid waste disposal facilities from which there is a migration of hazardous
34 waste and for which a California regional water quality control board has notified
35 the Department of Toxic Substances Control pursuant to subdivision (e) of Section
36 13273 of the Water Code.

37 (3) All cease and desist orders issued after January 1, 1986, pursuant to Section
38 13301 of the Water Code, and all cleanup or abatement orders issued after January
39 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge
40 of wastes that are hazardous materials.

41 (d) The local enforcement agency, as designated pursuant to Section 18051 of
42 Title 14 of the California Code of Regulations, shall compile as appropriate, but at

1 least annually, and shall submit to the Department of Resources Recycling and
2 Recovery, a list of all solid waste disposal facilities from which there is a known
3 migration of hazardous waste. The Department of Resources Recycling and
4 Recovery shall compile the local lists into a statewide list, which shall be submitted
5 to the Secretary for Environmental Protection and shall be available to any person
6 who requests the information.

7 (e) The Secretary for Environmental Protection shall consolidate the information
8 submitted pursuant to this section and distribute it in a timely fashion to each city
9 and county in which sites on the lists are located. The secretary shall distribute the
10 information to any other person upon request. The secretary may charge a
11 reasonable fee to persons requesting the information, other than cities, counties, or
12 cities and counties, to cover the cost of developing, maintaining, and reproducing
13 and distributing the information.

14 (f) Before a lead agency accepts as complete an application for any development
15 project which will be used by any person, the applicant shall consult the lists sent to
16 the appropriate city or county and shall submit a signed statement to the local agency
17 indicating whether the project and any alternatives are located on a site that is
18 included on any of the lists compiled pursuant to this section and shall specify any
19 list. If the site is included on a list, and the list is not specified on the statement, the
20 lead agency shall notify the applicant pursuant to Section 65943. The statement shall
21 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 _____

22 (g) The changes made to this section by the act amending this section, that takes
23 effect January 1, 1992, apply only to projects for which applications have not been
24 deemed complete on or before January 1, 1992, pursuant to Section 65943.

1 **Comment.** Section 65962.5(a)(4) is amended to update a cross-reference 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 AND SAFETY CODE

5 **Health & Safety Code § 11374.5 (amended). Penalties for disposal of hazardous substance**
6 **related to manufacture of controlled substance**

7 SEC. __. Section 11374.5 of the Health and Safety Code is amended to read:

8 11374.5. (a) Any manufacturer of a controlled substance who disposes of any
9 hazardous substance that is a controlled substance or a chemical used in, or is a
10 byproduct of, the manufacture of a controlled substance in violation of any law
11 regulating the disposal of hazardous substances or hazardous waste is guilty of a
12 public offense punishable by imprisonment pursuant to subdivision (h) of Section
13 1170 of the Penal Code for two, three, or four years or in the county jail not
14 exceeding one year.

15 (b)(1) In addition to any other penalty or liability imposed by law, a person who
16 is convicted of violating subdivision (a), or any person who is convicted of the
17 manufacture, sale, possession for sale, possession, transportation, or disposal of any
18 hazardous substance that is a controlled substance or a chemical used in, or is a
19 byproduct of, the manufacture of a controlled substance in violation of any law,
20 shall pay a penalty equal to the amount of the actual cost incurred by the state or
21 local agency to remove and dispose of the hazardous substance that is a controlled
22 substance or a chemical used in, or is a byproduct of, the manufacture of a controlled
23 substance and to take removal action with respect to any release of the hazardous
24 substance or any items or materials contaminated by that release, if the state or local
25 agency requests the prosecuting authority to seek recovery of that cost. The court
26 shall transmit all penalties collected pursuant to this subdivision to the county
27 treasurer of the county in which the court is located for deposit in a special account
28 in the county treasury. The county treasurer shall pay that money at least once a
29 month to the agency that requested recovery of the cost for the removal action. The
30 county may retain up to 5 percent of any assessed penalty for appropriate and
31 reasonable administrative costs attributable to the collection and disbursement of
32 the penalty.

33 (2) If the Department of Toxic Substances Control has requested recovery of the
34 cost of removing the hazardous substance that is a controlled substance or a
35 chemical used in, or is a byproduct of, the manufacture of a controlled substance or
36 taking removal action with respect to any release of the hazardous substance, the
37 county treasurer shall transfer funds in the amount of the penalty collected to the
38 Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account,
39 which is hereby created in the General Fund in the State Treasury. The Department
40 of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup
41 Account, upon appropriation by the Legislature, to cover the cost of taking removal

1 actions pursuant to ~~Section 25354.5~~. Article 16 (commencing with Section 79350)
2 of Chapter 5 of Part 2 of Division 45.

3 (3) If a local agency and the Department of Toxic Substances Control have both
4 requested recovery of removal costs with respect to a hazardous substance that is a
5 controlled substance or a chemical used in, or is a byproduct of, the manufacture of
6 a controlled substance, the county treasurer shall apportion any penalty collected
7 among the agencies involved in proportion to the costs incurred.

8 (c) As used in this section the following terms have the following meaning:

9 (1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final
10 action after use has been achieved or a use is no longer intended.

11 (2) “Hazardous substance” has the same meaning as defined in ~~Section 25316~~.
12 subdivision (a) of Section 78075.

13 (3) “Hazardous waste” has the same meaning as defined in Section 25117.

14 (4) For purposes of this section, “remove” or “removal” has the same meaning as
15 set forth in ~~Section 25323~~. 78135.

16 **Comment.** Section 11374.5(b)(2), (c)(2), and (c)(4) are amended to update cross-references in
17 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
18 25300) of Division 20 of the Health and Safety Code.

19 **Health & Safety Code § 11470.1 (amended). Cost recovery for controlled substance**
20 **remedial action**

21 SEC. __. Section 11470.1 of the Health and Safety Code is amended to read:

22 11470.1. (a) The expenses of seizing, eradicating, destroying, or taking remedial
23 action with respect to, any controlled substance or its precursors shall be recoverable
24 from:

25 (1) Any person who manufactures or cultivates a controlled substance or its
26 precursors in violation of this division.

27 (2) Any person who aids and abets or who knowingly profits in any manner from
28 the manufacture or cultivation of a controlled substance or its precursors on property
29 owned, leased, or possessed by the defendant, in violation of this division.

30 (b) The expenses of taking remedial action with respect to any controlled
31 substance or its precursors shall also be recoverable from any person liable for the
32 costs of that remedial action under ~~Chapter 6.8 (commencing with Section 25300)~~
33 of Division 20 Part 2 (commencing with Section 78000) of Division 45 of the Health
34 and Safety Code.

35 (c) It shall be necessary to seek or obtain a criminal conviction for the unlawful
36 manufacture or cultivation of any controlled substance or its precursors prior to the
37 entry of judgment for the recovery of expenses. If criminal charges are pending
38 against the defendant for the unlawful manufacture or cultivation of any controlled
39 substance or its precursors, an action brought pursuant to this section shall, upon a
40 defendant’s request, be continued while the criminal charges are pending.

41 (d) The action may be brought by the district attorney, county counsel, city
42 attorney, the State Department of Health Care Services, or Attorney General. All

1 expenses recovered pursuant to this section shall be remitted to the law enforcement
2 agency which incurred them.

3 (e)(1) The burden of proof as to liability shall be on the plaintiff and shall be by a
4 preponderance of the evidence in an action alleging that the defendant is liable for
5 expenses pursuant to paragraph (1) of subdivision (a). The burden of proof as to
6 liability shall be on the plaintiff and shall be by clear and convincing evidence in an
7 action alleging that the defendant is liable for expenses pursuant to paragraph (2) of
8 subdivision (a). The burden of proof as to the amount of expenses recoverable shall
9 be on the plaintiff and shall be by a preponderance of the evidence in any action
10 brought pursuant to subdivision (a).

11 (2) Notwithstanding paragraph (1), for any person convicted of a criminal charge
12 of the manufacture or cultivation of a controlled substance or its precursors there
13 shall be a presumption affecting the burden of proof that the person is liable.

14 (f) Only expenses which meet the following requirements shall be recoverable
15 under this section:

16 (1) The expenses were incurred in seizing, eradicating, or destroying the
17 controlled substance or its precursors or in taking remedial action with respect to a
18 hazardous substance. These expenses may not include any costs incurred in use of
19 the herbicide paraquat.

20 (2) The expenses were incurred as a proximate result of the defendant's
21 manufacture or cultivation of a controlled substance in violation of this division.

22 (3) The expenses were reasonably incurred.

23 (g) For purposes of this section, "remedial action" shall have the meaning set forth
24 in Section ~~25322~~. 78125.

25 (h) For the purpose of discharge in bankruptcy, a judgment for recovery of
26 expenses under this section shall be deemed to be a debt for willful and malicious
27 injury by the defendant to another entity or to the property of another entity.

28 (i) Notwithstanding Section 526 of the Code of Civil Procedure, the plaintiff may
29 be granted a temporary restraining order or a preliminary injunction, pending or
30 during trial, to restrain the defendant from transferring, encumbering,
31 hypothecating, or otherwise disposing of any assets specified by the court, if it
32 appears by the complaint that the plaintiff is entitled to the relief demanded and it
33 appears that the defendant may dispose of those assets to thwart enforcement of the
34 judgment.

35 (j) The Legislature finds and declares that civil penalties for the recovery of
36 expenses incurred in enforcing the provisions of this division shall not supplant
37 criminal prosecution for violation of those provisions, but shall be a supplemental
38 remedy to criminal enforcement.

39 (k) Any testimony, admission, or any other statement made by the defendant in
40 any proceeding brought pursuant to this section, or any evidence derived from the
41 testimony, admission, or other statement, shall not be admitted or otherwise used in
42 any criminal proceeding arising out of the same conduct.

1 (l) No action shall be brought or maintained pursuant to this section against a
2 person who has been acquitted of criminal charges for conduct that is the basis for
3 an action under this section.

4 **Comment.** Section 11470.1(b) and (g) are amended to update cross-references in accordance
5 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
6 Division 20 of the Health and Safety Code.

7 **Health & Safety Code § 13009.6 (amended). Emergency response expenses**

8 SEC. __. Section 13009.6 of the Health and Safety Code is amended to read:

9 13009.6. (a)(1) Those expenses of an emergency response necessary to protect the
10 public from a real and imminent threat to health and safety by a public agency to
11 confine, prevent, or mitigate the release, escape, or burning of hazardous substances
12 described in subdivision (c) are a charge against any person whose negligence
13 causes the incident, if either of the following occurs:

14 (A) Evacuation from the building, structure, property, or public right-of-way
15 where the incident originates is necessary to prevent loss of life or injury.

16 (B) The incident results in the spread of hazardous substances or fire posing a real
17 and imminent threat to public health and safety beyond the building, structure,
18 property, or public right-of-way where the incident originates.

19 (2) Expenses reimbursable to a public agency under this section are a debt of the
20 person liable therefor, and shall be collectible in the same manner as in the case of
21 an obligation under contract, express or implied.

22 (3) The charge created against the person by this subdivision is also a charge
23 against the person's employer if the negligence causing the incident occurs in the
24 course of the person's employment.

25 (4) The public agencies participating in an emergency response meeting the
26 requirements of paragraph (1) of this subdivision may designate one or more of the
27 participating agencies to bring an action to recover the expenses incurred by all of
28 the designating agencies which are reimbursable under this section.

29 (5) An action to recover expenses under this section may be joined with any civil
30 action for penalties, fines, injunctive, or other relief brought against the responsible
31 person or employer, or both, arising out of the same incident.

32 (b) There shall be deducted from any amount otherwise recoverable under this
33 section, the amount of any reimbursement for eligible costs received by a public
34 agency pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20.~~
35 Part 2 (commencing with Section 78000) of Division 45. The amount so reimbursed
36 may be recovered as provided in Section ~~25360.~~ 79650.

37 (c) As used in this section, "hazardous substance" means any hazardous substance
38 listed in ~~Section 25316~~ subdivision (a) of Section 78075 or subdivision (q) of
39 Section 25501 of this code, or in Section 6382 of the Labor Code.

40 (d) As used in this section, "mitigate" includes actions by a public agency to
41 monitor or model ambient levels of airborne hazardous substances for the purpose
42 of determining or assisting in the determination of whether or not to evacuate areas

1 around the property where the incident originates, or to determine or assist in the
2 determination of which areas around the property where the incident originates
3 should be evacuated.

4 **Comment.** Section 13009.6(b) and (c) are amended to update cross-references in accordance
5 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
6 Division 20 of the Health and Safety Code.

7 **Health & Safety Code § 17021.8 (amended). Streamlined approval process for eligible**
8 **agricultural employee housing development**

9 SEC. __. Section 17021.8 of the Health and Safety Code is amended to read:

10 17021.8. (a) A development proponent may submit an application for a
11 development that is subject to a streamlined, ministerial approval process, provided
12 in subdivision (b), and is not subject to a conditional use permit if all of the
13 following requirements are met:

14 (1) The development is located on land designated as agricultural in the applicable
15 city or county general plan.

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

17 (A) Within the coastal zone, as defined in Division 20 (commencing with Section
18 30000) of the Public Resources Code.

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

21 (C) Within a very high fire hazard severity zone, as determined by the Department
22 of Forestry and Fire Protection pursuant to Section 51178 of the Government Code,
23 or within a high or very high fire hazard severity zone as indicated on maps adopted
24 by the Department of Forestry and Fire Protection pursuant to Section 4202 of the
25 Public Resources Code.

26 (D) A hazardous waste site that is listed pursuant to Section 65962.5 of the
27 Government Code or a hazardous waste site designated by the Department of Toxic
28 Substances Control pursuant to ~~Section 25356~~, Article 5 (commencing with Section
29 78760) of Chapter 4 of Part 2 of Division 45, unless the Department of Toxic
30 Substances Control has cleared the site for residential use or residential mixed uses.

31 (E) Within a delineated earthquake fault zone as determined by the State
32 Geologist in any official maps published by the State Geologist, unless the
33 development complies with applicable seismic protection building code standards
34 adopted by the California Building Standards Commission under the California
35 Building Standards Law (Part 2.5 (commencing with Section 18901)), and by any
36 local building department under Chapter 12.2 (commencing with Section 8875) of
37 Division 1 of Title 2 of the Government Code.

38 (F) Within a flood plain as determined by maps promulgated by the Federal
39 Emergency Management Agency, unless the development has been issued a flood
40 plain development permit pursuant to Part 59 (commencing with Section 59.1) and
41 Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of
42 the Code of Federal Regulations.

1 (G) Within a floodway as determined by maps promulgated by the Federal
2 Emergency Management Agency.

3 (H) Lands identified for conservation in an adopted natural community
4 conservation plan pursuant to the Natural Community Conservation Planning Act
5 (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game
6 Code), habitat conservation plan pursuant to the federal Endangered Species Act of
7 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection
8 plan.

9 (I) Lands under conservation easement. For purposes of this section,
10 “conservation easement” shall not include a contract executed pursuant to the
11 Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title
12 5 of the Government Code).

13 (J) Lands with groundwater levels within five feet of the soil surface and for which
14 the development would be served by an onsite wastewater disposal system serving
15 more than six family housing units.

16 (3) The development is an eligible agricultural employee housing development
17 that satisfies the requirements specified in subdivision (i).

18 (b)(1) If a local government determines that a development submitted pursuant to
19 this section does not meet the requirements specified in subdivision (a), the local
20 government shall provide the development proponent written documentation of
21 which requirement or requirements the development does not satisfy and an
22 explanation for the reason or reasons the development does not satisfy the
23 requirement or requirements, as follows:

24 (A) Within 30 days of submission of the development to the local government
25 pursuant to this section if the development contains 50 or fewer housing units.

26 (B) Within 60 days of submission of the development to the local government
27 pursuant to this section if the development contains more than 50 housing units.

28 (2) If the local government fails to provide the required documentation pursuant
29 to paragraph (1), the development shall be deemed to satisfy the requirements
30 specified in paragraph (2) of subdivision (a).

31 (c) The local government’s planning commission or an equivalent board or
32 commission responsible for review and approval of development projects, or the
33 city council or board of supervisors, as appropriate, may conduct a development
34 review or public oversight of the development. The development review or public
35 oversight shall be objective and be strictly focused on assessing compliance with
36 criteria required for streamlined projects, as well as any reasonable objective
37 development standards described in this section. For purposes of this subdivision,
38 “objective development standards” mean standards that involve no personal or
39 subjective judgment by a public official and are uniformly verifiable by reference
40 to an external and uniform benchmark or criterion available and knowable by both
41 the development applicant or proponent and the public official prior to submission.
42 The development review or public oversight shall be completed as follows and shall

1 not in any way inhibit, chill, or preclude the ministerial approval provided by this
2 section or its effect, as applicable:

3 (1) Within 90 days of submission of the development to the local government
4 pursuant to this section if the development contains 50 or fewer housing units.

5 (2) Within 180 days of submission of the development to the local government
6 pursuant to this section if the development contains more than 50 housing units.

7 (d) An agricultural employee housing development that is approved pursuant to
8 this section shall not be subject to the density limits specified in Section 17021.6 in
9 order to constitute an agricultural land use for purposes of that section.

10 (e) Notwithstanding Section 17021.6, a local government may subject an
11 agricultural employee housing development that is approved pursuant to this section
12 to the following written, objective development standards:

13 (1)(A) A requirement that the development have adequate water and wastewater
14 facilities and dry utilities to serve the project.

15 (B) A requirement that the development be connected to an existing public water
16 system that has not been identified as failing or being at risk of failing to provide an
17 adequate supply of safe drinking water.

18 (C) If the development proposes to include 10 or more units, a requirement that
19 the development connect to an existing municipal sewer system that has adequate
20 capacity to serve the project. If the local agency has adopted an approved local
21 agency management program for onsite wastewater treatment systems, those
22 requirements shall apply to the development.

23 (2) A requirement that the property on which the development is located be either:

24 (A) Within one-half mile of a duly designated collector road with an Average
25 Daily Trips (ADT) of 6,000 or greater.

26 (B) Adjacent to a duly designated collector road with an ADT of 2,000 or greater.

27 (3) A requirement that the development include off-street parking based upon
28 demonstrated need, provided that the standards do not require more parking for
29 eligible agricultural employee housing developments than for other residential uses
30 of similar size within the jurisdiction.

31 (4) Notwithstanding Section 17020 or any other law, health, safety, and welfare
32 standards for agricultural employee housing, including, but not limited to, density,
33 minimum living space per occupant, minimum sanitation facilities, minimum
34 sanitation requirements, and similar standards.

35 (5) Standards requiring that if a potential for exposure to significant hazards from
36 surrounding properties or activities is found to exist, the effects of the potential
37 exposure shall be mitigated to a level of insignificance in compliance with state and
38 federal requirements.

39 (f) Neither the approval of a development pursuant to this section, including the
40 permit processing, nor the application of development standards pursuant to this
41 section shall be deemed to be discretionary acts within the meaning of the California
42 Environmental Quality Act (Division 13 (commencing with Section 21000) of the
43 Public Resources Code).

1 (g) Notwithstanding Section 17021.6, a local agency may impose fees and other
2 exactions otherwise authorized by law that are essential to provide necessary public
3 services and facilities to the eligible agricultural employee housing development.

4 (h) This section shall not be construed to:

5 (1) Prohibit a local agency from requiring an eligible agricultural employee
6 housing development to comply with objective, quantifiable, written development
7 standards, conditions, and policies that are consistent with subdivision (e) and
8 appropriate to, and consistent with, meeting the jurisdiction's need for farmworker
9 housing, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583
10 of the Government Code.

11 (2) Prohibit a local agency from disapproving an eligible agricultural employee
12 housing development if the eligible agricultural employee housing development as
13 proposed would have a specific, adverse impact upon the public health or safety,
14 and there is no feasible method to satisfactorily mitigate or avoid the specific,
15 adverse impact without rendering the development unaffordable to lower income
16 households, as defined in Section 50079.5, or rendering the development financially
17 infeasible. As used in this paragraph, a "specific, adverse impact" means a
18 significant, quantifiable, direct, and unavoidable impact, based on objective,
19 identified written public health or safety standards, policies, or conditions as they
20 existed on the date the application was deemed complete.

21 (3) Prohibit a local agency from disapproving an eligible agricultural employee
22 housing development if that project would be in violation of any applicable state or
23 federal law.

24 (4) Change any obligations to comply with any other existing laws, including, but
25 not limited to, Section 116527, Section 106.4 of the Water Code, Division 7
26 (commencing with Section 13000) of the Water Code, and Part 12 (commencing
27 with Section 116270) of Division 104.

28 (i) For the purposes of this section, "eligible agricultural employee housing
29 development" means an agricultural employee housing development that satisfies
30 all of the following:

31 (1) The agricultural employee housing does not contain dormitory-style housing.

32 (2) The development consists of no more than 36 units or spaces designed for use
33 by a single family or household.

34 (3)(A) Except as otherwise provided in subparagraph (B), the agricultural
35 employee housing will be maintained and operated by a qualified affordable housing
36 organization that has been certified pursuant to Section 17030.10. The development
37 proponent shall submit proof of issuance of the qualified affordable housing
38 organization's certification by the enforcement agency. The qualified affordable
39 housing organization shall provide for onsite management of the development.

40 (B) In the case of agricultural employee housing that is maintained and operated
41 by a local public housing agency or a multicounty, state, or multistate agency that
42 has been certified as a qualified affordable housing organization as required by this
43 paragraph, that agency either directly maintains and operates the agricultural

1 employee housing or contracts with another qualified affordable housing
2 organization that has been certified pursuant to Section 17030.10.

3 (C) The local government ensures an affordability covenant is recorded on the
4 property to ensure the affordability of the proposed agricultural employee housing
5 for agricultural employees for not less than 55 years. For purposes of this paragraph,
6 “affordability” means the agricultural housing is made available at an affordable
7 rent, as defined in Section 50053, to lower income households, as defined in Section
8 50079.5.

9 (4) The agricultural employee housing is not ineligible for state funding pursuant
10 to paragraph (1) of subdivision (b) of Section 50205.

11 (j) For purposes of this section, “agricultural employee housing” means employee
12 housing for agricultural employees as both terms are defined in Sections 17008 and
13 17021 respectively.

14 (k) The Legislature hereby declares that it is the policy of this state that each
15 county and city shall permit and encourage the development and use of sufficient
16 numbers and types of agricultural employee housing as are commensurate with local
17 need. The Legislature further finds and declares that this section addresses a matter
18 of statewide concern rather than a municipal affair as that term is used in Section 5
19 of Article XI of the California Constitution. Therefore, this section applies to all
20 cities, including charter cities.

21 **Comment.** Section 17021.8(a)(2)(D) is amended to update a cross-reference in accordance with
22 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
23 of the Health and Safety Code.

24 **Health & Safety Code § 25117.13 (amended). “Land use restriction”**

25 SEC. __. Section 25117.13 of the Health and Safety Code is amended to read:

26 25117.13. “Land use restriction” means any limitation regarding the uses of
27 property which may be provided by, but is not limited to, a written instrument which
28 imposes an easement, covenant, restriction, or servitude, or a combination thereof,
29 as appropriate, upon the present and future uses of all, or part of, the land, pursuant
30 to Section 25202.5, 25222.1, 25230, or ~~25355.5~~ 79055.

31 **Comment.** Section 25117.13 is amended to update a cross-reference 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 **Health & Safety Code § 25122.8 (amended). “State operational costs”**

35 SEC. __. Section 25122.8 of the Health and Safety Code is amended to read:

36 25122.8. “State operational costs” means the costs to the state of overseeing
37 removal and remedial action, as defined in Sections ~~25322 and 25323~~, 78125 and
38 78135, to releases of hazardous substances, as defined in Sections ~~25316 and 25320~~,
39 subdivision (a) of Section 78075 and subdivision (a) of Section 78105, if the
40 responsible party is in compliance with an order issued, or with an enforceable
41 agreement entered into, pursuant to paragraph (1) of subdivision (a) of Section
42 ~~25355.5~~ 79055. “State operational costs” include, but are not limited to, the

1 expenditure of funds pursuant to ~~subdivision (e) or (d) of Section 25355.5. Section~~
2 79065.

3 **Comment.** Section 25122.8 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 § 25123.3 (amended). “Storage facility”**

7 SEC. __. Section 25123.3 of the Health and Safety Code is amended to read:

8 25123.3. (a) For purposes of this section, the following terms have the following
9 meanings:

10 (1) “Liquid hazardous waste” means a hazardous waste that meets the definition
11 of free liquids, as specified in Section 66260.10 of Title 22 of the California Code
12 of Regulations, as that section read on January 1, 1994.

13 (2) “Remediation waste staging” means the temporary accumulation of non-
14 RCRA contaminated soil that is generated and held onsite, and that is accumulated
15 for the purpose of onsite treatment pursuant to a certified, authorized, or permitted
16 treatment method, such as a transportable treatment unit, if all of the following
17 requirements are met:

18 (A) The hazardous waste being accumulated does not contain free liquids.

19 (B) The hazardous waste is accumulated on an impermeable surface, such as high
20 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,
21 or high density polyethylene of at least 60 mils that is not supported by a foundation.

22 (C) The generator provides controls for windblown dispersion and precipitation
23 runoff and run-on and complies with any stormwater permit requirements issued by
24 a regional water quality control board.

25 (D) The generator has the accumulation site inspected weekly and after storms to
26 ensure that the controls for windblown dispersion and precipitation runoff and run-
27 on are functioning properly.

28 (E) The staging area is certified by a registered engineer for compliance with the
29 standards specified in subparagraphs (A) to (D), inclusive.

30 (3) “Transfer facility” means any offsite facility that is related to the transportation
31 of hazardous waste, including, but not limited to, loading docks, parking areas,
32 storage areas, and other similar areas where shipments of hazardous waste are held
33 during the normal course of transportation.

34 (b) “Storage facility” means a hazardous waste facility at which the hazardous
35 waste meets any of the following requirements:

36 (1) The hazardous waste is held for greater than 90 days at an onsite facility. The
37 department may establish criteria and procedures to extend that 90-day period,
38 consistent with the federal act, and to prescribe the manner in which the hazardous
39 waste may be held if not otherwise prescribed by statute.

40 (2) The hazardous waste is held for any period of time at an offsite facility that is
41 not a transfer facility.

1 (3)(A) Except as provided in subparagraph (B), the waste is held at a transfer
2 facility and any one of the following apply:

3 (i) The transfer facility is located in an area zoned residential by the local planning
4 authority.

5 (ii) The transfer facility commences initial operations on or after January 1, 2005,
6 at a site located within 500 feet of a structure identified in paragraphs (1) to (5),
7 inclusive, of subdivision (c) of Section 25227.

8 (iii) The hazardous waste is held for a period greater than six days at a transfer
9 facility that is located in an area that is not zoned industrial or agricultural by the
10 local planning authority.

11 (iv) The hazardous waste is held for a period greater than 10 days at a transfer
12 facility that is located in an area that is zoned industrial or agricultural by the local
13 planning authority.

14 (v) The hazardous waste is held for a period greater than six days at a transfer
15 facility that commenced initial operations before January 1, 2005, is located in an
16 area zoned agricultural by the local planning authority, and is located within 500
17 feet of a structure identified in paragraphs (1) to (5), inclusive, of subdivision (c) of
18 Section 25227.

19 (B)(i) Notwithstanding subparagraph (A), a transfer facility located in an area that
20 is not zoned residential by the local planning authority is not a storage facility, if the
21 only hazardous waste held at the transfer facility is hazardous waste that is generated
22 as a result of an emergency release and that hazardous waste is collected and
23 temporarily stored by emergency rescue personnel, as defined in Section 25501, or
24 by a response action contractor upon the request of emergency rescue personnel or
25 the response action contractor, and the holding of that hazardous waste is approved
26 by the department.

27 (ii) For purposes of this subparagraph, “response action contractor” means any
28 person who enters into a contract with the department to take removal or remedial
29 action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
30 (commencing with Section 78000) of Division 45 in response to a release or
31 threatened release, including any subcontractors of the response action contractor.

32 (4)(A) Except as provided in subparagraph (B), the hazardous waste is held onsite
33 for any period of time, unless the hazardous waste is held in a container, tank, drip
34 pad, or containment building pursuant to regulations adopted by the department.

35 (B) Notwithstanding subparagraph (A), a generator that accumulates hazardous
36 waste generated and held onsite for 90 days or less for offsite transportation is not a
37 storage facility if all of the following requirements are met:

38 (i) The waste is non-RCRA contaminated soil.

39 (ii) The hazardous waste being accumulated does not contain free liquids.

40 (iii) The hazardous waste is accumulated on an impermeable surface, such as high
41 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,
42 or high density polyethylene of at least 60 mils that is not supported by a foundation.

1 (iv) The generator provides controls for windblown dispersion and precipitation
2 runoff and run-on and complies with any stormwater permit requirements issued by
3 a regional water quality control board.

4 (v) The generator has the accumulation site inspected weekly and after storms to
5 ensure that the controls for windblown dispersion and precipitation runoff and run-
6 on are functioning properly.

7 (vi) The generator, after final offsite transportation, inspects the accumulation site
8 for contamination and remediates as necessary.

9 (vii) The site is certified by a registered engineer for compliance with the
10 standards specified in clauses (i) to (vi), inclusive.

11 (5) The hazardous waste is held at a transfer facility at any location for any period
12 of time in a manner other than in a container.

13 (6) The hazardous waste is held at a transfer facility at any location for any period
14 of time and handling occurs. For purposes of this paragraph, “handling” does not
15 include the transfer of packaged or containerized hazardous waste from one vehicle
16 to another.

17 (c) The time period for calculating the 90-day period for purposes of paragraph
18 (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision
19 (h), begins when the facility has accumulated 100 kilograms of hazardous waste or
20 one kilogram of extremely hazardous waste or acutely hazardous waste. However,
21 if the facility generates more than 100 kilograms of hazardous waste or one kilogram
22 of extremely hazardous waste or acutely hazardous waste during any calendar
23 month, the time period begins when any amount of hazardous waste first begins to
24 accumulate in that month.

25 (d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous
26 waste that accumulates waste onsite is not a storage facility if all of the following
27 requirements are met:

28 (1) The generator accumulates a maximum of 55 gallons of hazardous waste, one
29 quart of acutely hazardous waste, or one quart of extremely hazardous waste at an
30 initial accumulation point that is at or near the area where the waste is generated and
31 that is under the control of the operator of the process generating the waste.

32 (2) The generator accumulates the waste in containers other than tanks.

33 (3) The generator does not hold the hazardous waste onsite without a hazardous
34 waste facilities permit or other grant of authorization for a period of time longer
35 than the shorter of the following time periods:

36 (A) One year from the initial date of accumulation.

37 (B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date
38 that the quantity limitation specified in paragraph (1) is reached.

39 (4) The generator labels any container used for the accumulation of hazardous
40 waste with the initial date of accumulation and with the words “hazardous waste”
41 or other words that identify the contents of the container.

42 (5) Within three days of reaching any applicable quantity limitation specified in
43 paragraph (1), the generator labels the container holding the accumulated hazardous

1 waste with the date the quantity limitation was reached and either transports the
2 waste offsite or holds the waste onsite and complies with either the regulations
3 adopted by the department establishing requirements for generators subject to the
4 time limit specified in paragraph (1) of subdivision (b) or the requirements specified
5 in paragraph (1) of subdivision (h), whichever requirements are applicable.

6 (6) The generator complies with regulations adopted by the department pertaining
7 to the use and management of containers and any other regulations adopted by the
8 department to implement this subdivision.

9 (e)(1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste
10 held for remediation waste staging shall not be considered to be held at a hazardous
11 waste storage facility if the total accumulation period is one year or less from the
12 date of the initial placing of hazardous waste by the generator at the staging site for
13 onsite remediation, except that the department may grant one six-month extension,
14 upon a showing of reasonable cause by the generator.

15 (2)(A) The generator shall submit a notification of plans to store and treat
16 hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by
17 certified mail, with return receipt requested, to the department and to one of the
18 following:

19 (i) The CUPA, if the generator is under the jurisdiction of a CUPA.

20 (ii) If the generator is not under the jurisdiction of a CUPA, the notification shall
21 be submitted to the agency authorized, pursuant to subdivision (f) of Section
22 25404.3, to implement and enforce the requirements of this chapter listed in
23 paragraph (1) of subdivision (c) of Section 25404.

24 (B) If, after the notification pursuant to subparagraph (A), or during the initial
25 year or the six-month extension granted by the department, the generator determines
26 that treatment cannot be accomplished for all, or part of, the hazardous waste
27 accumulated in a remediation waste staging area, the generator shall immediately
28 notify the department and the appropriate local agency, pursuant to subparagraph
29 (A), that the treatment has been discontinued. The generator shall then handle and
30 dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

31 (C) A generator shall not hold hazardous waste for remediation waste staging
32 unless the generator can show, through laboratory testing, bench scale testing, or
33 other documentation, that soil held for remediation waste staging is potentially
34 treatable. Any fines and penalties imposed for a violation of this subparagraph may
35 be imposed beginning with the 91st day that the hazardous waste was initially
36 accumulated.

37 (3) Once an onsite treatment operation is completed on hazardous waste held
38 pursuant to paragraph (1), the generator shall inspect the staging area for
39 contamination and remediate as necessary.

40 (f) Notwithstanding any other provision of this chapter, remediation waste staging
41 and the holding of non-RCRA contaminated soil for offsite transportation in
42 accordance with paragraph (4) of subdivision (b) shall not be considered to be
43 disposal or land disposal of hazardous waste.

1 (g) A generator who holds hazardous waste for remediation waste staging
2 pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite
3 for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain
4 records onsite that demonstrate compliance with this section related to storing
5 hazardous waste for remediation waste staging or related to holding hazardous waste
6 onsite for offsite transportation, as applicable. The records maintained pursuant to
7 this subdivision shall be available for review by a public agency authorized pursuant
8 to Section 25180 or 25185.

9 (h)(1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than
10 1,000 kilograms of hazardous waste in any calendar month who accumulates
11 hazardous waste onsite for 180 days or less, or 270 days or less if the generator
12 transports the generator's own waste, or offers the generator's waste for
13 transportation, over a distance of 200 miles or more, for offsite treatment, storage,
14 or disposal, is not a storage facility if all of the following apply:

15 (A) The quantity of hazardous waste accumulated onsite never exceeds 6,000
16 kilograms.

17 (B) The generator complies with the requirements of Section 262.16 of Title 40
18 of the Code of Federal Regulations.

19 (C) The generator does not hold acutely hazardous waste or extremely hazardous
20 waste in an amount greater than one kilogram for a time period longer than that
21 specified in paragraph (1) of subdivision (b).

22 (2) A generator meeting the requirements of paragraph (1) who does not receive
23 a copy of the manifest with the signature of the owner or operator of the facility to
24 which the generator's waste is submitted or is unable to verify through the e-
25 Manifest system that the facility has received the waste and signed the manifest,
26 within 60 days from the date that the hazardous waste was accepted by the initial
27 transporter, shall submit a report to the department along with a legible copy of the
28 manifest indicating that the generator cannot confirm the delivery or receipt of the
29 generator's waste with the owner or operator of the facility.

30 (i) The department may adopt regulations that set forth additional restrictions and
31 enforceable management standards that protect human health and the environment
32 and that apply to persons holding hazardous waste at a transfer facility. A regulation
33 adopted pursuant to this subdivision shall be considered by the Office of
34 Administrative Law to be necessary for the immediate preservation of the public
35 peace, health and safety, and general welfare, and may be adopted as an emergency
36 regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part
37 1 of Division 3 of Title 2 of the Government Code.

38 **Comment.** Section 25123.3(b)(3)(B)(ii) is amended to update a cross-reference in accordance
39 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
40 Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 25125.2 (amended). Responsibilities of Board of Environmental**
2 **Safety**

3 SEC. __. Section 25125.2 of the Health and Safety Code is amended to read:

4 25125.2. (a) Beginning January 1, 2022, the board shall conduct no fewer than six
5 public meetings per year, at least three of which shall be held outside the greater
6 Sacramento area. For those meetings held outside the greater Sacramento area, the
7 board shall meet in different geographic areas within the state to facilitate the
8 participation by the businesses and sites regulated by the department, as well as
9 members of the communities impacted by the businesses and sites regulated by the
10 department.

11 (b) The board shall do all of the following:

12 (1) Set fees pursuant to Sections 25205.2.1, 25205.5.01, and 25205.6.1.

13 (2) Hear and decide appeals of hazardous waste facility permit decisions.

14 (3) Provide opportunities for public hearings on individual permitted or
15 remediation sites.

16 (4) Review and consider for approval the director's annual priorities for each
17 program under the department and, after consulting with the director, adopt clear
18 performance metrics for the department and each of the department's programs. The
19 board's responsibilities under this paragraph shall be conducted at a public hearing.
20 The director shall provide annual updates on progress toward meeting the priorities
21 and performance metrics.

22 (5) Conduct an analysis of the fee structure supporting the department's activities
23 funded by the Hazardous Waste Control Account, the Hazardous Waste Facilities
24 Account, and the Toxic Substances Control Account and, to the extent necessary,
25 develop recommendations for funding the department's activities that accomplish
26 all of the following:

27 (A) Provides for protection for public health and safety and the environment.

28 (B) Provides adequate funding to ensure the timely remediation of contaminated
29 sites, including the remediation of orphan sites.

30 (C) Provides adequate funding for the enforcement of this chapter and ~~Chapter~~
31 ~~6.8 (commencing with Section 25300). Part 2 (commencing with Section 78000) of~~
32 Division 45.

33 (D) Provides adequate funding for the programs and regulatory efforts that protect
34 consumers from potentially harmful chemicals in products or workplaces.

35 (E) Provides for a reasonable distribution of costs among the businesses that
36 contribute to the need for management of hazardous waste in the state.

37 (F) Provides a level of funding that will enable the department and the board to
38 implement and carry out their duties and responsibilities, including the department's
39 performance metrics approved by the board pursuant to this section.

40 (G) Considers increasing fee rates, decreasing fee rates, consolidating fees,
41 eliminating fees, or creating new fees, as appropriate, as well as the option to
42 identify any other funding sources that may be appropriate for use by the department
43 in performing its duties and responsibilities. The board may consider where tiered

1 rates may be appropriate to align the department’s regulatory costs with different
2 volumes or types of hazardous waste.

3 (H) Considers the creation of graduated fee rates that could be used to encourage
4 or discourage waste generation or specific higher risk or hazard waste management
5 activities.

6 (I) Considers additional funding amounts that may be needed for the department
7 to implement the responsibilities identified in Article 11.8 (commencing with
8 Section 25244) and Article 11.9 (commencing with Section 25244.12), in whole or
9 in part.

10 (J) Considers additional funding amounts that may be needed for the department
11 to implement programs that further support the collection and appropriate
12 management of hazardous wastes that may pose a higher risk of being illegally
13 disposed.

14 (6) Conduct an analysis of the department’s programs, the relationship between
15 those programs and related programs in other regulatory agencies, including, but
16 not limited to, the State Water Resources Control Board, the California regional
17 water quality control boards, and the Department of Resources Recycling and
18 Recovery, and, to the extent necessary, develop recommendations to improve
19 coordination between programs, and to reduce or eliminate duplication or overlap.

20 (7) Develop, in consultation with the director and with consideration of available
21 resources, a multiyear schedule for the discussion of long-term goals for the
22 following departmental activities:

23 (A) The department’s processing of hazardous waste facility permits and
24 proposals to improve the efficiency of the permitting process, the relationship
25 between the efficiency of the process and the time needed to review permit
26 applications and reach permit decisions, and the amount of reimbursement required
27 of permit applicants in the course of the permitting process.

28 (B) The department’s duties and responsibilities in law and proposals to improve
29 the department’s ability to meet those duties and responsibilities.

30 (C) The site mitigation program and proposals for the prioritization of the cleanup
31 of contaminated properties.

32 (D) The department’s implementation of its enforcement activities.

33 **Comment.** Section 25125.2(b)(5)(C) is amended to update a cross-reference in accordance with
34 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
35 of the Health and Safety Code.

36 **Health & Safety Code § 25135 (amended). State hazardous waste management plan and**
37 **report with analysis of available data related to hazardous waste**

38 SEC. __. Section 25135 of the Health and Safety Code is amended to read:

39 25135. (a) The department shall, by March 1, 2025, and every three years
40 thereafter, prepare a state hazardous waste management plan and present it to the
41 board for approval. The state hazardous waste management plan shall be based on
42 the report prepared pursuant to subdivision (b) and any other sources of information

1 deemed relevant by the department. The state hazardous waste management plan
2 shall serve as a comprehensive planning document for the management of hazardous
3 waste in the state, as a useful informational source to guide state and local hazardous
4 waste management efforts, and as a guide for the department's implementation of
5 its hazardous waste management program.

6 (b) By March 1, 2023, and every three years thereafter, the department shall
7 prepare, and post on its internet website, a report that includes an analysis of
8 available data related to hazardous waste, including all of the following
9 components:

10 (1) An analysis of the hazardous waste streams produced in the state, including
11 the sources of the data and any limitations of that data. The report shall present
12 hazardous waste stream information for the hazardous waste types currently being
13 generated, historically generated, and expected to be generated in the state in the
14 future. In addition to statewide data, the report shall also present the hazardous waste
15 stream information in each of the following categories:

16 (A) The county in which each hazardous waste stream is generated.

17 (B) The destination to which each hazardous waste stream is shipped.

18 (C) The amount of hazardous waste disposed to land, both within the state and in
19 other states.

20 (D) The amount of hazardous waste treated, both within the state and in other
21 states.

22 (E) The amount of hazardous waste that is regulated under the federal act.

23 (F) The amount of hazardous waste that is regulated only in the state.

24 (G) An estimate of the types and volumes of hazardous waste that are generated,
25 but are not required to be manifested, and therefore are not included in the
26 department's Hazardous Waste Tracking System, including hazardous wastes that
27 are:

28 (i) Treated onsite.

29 (ii) Recycled onsite.

30 (iii) Identified as universal wastes.

31 (iv) Eligible to be managed under a management standard that is an alternative to
32 full hazardous waste regulation.

33 (2) Information regarding hazardous waste facilities that operate in the state,
34 including all of the following:

35 (A) Information regarding each hazardous waste facility, including a description
36 of the facility, the amount of hazardous waste the facility is permitted to receive
37 annually, and the amount of hazardous waste managed by the facility that is received
38 from in-state versus out-of-state generators. The information provided pursuant to
39 this subparagraph shall include information on both of the following:

40 (i) Hazardous waste facilities that have been issued a permit to operate by the
41 department.

1 (ii) Any other hazardous waste facilities that are receiving any type of hazardous
2 wastes from offsite that do not require a hazardous waste facilities permit to operate,
3 such as universal waste handlers or temporary transfer stations.

4 (B) An analysis of the location of each destination facility, including an
5 assessment of the area in which the destination facility is located. For destination
6 facilities located in the state, this analysis shall include zoning and other geographic
7 information and the CalEnviroScreen score, and may include information from
8 national environmental health screening tools. For destination facilities located in
9 other states, the analysis shall include a similar assessment of the environmental
10 conditions or vulnerability to environmental pollutants of the population
11 surrounding each destination facility, to the extent data are available.

12 (C) An analysis of the transportation of hazardous waste generated in the state,
13 including information on the distance between the destination facilities and the
14 generators that are sending hazardous waste to those destination facilities, the
15 transportation options available to transport hazardous wastes to each destination
16 facility, and the cost for transportation to each destination facility, including a
17 calculated estimate of cost per mile traveled.

18 (3) An analysis of national and international pollution prevention programs to
19 inform recommendations to be proposed by the department for changes to the
20 implementation of Article 11.8 (commencing with Section 25244) and Article 11.9
21 (commencing with Section 25244.12).

22 (4) An analysis of the use of fees and their ability to influence or encourage the
23 reduction in the generation of hazardous wastes.

24 (5) An analysis of the criteria used to identify wastes as hazardous waste under
25 state law. The analysis shall include all of the following:

26 (A) An assessment of the extent to which the criteria that result in wastes being
27 regulated as hazardous waste in California, as opposed to under the federal act,
28 provide additional safeguards that are necessary to protect public health and the
29 environment in the state.

30 (B) An assessment of the existing hazardous waste identification criteria and the
31 extent to which they reflect current science, technology, or analytical methods.

32 (C) An assessment of additional contaminants, chemical constituents, or hazard
33 characteristics or traits that are not currently included in the hazardous waste
34 identification criteria, and the additional public health or environmental protections
35 that could be achieved if those additional contaminants, chemical constituents, or
36 hazard characteristics or traits were to be added to the hazardous waste identification
37 criteria in the state.

38 (c) Before publishing the final report required by subdivision (b), the department
39 shall conduct workshops to present the draft report to the public and receive
40 comments from the public on the draft report. The department shall, in finalizing
41 the report required by subdivision (b), consider the public comments and revise the
42 draft report as the department deems appropriate.

1 (d) The state hazardous waste management plan prepared pursuant to subdivision
2 (a) shall include, but is not limited to, all of the following:

3 (1) A baseline of the amount and types of hazardous waste generated and disposed
4 of in the state, and disposed of in other states, from which recommendations can be
5 drawn and changes made to hazardous waste management practices, including the
6 reduction in the amount of hazardous waste generated or disposed, can be measured.

7 (2) Recommended goals to reduce the amount of hazardous waste generated or
8 disposed of, including, but not limited to, goals based on all of the following:

9 (A) Statewide total amounts of hazardous waste.

10 (B) Total amounts of particular hazardous waste streams or hazardous waste
11 types.

12 (C) Total amounts of particular hazardous waste streams or hazardous waste types
13 generated or disposed of by specific industry types or sectors.

14 (3)(A) Recommendations for achieving the recommended goals identified
15 pursuant to paragraph (2), including, but not limited to, recommendations for both
16 of the following:

17 (i) Techniques to measure hazardous waste being generated to account for
18 variability in manufacturing production or other economic factors.

19 (ii) Additional steps to be taken to accomplish all of the following:

20 (I) Reducing the use of hazardous materials and increasing the use of less
21 hazardous or nonhazardous alternatives to the maximum extent feasible.

22 (II) Reducing the amount of hazardous waste disposed.

23 (III) Reducing the amount of hazardous waste generated.

24 (IV) Reducing the risk of exposure to communities threatened by releases of
25 hazardous substances, as defined in ~~Chapter 6.8 (commencing with Section 25300),~~
26 Part 2 (commencing with Section 78000) of Division 45, and releases of hazardous
27 wastes.

28 (V) Reducing the risk of exposure to communities near sites contaminated by
29 hazardous substances, as defined in ~~Chapter 6.8 (commencing with Section 25300),~~
30 Part 2 (commencing with Section 78000) of Division 45, and hazardous wastes.

31 (B) Any recommendations for achieving the goals identified pursuant to
32 paragraph (2) related to the generation and disposal of contaminated soils that are
33 identified as hazardous waste shall ensure that subclauses (IV) and (V) of clause (ii)
34 of subparagraph (A) are also accomplished. In addition, the recommendations shall
35 not propose to reduce the amount of contaminated soils being generated or disposed
36 solely by reducing the removal of contaminated soils from sites contaminated by
37 hazardous substances or sites where releases of hazardous substances are threatened.

38 (C) Any recommendations for achieving the goals identified pursuant to
39 paragraph (2) related to the generation and disposal of household hazardous waste
40 shall not propose to reduce the collection of household hazardous waste as a method
41 to achieve the goal.

1 (4) Recommendations for modifications to hazardous waste-related fees or
2 financial incentives to encourage additional reductions in hazardous waste
3 generation.

4 (5) Recommendations for incorporating external or long-term costs into
5 hazardous waste management decisionmaking.

6 (6) Recommendations for allowing for public comment on and input into source
7 reduction evaluation review and plans prepared by generators pursuant to Section
8 25244.19 and hazardous waste management performance reports prepared by
9 generators pursuant to Section 25244.20.

10 (7) Recommendations for changes to the department's implementation of Article
11 11.8 (commencing with Section 25244) and Article 11.9 (commencing with Section
12 25244.12).

13 (8) Recommendations for appropriate roles and responsibilities for the
14 department, other agencies, local unified program agencies, and green business
15 programs in achieving the goals of the state hazardous waste management plan.

16 (9) Recommendations for changes to statutes and regulations that may create
17 impediments to waste reduction and achieving the recommended goals identified
18 pursuant to paragraph (2).

19 (10) Recommendations for changes to statutes and regulations that enhance or
20 facilitate accomplishment of the recommended goals identified pursuant to
21 paragraph (2).

22 (11) Recommendations regarding the criteria used to identify wastes as hazardous
23 waste in California. The recommendations shall include all of the following:

24 (A) Whether any wastes currently identified as hazardous waste in California, to
25 the extent consistent with the federal act, may be managed under management
26 standards that are different from the hazardous waste management requirements and
27 still be protective of public health and the environment.

28 (B) Whether the California hazardous waste identification criteria should be
29 updated to reflect advances in science, technology, or analytical methods.

30 (C) Whether additional contaminants, chemical constituents, or hazard
31 characteristics or traits should be included in the hazardous waste identification
32 criteria to be protective of public health and the environment, and whether additional
33 wastes that are not currently required to be managed as hazardous waste under state
34 law should be required to be managed in accordance with hazardous waste
35 management requirements to protect public health and the environment.

36 (12) Any other recommendations that would further the department's
37 implementation of its hazardous waste management program and the goals of this
38 section.

39 (e) Before approving the final state hazardous waste management plan prepared
40 pursuant to subdivision (a), the board shall hold at least three public hearings in
41 various parts of the state to receive comments from the public on the draft hazardous
42 waste management plan. The board and the department, in finalizing the state
43 hazardous waste management plan prepared pursuant to subdivision (a), shall

1 consider the public comments and revise the draft state hazardous waste
2 management plan as they deem appropriate.

3 (f)(1) For purposes of implementing this section, using the funds appropriated for
4 the 2021–22 fiscal year, the department may enter into necessary contracts to
5 procure subject matter expertise or other technical assistance. The contracts are
6 exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3
7 of Title 2 of the Government Code, and Section 10295 of, and Article 4
8 (commencing with Section 10335) of Chapter 2 of, and Chapter 3 (commencing
9 with Section 12100) of, Part 2 of Division 2 of the Public Contract Code, and any
10 policies, procedures, and regulations authorized by those laws.

11 (2) The department shall obtain approval from the Department of Finance before
12 entering into a contract under this section.

13 **Comment.** Section 25135(d)(3)(A)(ii)(IV) and (V) are amended to update cross-references in
14 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
15 25300) of Division 20 of the Health and Safety Code.

16 **Health & Safety Code § 25143.1 (amended). Exemption for specified wastes**

17 SEC. __. Section 25143.1 of the Health and Safety Code is amended to read:

18 25143.1. (a) Geothermal waste resulting from drilling for geothermal resources is
19 exempt from the requirements of this chapter because the disposal of these
20 geothermal wastes is regulated by the California regional water quality control
21 boards.

22 (b)(1) Wastes from the extraction, beneficiation, and processing of ores and
23 minerals that are not subject to regulation under the federal act are exempt from the
24 requirements of this chapter, except the requirements of Article 9.5 (commencing
25 with Section 25208), as provided in paragraph (2).

26 (2) The wastes subject to this subdivision are subject to Article 9.5 (commencing
27 with Section 25208) and ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
28 (commencing with Section 78000) of Division 45 if the wastes would otherwise be
29 classified as hazardous wastes pursuant to Section 25117 and the regulations
30 adopted pursuant to Section 25141.

31 (3) For purposes of this subdivision, the following definitions shall apply:

32 (A) “Wastes from the extraction, beneficiation, and processing of ores and
33 minerals” means any of the following:

34 (i) Soil, waste rock, overburden, and other solid, semisolid, or liquid natural
35 materials that are removed, unearthed, or otherwise displaced as a result of
36 excavating or recovering an ore or a mineral.

37 (ii) Residuals of ores or minerals after those ores or minerals have been removed,
38 unearthed, or otherwise displaced from their natural sites and physically or
39 chemically treated or otherwise managed in order to separate or concentrate the
40 commercial product present in the ore or mineral, or processed to produce a final
41 marketable product.

1 (iii) Spent brine solutions that are used to produce geothermal energy and that are
2 transferred, via a closed piping system, to an adjacent facility for reclamation,
3 beneficiation, or processing to recover minerals or other commercial substances, if
4 the spent brine solutions, and any liquid residuals derived from the solutions, satisfy
5 all of the following conditions:

6 (I) Are managed in accordance with the standards set forth in Section
7 261.4(a)(17)(i) to (iii), inclusive, of Title 40 of the Code of Federal Regulations.

8 (II) Are returned after processing, via closed piping, and subsequently managed
9 in accordance with the exemption provided in subdivision (c).

10 (III) Are not a solid or semisolid hazardous residuals. This subclause applies to
11 materials that include, but are not limited to, filter cakes that are not covered by the
12 exemption provided in subdivision (c).

13 (B) “Minerals” has the same meaning as defined in Section 2005 of the Public
14 Resources Code.

15 (c)(1) Except as provided in paragraphs (3) and (4), geothermal waste, excluding
16 filter cake, that is generated from the exploration, development, or production of
17 geothermal energy and that does not result from drilling for geothermal resources,
18 is exempt from the requirements of this chapter, if the geothermal waste meets either
19 of the following requirements:

20 (A) The geothermal waste is contained within a piping system, nonearthen trench,
21 or descaling area, or within related equipment, that is associated with the geothermal
22 plant where the waste was generated.

23 (B) The geothermal waste is within the physical boundaries of a lined surface
24 impoundment associated with the geothermal plant where the waste was generated.

25 (2) If geothermal waste that is exempted pursuant to subparagraph (B) of
26 paragraph (1) is relocated to an elevated location inside a lined surface
27 impoundment for dewatering, that waste shall be removed from the surface
28 impoundment within 30 days of the relocation and while the waste still contains
29 sufficient moisture to prevent wind dispersion, except for residuals that are
30 impractical to remove. The geothermal waste shall be deemed to be generated at the
31 time of removal and shall be properly managed as hazardous waste pursuant to the
32 requirements of this chapter.

33 (3) A geothermal waste that is exempt pursuant to this subdivision ceases to be
34 exempt from the requirements of this chapter, and shall be deemed to have been
35 generated, when any of the following occur:

36 (A) It is no longer contained in one or more of the following, as described in
37 paragraph (1):

38 (i) A piping system.

39 (ii) Nonearthen trench.

40 (iii) Descaling area.

41 (iv) Related equipment.

42 (v) Lined surface impoundment.

1 (B) It is left in a geothermal piping system, a related piping system, a nonearthen
2 trench, a descaling area, or another piece of related equipment 18 months after the
3 date the geothermal power plant last produced power, unless prior to that date the
4 operator submits a written notification, as described in paragraph (4) to the
5 department, and the department acknowledges the notification in writing.

6 (C) It is left in a lined surface impoundment and at any time poses an imminent
7 potential threat to areas outside the surface impoundment due to windblown fugitive
8 dusts.

9 (D) It remains in a unit no longer actively regulated by the regional water quality
10 control board.

11 (E) It is left in a lined surface impoundment 18 months after the date the surface
12 impoundment has last received waste, unless prior to that date the operator submits
13 a written notification as described in paragraph (4) to the department, and the
14 department acknowledges the notification in writing.

15 (4) The notification that is required to be submitted by an operator pursuant to
16 subparagraphs (B) and (E) of paragraph (3) shall contain all of the following
17 information:

18 (A) The name and address of the operator, and the address and physical location
19 of the plant or surface impoundment in which the waste will be stored.

20 (B) Estimated dates on which the units will resume operation.

21 (C) A description of how the waste will be stored and managed, demonstrating to
22 the department that the waste will not pose a significant hazard to human health and
23 safety or the environment.

24 (5) This subdivision does not exempt hazardous waste that is either not directly
25 associated with geothermal energy exploration, development, and production, or
26 that is not exempted from the federal act pursuant to paragraph (5) of subdivision
27 (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or both.
28 Hazardous waste that is not exempted pursuant to this subdivision includes, but is
29 not limited to, used oil generated from vehicles or the lubrication of machinery.

30 **Comment.** Section 25143.1(b)(2) is amended to update a cross-reference 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 § 25143.2 (amended). Application of chapter to recyclable materials**

34 SEC. __. Section 25143.2 of the Health and Safety Code is amended to read:

35 25143.2. (a) Recyclable materials are subject to this chapter and the regulations
36 adopted by the department to implement this chapter that apply to hazardous wastes,
37 unless the department issues a variance pursuant to Section 25143, or except as
38 provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by
39 the department pursuant to Sections 25150 and 25151.

40 (b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable
41 material that is managed in accordance with Section 25143.9 and is or will be

1 recycled by any of the following methods shall be excluded from classification as a
2 waste:

3 (1) Used or reused as an ingredient in an industrial process to make a product if
4 the material is not being reclaimed.

5 (2) Used or reused as a safe and effective substitute for commercial products if
6 the material is not being reclaimed.

7 (3) Returned to the original process from which the material was generated,
8 without first being reclaimed, if the material is returned as a substitute for raw
9 material feedstock, and the process uses raw materials as principal feedstocks.

10 (c) Except as otherwise provided in subdivision (e), any recyclable material may
11 be recycled at a facility that is not authorized by the department pursuant to the
12 applicable hazardous waste facilities permit requirements of Article 9 (commencing
13 with Section 25200) if either of the following requirements is met:

14 (1) The material is a petroleum refinery waste containing oil that is converted into
15 petroleum coke at the same facility at which the waste was generated unless the
16 resulting coke product would be identified as a hazardous waste under this chapter.

17 (2) The material meets all of the following conditions:

18 (A) The material is recycled and used at the same facility at which the material
19 was generated.

20 (B) The material is recycled within the applicable generator accumulation time
21 limits specified in Section 25123.3 and the regulations adopted by the department
22 pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

23 (C) The material is managed in accordance with all applicable requirements for
24 generators of hazardous wastes under this chapter and regulations adopted by the
25 department.

26 (d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable
27 material that meets the definition of a non-RCRA hazardous waste in Section
28 25117.9, is managed in accordance with Section 25143.9, and meets or will meet
29 any of the following requirements is excluded from classification as a waste:

30 (1) The material can be shown to be recycled and used at the site where the
31 material was generated.

32 (2) The material qualifies as one or more of the following:

33 (A) The material is a product that has been processed from a hazardous waste, or
34 has been handled, at a facility authorized by the department pursuant to the facility
35 permit requirements of Article 9 (commencing with Section 25200) to process or
36 handle the material, if the product meets both of the following conditions:

37 (i) The product does not contain constituents, other than those for which the
38 material is being recycled, that render the material hazardous under regulations
39 adopted pursuant to Sections 25140 and 25141.

40 (ii) The product is used, or distributed or sold for use, in a manner for which the
41 product is commonly used.

1 (B) The material is a petroleum refinery waste containing oil that is converted into
2 petroleum coke at the same facility at which the waste was generated, unless the
3 resulting coke product would be identified as a hazardous waste under this chapter.

4 (C) The material is oily waste, used oil, or spent nonhalogenated solvent that is
5 managed by the owner or operator of a refinery that is processing primarily crude
6 oil and is not subject to permit requirements for the recycling of used oil, of a public
7 utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same
8 corporate parent of the refinery or public utility, and meets all of the following
9 requirements:

10 (i) The material is either burned in an industrial boiler, an industrial furnace, an
11 incinerator, or a utility boiler that is in compliance with all applicable federal and
12 state laws, or is recombined with normal process streams to produce a fuel or other
13 refined petroleum product.

14 (ii) The material is managed at the site where it was generated; managed at another
15 site owned or operated by the generator, a corporate subsidiary of the generator, a
16 subsidiary of the same entity of which the generator is a subsidiary, or the corporate
17 parent of the generator; or, if the material is generated in the course of oil or gas
18 exploration or production, managed by an unrelated refinery receiving the waste
19 through a common pipeline.

20 (iii) The material does not contain constituents, other than those for which the
21 material is being recycled, that render the material hazardous under regulations
22 adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing
23 material or recovered oil that is managed in accordance with subdivisions (a) and
24 (c) of Section 25144 or unless the material is used oil removed from equipment,
25 vehicles, or engines used primarily at the refinery where it is to be used to produce
26 fuels or other refined petroleum products and the used oil is managed in accordance
27 with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion
28 into the refining process.

29 (D) The material is a fuel that is transferred to, and processed into, a fuel or other
30 refined petroleum product at a petroleum refinery, as defined in paragraph (4) of
31 subdivision (a) of Section 25144, and meets one of the following requirements:

32 (i) The fuel has been removed from a fuel tank and is contaminated with water or
33 nonhazardous debris, of not more than 2 percent by weight, including, but not
34 limited to, rust or sand.

35 (ii) The fuel has been unintentionally mixed with an unused petroleum product.

36 (3) The material is transported between locations operated by the same person
37 who generated the material, if the material is recycled at the last location operated
38 by that person and all of the conditions of clauses (i) to (vi), inclusive, of
39 subparagraph (A) of paragraph (4) are met. If requested by the department or by any
40 official authorized to enforce this section pursuant to subdivision (a) of Section
41 25180, a person handling material subject to this paragraph, within 15 days from the
42 date of receipt of the request, shall supply documentation to show that the
43 requirements of this paragraph have been satisfied.

1 (4)(A) The material is transferred between locations operated by the same person
2 who generated the material, if the material is to be recycled at an authorized offsite
3 hazardous waste facility and if all of the following conditions are met:

4 (i) The material is transferred by employees of that person in vehicles under the
5 control of that person or by a registered hazardous waste hauler under contract to
6 that person.

7 (ii) The material is not handled at any interim location.

8 (iii) The material is not held at any publicly accessible interim location for more
9 than four hours unless required by other provisions of law.

10 (iv) The material is managed in compliance with this chapter and the regulations
11 adopted pursuant to this chapter prior to the initial transportation of the material and
12 after the receipt of the material at the last location operated by that person. Upon
13 receipt of the material at the last location operated by that person, the material shall
14 be deemed to have been generated at that location.

15 (v) All of the following information is maintained in an operating log at the last
16 location operated by that person and kept for at least three years after receipt of the
17 material at that location:

18 (I) The name and address of each generator location contributing material to each
19 shipment received.

20 (II) The quantity and type of material contributed by each generator to each
21 shipment of material.

22 (III) The destination and intended disposition of all material shipped offsite or
23 received.

24 (IV) The date of each shipment received or sent offsite.

25 (vi) If requested by the department, or by any law enforcement official, a person
26 handling material subject to this paragraph, within 15 days from the date of receipt
27 of the request, shall supply documentation to show that the requirements of this
28 paragraph have been satisfied.

29 (B) For purposes of paragraph (3) and subparagraph (A) of this paragraph,
30 “person” also includes corporate subsidiary, corporate parent, or subsidiary of the
31 same corporate parent.

32 (C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the
33 same corporate parent, and that manage recyclable materials under paragraph (3) or
34 subparagraph (A) of this paragraph, are jointly and severally liable for any activities
35 excluded from regulation pursuant to this section.

36 (5) The material is used or reused as an ingredient in an industrial process to make
37 a product if the material meets all of the following requirements:

38 (A) The material is not a wastewater that meets all of the following criteria:

39 (i) The wastewater is a non-RCRA hazardous waste.

40 (ii) The wastewater contains more than 75 parts per million of total petroleum
41 hydrocarbons, as determined by use of United States Environmental Protection
42 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable
43 Material.

1 (iii) The wastewater has been transported offsite to a facility, that is not a publicly
2 owned treatment works, a facility owned by the generator, or a corporate subsidiary,
3 corporate parent, or a subsidiary of the same corporate parent of the generator.

4 (B) Any discharges to air from the treatment of the material by the procedures
5 specified in subparagraph (C) do not contain constituents that are hazardous wastes
6 pursuant to the regulations of the department and are in compliance with applicable
7 air pollution control laws.

8 (C) The material is not being treated except by one or more of the following
9 procedures:

10 (i) Filtering.

11 (ii) Screening.

12 (iii) Sorting.

13 (iv) Sieving.

14 (v) Grinding.

15 (vi) Physical or gravity separation without the addition of external heat or any
16 chemicals.

17 (vii) pH adjustment.

18 (viii) Viscosity adjustment.

19 (6) The material is used or reused as a safe and effective substitute for commercial
20 products, if the material meets all of the following requirements:

21 (A) The material is not a wastewater that meets all of the following criteria:

22 (i) The wastewater is a non-RCRA hazardous waste.

23 (ii) The wastewater contains more than 75 parts per million of total petroleum
24 hydrocarbons, as determined by use of United States Environmental Protection
25 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable
26 Material.

27 (iii) The wastewater has been transported offsite to a facility that is not a publicly
28 owned treatment works, or a facility owned by the generator, or a corporate
29 subsidiary, corporate parent, or a subsidiary of the same corporate parent of the
30 generator.

31 (B) Any discharges to air from the treatment of the material by the procedures
32 specified in subparagraph (C) do not contain constituents that are hazardous wastes
33 pursuant to the regulations of the department and the discharges are in compliance
34 with applicable air pollution control laws.

35 (C) The material is not being treated, except by one or more of the following
36 procedures:

37 (i) Filtering.

38 (ii) Screening.

39 (iii) Sorting.

40 (iv) Sieving.

41 (v) Grinding.

42 (vi) Physical or gravity separation without the addition of external heat or any
43 chemicals.

1 (vii) pH adjustment.

2 (viii) Viscosity adjustment.

3 (7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound
4 or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is
5 being reused or recycled, and is used in heat transfer equipment, including, but not
6 limited to, mobile air-conditioning systems, mobile refrigeration, and commercial
7 and industrial air-conditioning and refrigeration systems, used in fire extinguishing
8 products, or contained within foam products.

9 (e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable
10 materials are hazardous wastes and subject to full regulation under this chapter, even
11 if the recycling involves use, reuse, or return to the original process as described in
12 subdivision (b), and even if the recycling involves activities or materials described
13 in subdivisions (c) and (d):

14 (1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2,
15 used in a manner constituting disposal, or used to produce products that are applied
16 to the land, including, but not limited to, materials used to produce a fertilizer, soil
17 amendment, agricultural mineral, or an auxiliary soil and plant substance.

18 (2) Materials that are a non-RCRA hazardous waste, as defined in Section
19 25117.9, and used in a manner constituting disposal or used to produce products
20 that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or
21 an auxiliary soil and plant substance. The department may adopt regulations to
22 exclude materials from regulation pursuant to this paragraph.

23 (3) Materials burned for energy recovery, used to produce a fuel, or contained in
24 fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded
25 under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

26 (4) Materials accumulated speculatively.

27 (5) Materials determined to be inherently wastelike pursuant to regulations
28 adopted by the department.

29 (6) Used or spent etchants, stripping solutions, and plating solutions that are
30 transported to an offsite facility operated by a person other than the generator and
31 either of the following applies:

32 (A) The etchants or solutions are no longer fit for their originally purchased or
33 manufactured purpose.

34 (B) If the etchants or solutions are reused, the generator and the user cannot
35 document that they are used for their originally purchased or manufactured purpose
36 without prior treatment.

37 (7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the
38 following applies:

39 (A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of
40 subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1,
41 or Section 25250.3, and is managed in accordance with the applicable requirements
42 of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal
43 Regulations.

1 (B) The used oil is used or reused on the site where it was generated or is excluded
2 under paragraph (3) of subdivision (d), is managed in accordance with the applicable
3 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code
4 of Federal Regulations, and is not any of the following:

5 (i) Used in a manner constituting disposal or used to produce a product that is
6 applied to land.

7 (ii) Burned for energy recovery or used to produce a fuel unless the used oil is
8 excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

9 (iii) Accumulated speculatively.

10 (iv) Determined to be inherently wastelike pursuant to regulations adopted by the
11 department.

12 (f)(1) Any person who manages a recyclable material under a claim that the
13 material qualifies for exclusion or exemption pursuant to this section shall provide,
14 upon request, to the department, the California Environmental Protection Agency,
15 or any local agency or official authorized to bring an action as provided in Section
16 25180, all of the following information:

17 (A) The name, street and mailing address, and telephone number of the owner or
18 operator of any facility that manages the material.

19 (B) Any other information related to the management by that person of the
20 material requested by the department, the California Environmental Protection
21 Agency, or the authorized local agency or official.

22 (2) Any person claiming an exclusion or an exemption pursuant to this section
23 shall maintain adequate records to demonstrate to the satisfaction of the requesting
24 agency or official that there is a known market or disposition for the material, and
25 that the requirements of any exemption or exclusion pursuant to this section are met.

26 (3) For purposes of determining that the conditions for exclusion from
27 classification as a waste pursuant to this section are met, any person, facility, site,
28 or vehicle engaged in the management of a material under a claim that the material
29 is excluded from classification as a waste pursuant to this section is subject to
30 Section 25185.

31 (g) For purposes of ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2
32 (commencing with Section 78000) of Division 45, recyclable materials excluded
33 from classification as a waste pursuant to this section are not excluded from the
34 definition of hazardous substances in ~~subdivision (g) of Section 25316~~. paragraph
35 (7) of subdivision (a) of Section 78075.

36 (h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely
37 because the used oil is a RCRA hazardous waste may be managed pursuant to
38 subdivision (d) if the used oil is also managed in accordance with the applicable
39 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code
40 of Federal Regulations.

41 **Comment.** Section 25143.2(g) 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 **Health & Safety Code § 25152.5 (amended). Public records**

2 SEC. __. Section 25152.5 of the Health and Safety Code is amended to read:

3 25152.5. (a) For purposes of this section, the following definitions apply:

4 (1) “Unusual circumstances” means only the following:

5 (A) The need to search for and collect the requested records from field facilities
6 or other establishments that are separate from the office processing the request.

7 (B) The need to search for, collect, and appropriately examine a voluminous
8 amount of separate and distinct records that are demanded in a single request.

9 (C) The need to consult with another agency having a substantial interest in the
10 determination of whether to respond to the request.

11 (2) “Public records” means any public record, as defined in Section 7920.530 of
12 the Government Code, of the department relating to this chapter, Chapter 6.7
13 (commencing with Section 25280), or ~~Chapter 6.8 (commencing with Section~~
14 ~~25300). Part 2 (commencing with Section 78000) of Division 45. “Public records”~~
15 includes unprinted information relating to this chapter, Chapter 6.7 (commencing
16 with Section 25280), or ~~Chapter 6.8 (commencing with Section 25300) Part 2~~
17 ~~(commencing with Section 78000) of Division 45~~ that is stored in data or word
18 processing equipment either owned by an employee and located on premises under
19 control of the department or owned by the department.

20 (b) Notwithstanding any other provision of law, the department shall not limit the
21 hours during the normal working day or limit the number of working days during
22 which public records are open for inspection.

23 (c)(1) Notwithstanding any other provision of law, the department shall make
24 public records that are not exempt from disclosure by law, including Division 10
25 (commencing with Section 7920.000) of Title 1 of the Government Code, promptly
26 available to any person, within the time limits specified in subdivision (a) of Section
27 7922.535 of the Government Code, upon payment of a fee established by the
28 department to cover the direct costs of duplication, as specified in subdivision (f).
29 In addition, a person requesting copies by mail may be required to pay the mailing
30 costs.

31 (2) If any portion of a record is exempt from disclosure, the part that is not exempt
32 shall be provided as prescribed in this section.

33 (d) Any person may request access to, or copies of, public records of the
34 department in person or by mail. A request shall reasonably describe an identifiable
35 record or information to be produced therefrom.

36 (e) If the department determines that an unusual circumstance exists, the
37 department shall comply with the notification procedures and the time limits
38 specified in subdivisions (b) and (c) of Section 7922.535 of the Government Code.

39 (f) The department shall, upon request, provide any person with the facts upon
40 which it bases its determination of the direct costs of copying for each page that is
41 requested. The department shall not impose a minimum fee for a copy of a public
42 record that is greater than its direct per page copying costs and the department shall
43 not impose limits on the types or amounts of public records that the department will

1 provide to persons requesting these records, upon payment of any fees covering the
2 direct costs of duplication by the department.

3 (g) This section does not authorize the department, or any employee of the
4 department, to delay access for purposes of inspecting or obtaining copies of public
5 records, unless there are unusual circumstances.

6 (h) Any denial of a request for records shall set forth in writing the reasons for the
7 denial and the names and titles or positions of each person responsible for the denial.
8 This written response shall be provided to the requester within five working days of
9 the denial.

10 **Comment.** Section 25152.5(a)(2) 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 § 25159.22 (amended). Construction of article**

14 SEC. __. Section 25159.22 of the Health and Safety Code is amended to read:
15 25159.22. This article shall not be construed to limit or abridge the powers and
16 duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8~~
17 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
18 Division 45 or to the state board or any regional board pursuant to Division 7
19 (commencing with Section 13000) of the Water Code, to the Division of Oil and
20 Gas pursuant to Division 3 (commencing with Section 3000) of the Public
21 Resources Code, or the authority of any city, county, or district to act pursuant to
22 the local agency's ordinances or regulations.

23 **Comment.** Section 25159.22 is amended to update a cross-reference 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 § 25173.6 (amended). Toxic Substances Control Account**

27 SEC. __. Section 25173.6 of the Health and Safety Code is amended to read:
28 25173.6. (a) There is in the General Fund the Toxic Substances Control Account,
29 which shall be administered by the director. In addition to any other money that may
30 be appropriated by the Legislature to the Toxic Substances Control Account, all of
31 the following shall be deposited in the account:

- 32 (1) The fees collected pursuant to Section 25205.6.
33 (2) The fees collected pursuant to Section 25187.2, to the extent that those fees
34 are for oversight of a removal or remedial action taken under ~~Chapter 6.8~~
35 ~~(commencing with Section 25300)~~ or Chapter 6.86 (commencing with Section
36 25396), 25396) or Part 2 (commencing with Section 78000) of Division 45.
37 (3) Fines or penalties collected pursuant to this chapter, ~~Chapter 6.8 (commencing~~
38 ~~with Section 25300), or Chapter 6.86 (commencing with Section 25396), or Part 2~~
39 (commencing with Section 78000) of Division 45, except as directed otherwise by
40 Section 25192.

41 (4) Interest earned upon money deposited in the Toxic Substances Control
42 Account.

1 (5) All money recovered pursuant to Section ~~25360~~, 79650, except any amount
2 recovered on or before June 30, 2006, that was paid from the Hazardous Substance
3 Cleanup Fund.

4 (6) All money recovered pursuant to ~~Section 25380~~. Article 7 (commencing with
5 Section 81030) of Chapter 12 of Part 2 of Division 45.

6 (7) All penalties recovered pursuant to Section 25214.3, except as provided by
7 Section 25192.

8 (8) All penalties recovered pursuant to Section 25214.22.1, except as provided by
9 Section 25192.

10 (9) All penalties recovered pursuant to Section 25215.82, except as provided by
11 Section 25192.

12 (10) Reimbursements for funds expended from the Toxic Substances Control
13 Account for services provided by the department, including, but not limited to,
14 reimbursements required pursuant to Sections 25201.9 and ~~25343~~. 79105.

15 (11) Money received from the federal government pursuant to the federal
16 Comprehensive Environmental Response, Compensation, and Liability Act of
17 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

18 (12) Money received from responsible parties for remedial action or removal at a
19 specific site, except as otherwise provided by law.

20 (b) The funds deposited in the Toxic Substances Control Account may be
21 appropriated to the department for the following purposes:

22 (1) The administration and implementation of the following:

23 (A) ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with
24 Section 78000) of Division 45, except that funds shall not be expended from the
25 Toxic Substances Control Account for purposes of ~~Section 25354.5~~. Article 16
26 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

27 (B) Chapter 6.86 (commencing with Section 25396).

28 (C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the
29 Public Utilities Code, to the extent the department has been delegated
30 responsibilities by the secretary for implementing that article.

31 (D) Article 10 (commencing with Section 25210), Article 10.01 (commencing
32 with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article
33 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with
34 Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article
35 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section
36 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5
37 (commencing with Section 25250.50), Article 14 (commencing with Section
38 25251), and Section 25214.10.

39 (E) Green chemistry (Article 14 (commencing with Section 25251)).

40 (2) The administration of the following units, and successor organizations of those
41 units, within the department, and the implementation of programs administered by
42 those units or successor organizations:

43 (A) The Human and Ecological Risk Office.

1 (B) The Environmental Chemistry Laboratory.

2 (C) The Office of Pollution Prevention and Technology Development

3 (D) The Safer Consumer Products Program.

4 (3) For allocation to the Office of Environmental Health Hazard Assessment,
5 pursuant to an interagency agreement, to assist the department as needed in
6 administering the programs described in subparagraphs (A) and (B) of paragraph
7 (1).

8 (4) For allocation to the California Department of Tax and Fee Administration to
9 pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation
10 Code.

11 (5) For the state share mandated pursuant to paragraph (3) of subsection (c) of
12 Section 104 of the federal Comprehensive Environmental Response, Compensation,
13 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

14 (6) For the purchase by the state, or by a local agency with the prior approval of
15 the director, of hazardous substance response equipment and other preparations for
16 response to a release of hazardous substances. However, all equipment shall be
17 purchased in a cost-effective manner after consideration of the adequacy of existing
18 equipment owned by the state or the local agency, and the availability of equipment
19 owned by private contractors.

20 (7) For payment of all costs of removal and remedial action incurred by the state,
21 or by a local agency with the approval of the director, in response to a release or
22 threatened release of a hazardous substance, to the extent the costs are not
23 reimbursed by the federal Comprehensive Environmental Response, Compensation,
24 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

25 (8) For payment of all costs of actions taken pursuant to ~~subdivision (b) of Section~~
26 ~~25358.3, Section 78650~~, to the extent that these costs are not paid by the federal
27 Comprehensive Environmental Response, Compensation, and Liability Act of
28 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

29 (9) For all costs incurred by the department in cooperation with the Agency for
30 Toxic Substances and Disease Registry established pursuant to subsection (i) of
31 Section 104 of the federal Comprehensive Environmental Response, Compensation,
32 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of
33 health effects studies undertaken regarding specific sites or specific substances at
34 specific sites. Funds appropriated for this purpose shall not exceed five hundred
35 thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not
36 duplicate reasonably available federal actions and studies.

37 (10) For repayment of the principal of, and interest on, bonds sold pursuant to
38 ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8. Article 5~~
39 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

40 (11) Direct site remediation costs.

41 (12) For the department's expenses for staff to perform oversight of investigations,
42 characterizations, removals, remediations, or long-term operation and maintenance.

1 (13) For the administration and collection of the fees imposed pursuant to Section
2 25205.6.

3 (14) For allocation to the office of the Attorney General, pursuant to an
4 interagency agreement or similar mechanism, for the support of the Toxic Substance
5 Enforcement Program in the office of the Attorney General, in carrying out the
6 purposes of ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing~~
7 ~~with Section 78000) of Division 45~~, Chapter 6.86 (commencing with Section
8 25396), Article 10 (commencing with Section 25210), Article 10.01 (commencing
9 with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article
10 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with
11 Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article
12 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section
13 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5
14 (commencing with Section 25250.50), Article 14 (commencing with Section
15 25251), and Section 25214.10.

16 (15) For funding the California Environmental Contaminant Biomonitoring
17 Program established pursuant to Chapter 8 (commencing with Section 105440) of
18 Part 5 of Division 103.

19 (16) As provided in Sections 25214.3 and 25215.7 and, with regard to penalties
20 recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4
21 (commencing with Section 25214.11).

22 (17) For the costs of performance or review of analyses of past, present, or
23 potential environmental public health effects related to extremely hazardous waste,
24 as defined in Section 25115, and hazardous waste, as defined in Section 25117.

25 (18) For costs incurred by the Board of Environmental Safety in the
26 administration and implementation of its duties and responsibilities established in
27 Article 2.1 (commencing with Section 25125).

28 (c) The funds deposited in the Toxic Substances Control Account may be
29 appropriated by the Legislature to the Office of Environmental Health Hazard
30 Assessment and the State Department of Public Health for purposes of carrying out
31 their duties pursuant to the California Environmental Contaminant Biomonitoring
32 Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

33 (d) The director shall expend federal funds in the Toxic Substances Control
34 Account consistent with the requirements specified in Section 114 of the federal
35 Comprehensive Environmental Response, Compensation, and Liability Act of
36 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for
37 the purposes for which they were provided to the state.

38 (e) Money in the Toxic Substances Control Account shall not be expended to
39 conduct removal or remedial actions if a significant portion of the hazardous
40 substances to be removed or remedied originated from a source outside the state.

41 (f) The Director of Finance, upon request of the director, may make a loan from
42 the General Fund to the Toxic Substances Control Account to meet cash needs. The
43 loan shall be subject to the repayment provisions of Section 16351 of the

1 Government Code and the interest provisions of Section 16314 of the Government
2 Code.

3 (g) The Toxic Substances Control Account established pursuant to subdivision (a)
4 is the successor fund of all of the following:

5 (1) The Hazardous Substance Account established pursuant to Section 25330, as
6 that section read on June 30, 2006.

7 (2) The Hazardous Substance Clearing Account established pursuant to Section
8 25334, as that section read on June 30, 2006.

9 (3) The Hazardous Substance Cleanup Fund established pursuant to Section
10 25385.3, as that section read on June 30, 2006.

11 (4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as
12 that section read on June 30, 2006.

13 (h) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and
14 funds listed in subdivision (g), shall be transferred to, and become a part of, the
15 Toxic Substances Control Account, as provided by Section 16346 of the
16 Government Code. All existing appropriations from these accounts, to the extent
17 encumbered, shall continue to be available for the same purposes and periods from
18 the Toxic Substances Control Account.

19 (i) This section shall become operative on January 1, 2022.

20 **Comment.** Section 25173.6 is amended throughout to update cross-references in accordance
21 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
22 Division 20 of the Health and Safety Code.

23 **Health & Safety Code § 25173.7 (amended). Appropriation of funds in Toxic Substances**
24 **Control Account**

25 SEC. __. Section 25173.7 of the Health and Safety Code is amended to read:

26 25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic
27 Substances Control Account shall be appropriated in the annual Budget Act each
28 year in the following manner:

29 (1) An amount sufficient to pay for the estimated costs identified by the
30 department in the report submitted pursuant to subdivision (c) to the Site
31 Remediation Account in the General Fund for direct site remediation costs, as
32 defined in ~~Section 25337~~. Section 78260.

33 (2) Not less than ten million seven hundred fifty thousand dollars (\$10,750,000)
34 to the Site Remediation Account in the General Fund for direct site remediation
35 costs, as defined in ~~Section 25337~~. Section 78260.

36 (3) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site
37 Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)
38 of former Section 25399.1, for purposes of paying the orphan share of response costs
39 pursuant to former Chapter 6.85 (commencing with Section 25396).

40 (4) An amount that does not exceed the costs incurred by the State Board of
41 Equalization, a private party, or other public agency, to administer and collect the
42 fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and

1 deposited into the Toxic Substances Control Account, for the purpose of
2 reimbursing the State Board of Equalization, public agency, or private party, for
3 those costs.

4 (5) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of
5 establishing and implementing a program pursuant to Sections 25244.15.1,
6 25244.17.1, 25244.17.2, and 25244.22 to encourage hazardous waste generators to
7 implement pollution prevention measures.

8 (6) Funds not appropriated as specified in paragraphs (1) to (5), inclusive, may be
9 appropriated for any of the purposes specified in subdivision (b) of Section 25173.6,
10 except the purposes specified in subparagraph (C) of paragraph (1) of, and
11 paragraph (13) of, subdivision (b) of Section 25173.6.

12 (b)(1) The amounts specified in paragraphs (2) to (5), inclusive, of subdivision (a)
13 shall be adjusted annually to reflect increases or decreases in the cost of living
14 during the prior fiscal year, as measured by the Consumer Price Index issued by the
15 Department of Industrial Relations or by a successor agency.

16 (2) Notwithstanding paragraph (1), the department may, upon the approval of the
17 Legislature in a statute or the annual Budget Act, take either of the following
18 actions:

19 (A) Reduce the amounts specified in paragraphs (1) to (5), inclusive, of
20 subdivision (a), if there are insufficient funds in the Toxic Substances Control
21 Account.

22 (B) Suspend the transfer specified in paragraph (3) of subdivision (a), if there are
23 no orphan shares pending payment pursuant to former Chapter 6.85 (commencing
24 with Section 25396).

25 (c) The department shall submit to the Legislature with the Governor's Budget
26 each year a report that includes an estimate of the funding needed to fund direct site
27 remediation costs at state orphan sites and meet the state's obligation to pay for
28 direct site remediation costs at federal Superfund orphan sites pursuant to paragraph
29 (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental
30 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
31 9604(c)(3)). The estimate shall include projected costs for the current budget year
32 and the two following budget years, including, but not limited to, the state's 10-
33 percent funding obligation for remedial actions at federal Superfund orphan sites,
34 the state's 100-percent funding obligation for ongoing operation and maintenance
35 at federal Superfund orphan sites, and ongoing operation and maintenance costs at
36 state orphan sites.

37 **Comment.** Section 25173.7 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 **Health & Safety Code § 25174.02 (amended). Collection and administration of fees,**
41 **surcharges, fines, penalties, and funds**

42 SEC. __. Section 25174.02 of the Health and Safety Code is amended to read:

1 25174.02. (a) Notwithstanding this chapter, or Part 22 (commencing with Section
2 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges,
3 fines, penalties, and funds that are required to be deposited into the Hazardous
4 Waste Control Account, the Hazardous Waste Facilities Account, or the Toxic
5 Substances Control Account, the department, with the approval of the secretary,
6 may take either of the following actions:

7 (1) Assume responsibility for, or enter into a contract with a private party or with
8 another public agency, other than the California Department of Tax and Fee
9 Administration, for the collection of any fees, surcharges, fines, penalties and funds
10 described in ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing
11 with Section 78000) of Division 45, for deposit into the Toxic Substances Control
12 Account.

13 (2) Administer, or by mutual agreement, contract with a private party or another
14 public agency, for the making of those determinations and the performance of
15 functions that would otherwise be the responsibility of the California Department
16 of Tax and Fee Administration pursuant to ~~Chapter 6.8 (commencing with Section~~
17 ~~25300)~~, Part 2 (commencing with Section 78000) of Division 45, or Part 22
18 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code,
19 if those activities and functions for which the California Department of Tax and Fee
20 Administration would otherwise be responsible become the responsibility of the
21 department or, by mutual agreement, the contractor selected by the department.

22 (b) If, pursuant to subdivision (a), the department, or a private party or another
23 public agency, pursuant to a contract with the department, performs the
24 determinations and functions that would otherwise be the responsibility of the
25 California Department of Tax and Fee Administration, the department shall be
26 responsible for ensuring that persons who are subject to the fees specified in
27 subdivision (a) have equivalent rights to public notice and comment, and procedural
28 and substantive rights of appeal, as afforded by the procedures of the California
29 Department of Tax and Fee Administration pursuant to Part 22 (commencing with
30 Section 43001) of Division 2 of the Revenue and Taxation Code. Final
31 responsibility for the administrative adjustment of fee rates and the administrative
32 appeal of any fees or penalty assessments made pursuant to this section may only
33 be assigned by the department to a public agency.

34 (c) If, pursuant to subdivision (a), the department, or a private party or another
35 public agency, pursuant to a contract with the department, performs the
36 determinations and functions that would otherwise be the responsibility of the
37 California Department of Tax and Fee Administration, the department shall have
38 equivalent authority to make collections and enforce judgments as provided to the
39 California Department of Tax and Fee Administration pursuant to Part 22
40 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.
41 Unpaid amounts, including penalties and interest, shall be a perfected and
42 enforceable state tax lien in accordance with Section 43413 of the Revenue and
43 Taxation Code.

1 (d) The department, with the concurrence of the secretary, shall determine which
2 administrative functions should be retained by the California Department of Tax
3 and Fee Administration, administered by the department, or assigned to another
4 public agency or private party pursuant to subdivisions (a), (b), and (c).

5 (e) The department may adopt regulations to implement this section.

6 (f) This section shall become operative on January 1, 2022.

7 **Comment.** Section 25174.02 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 § 25178 (amended). Information to be posted on department’s**
11 **website**

12 SEC. __. Section 25178 of the Health and Safety Code is amended to read:

13 25178. On or before January 1 of each odd-numbered year, the department shall
14 post on its ~~Web site,~~ internet website, at a minimum, all of the following:

15 (a) The status of the regulatory and program developments required pursuant to
16 legislative mandates.

17 (b)(1) The status of the hazardous waste facilities permit program that shall
18 include all of the following information:

19 (A) A description of the final hazardous waste facilities permit applications
20 received.

21 (B) The number of final hazardous waste facilities permits issued to date.

22 (C) The number of final hazardous waste facilities permits yet to be issued.

23 (D) A complete description of the reasons why the final hazardous waste facilities
24 permits yet to be issued have not been issued.

25 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that
26 uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and
27 that disposes of wastes regulated as hazardous waste pursuant to the federal act.

28 (c) The status of the hazardous waste facilities siting program.

29 (d) The status of the hazardous waste abandoned sites program.

30 (e) A summary of enforcement actions taken by the department pursuant to this
31 chapter and any other actions relating to hazardous waste management.

32 (f) Summary data on annual quantities and types of hazardous waste generated,
33 transported, treated, stored, and disposed.

34 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

35 (h) Research activity initiated by the department.

36 (i) Regulatory action by other agencies relating to hazardous waste management.

37 (j) A revised listing of recyclable materials showing any additions or deletions to
38 the list prepared pursuant to Section 25175 that have occurred since the last report.

39 (k) Any other data considered pertinent by the department to hazardous waste
40 management.

41 (l) The information specified in subdivision (c) of Section 25161, paragraph (4)
42 of subdivision (a) of Section 25197.1, ~~subdivision (e) of Section 25354, and~~

1 ~~Sections 25334.7, and 25356.5, and Article 9 (commencing with Section 78575) of~~
2 ~~Chapter 3 of Part 2 of Division 45.~~

3 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site
4 in Orange County.

5 **Comment.** Section 25178 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 delete an obsolete cross-reference and make a technical change.

9 **Health & Safety Code § 25184.1 (amended). Application to collect administrative penalty**

10 SEC. __. Section 25184.1 of the Health and Safety Code is amended to read:

11 25184.1. If any administrative order or decision that imposes a penalty is issued
12 pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300), Part 2~~
13 ~~(commencing with Section 78000) of Division 45,~~ the administrative order or
14 decision has become final, and, if applicable, a petition for judicial review of the
15 final order or decision has not been filed within the time limits prescribed in Section
16 11523 of the Government Code, the department may apply to the clerk of the
17 appropriate court for a judgment to collect the administrative penalty. The
18 department's application, which shall include a certified copy of the final
19 administrative order or decision, constitutes a sufficient showing to warrant issuance
20 of the judgment. The court clerk shall enter the judgment immediately in conformity
21 with the application. The judgment so entered has the same force and effect as, and
22 is subject to all the provisions of law relating to, a judgment in a civil action, and
23 may be enforced in the same manner as any other judgment of the court in which it
24 is entered.

25 **Comment.** Section 25184.1 is amended to update a cross-reference in accordance with the
26 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
27 the Health and Safety Code.

28 **Health & Safety Code § 25186 (amended). Denial, suspension, or revocation of permit,**
29 **registration, or certificate**

30 SEC. __. Section 25186 of the Health and Safety Code is amended to read:

31 25186. The department may deny, suspend, or revoke any permit, registration, or
32 certificate applied for, or issued, pursuant to this chapter in accordance with the
33 procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder
34 of the permit, registration, or certificate, or in the case of a business concern, any
35 trustee, officer, director, partner, or any person holding more than 5 percent of the
36 equity in, or debt liability of, that business concern, has engaged in any of the
37 following:

38 (a) Any violation of, or noncompliance with, this chapter, Chapter 6.7
39 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~
40 ~~Part 2 (commencing with Section 78000) of Division 45,~~ the Porter-Cologne Water
41 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
42 Code), the Resource Conservation and Recovery Act of 1976, as amended, (42

1 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C.
2 Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation,
3 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances
4 Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state
5 statute or any requirement or regulation adopted pursuant thereto relating to the
6 generation, transportation, treatment, storage, recycling, disposal, or handling of a
7 hazardous waste, as defined in Section 25117, a hazardous substance, as defined in
8 ~~Section 25316~~, subdivision (a) of Section 78075, or a hazardous material, as defined
9 in Section 353 of the Vehicle Code, if the violation or noncompliance shows a
10 repeating or recurring pattern or may pose a threat to public health or safety or the
11 environment.

12 (b) The aiding, abetting, or permitting of any violation of, or noncompliance with,
13 this chapter, Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8~~
14 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
15 Division 45, the Porter-Cologne Water Quality Act (Division 7 (commencing with
16 Section 13000) of the Water Code), the Resource Conservation and Recovery Act
17 of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials
18 Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive
19 Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec.
20 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or
21 any other equivalent federal or state statute or any requirement or regulation adopted
22 pursuant thereto relating to the generation, transportation, treatment, storage,
23 recycling, disposal, or handling of a hazardous waste, as defined in Section 25117,
24 a hazardous substance, as defined in ~~Section 25316~~, subdivision (a) of Section
25 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if
26 the violation or noncompliance shows a repeating or recurring pattern or may pose
27 a threat to public health or safety or the environment.

28 (c) Any violation of, or noncompliance with, any order issued by a state or local
29 agency or by a hearing officer or a court relating to the generation, transportation,
30 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined
31 in Section 25117, a hazardous substance, as defined in ~~Section 25316~~, subdivision
32 (a) of Section 78075, or a hazardous material, as defined in Section 353 of the
33 Vehicle Code.

34 (d) Any misrepresentation or omission of a significant fact or other required
35 information in the application for the permit, registration, or certificate, or in
36 information subsequently reported to the department or to a local officer or agency
37 authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

38 (e)(1) Activities resulting in any federal or state conviction that are significantly
39 related to the fitness of the applicant or holder of the permit, registration, or
40 certificate to perform the applicant's duties or activities under the permit,
41 registration, or certificate.

42 (2) For the purposes of this paragraph, "conviction" means a plea or verdict of
43 guilty or a conviction following a plea of nolo contendere.

1 (3) An action that the department may take pursuant to this paragraph relating to
2 the denial, suspension, or revocation of a permit, registration, or certificate may be
3 based upon a conviction for which any of the following has occurred:

4 (A) The time for appeal has elapsed.

5 (B) The judgment of conviction has been affirmed on appeal.

6 (C) Any order granting probation is made suspending the imposition of sentence,
7 notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code
8 permitting that person to withdraw the person's plea of guilty, and to enter a plea of
9 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
10 information, or indictment.

11 (f) Activities resulting in the revocation or suspension of a license, permit,
12 registration, or certificate held by the applicant or holder of the permit, registration,
13 or certificate or, if the applicant or holder of the permit, registration, or certificate is
14 a business concern, by any trustee, officer, director, partner, or any person holding
15 more than 5 percent of the equity in, or debt liability of, that business concern
16 relating to, the generation, transportation, treatment, storage, recycling, disposal, or
17 handling of a hazardous waste, as defined in Section 25117, a hazardous substance,
18 as defined in ~~Section 25316~~, subdivision (a) of Section 78075, or a hazardous
19 material, as defined in Section 353 of the Vehicle Code.

20 **Comment.** Section 25186 is amended throughout to update cross-references in accordance with
21 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
22 of the Health and Safety Code.

23 **Health & Safety Code § 25187 (amended). Order requiring corrective action and imposing**
24 **penalties for violation**

25 SEC. __. Section 25187 of the Health and Safety Code is amended to read:

26 25187. (a)(1) The department or a unified program agency, in accordance with
27 subdivision (l), may issue an order requiring that the violation be corrected and
28 imposing an administrative penalty, for any violation of this chapter or any permit,
29 rule, regulation, standard, or requirement issued or adopted pursuant to this chapter,
30 whenever the department or unified program agency determines that a person has
31 violated, is in violation of, or threatens, as defined in subdivision (e) of Section
32 13304 of the Water Code, to violate, this chapter or ~~Chapter 6.8 (commencing with~~
33 ~~Section 25300)~~, Part 2 (commencing with Section 78000) of Division 45, or any
34 permit, rule, regulation, standard, or requirement issued or adopted pursuant to this
35 chapter or ~~Chapter 6.8 (commencing with Section 25300)~~. Part 2 (commencing with
36 Section 78000) of Division 45.

37 (2) In an order proposing a penalty pursuant to this section, the department or
38 unified program agency shall take into consideration the nature, circumstances,
39 extent, and gravity of the violation, the violator's past and present efforts to prevent,
40 abate, or clean up conditions posing a threat to the public health or safety or the
41 environment, the violator's ability to pay the proposed penalty, and the prophylactic

1 effect that the imposition of the proposed penalty would have on both the violator
2 and the regulated community as a whole.

3 (b) The department or a unified program agency, in accordance with subdivision
4 (I), may issue an order requiring corrective action whenever the department or
5 unified program agency determines that there is or has been a release, as defined in
6 ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section
7 78000) of Division 45, of hazardous waste or constituents into the environment from
8 a hazardous waste facility.

9 (1) In the case of a release of hazardous waste or constituents into the environment
10 from a hazardous waste facility that is required to obtain a permit pursuant to Article
11 9 (commencing with Section 25200), the department shall pursue the remedies
12 available under this chapter, including the issuance of an order for corrective action
13 pursuant to this section, before using the legal remedies available pursuant to
14 ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section
15 78000) of Division 45, except in any of the following circumstances:

16 (A) If the person who is responsible for the release voluntarily requests in writing
17 that the department issue an order to that person to take corrective action pursuant
18 to ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section
19 78000) of Division 45.

20 (B) If the person who is responsible for the release is unable to pay for the cost of
21 corrective action to address the release. For purposes of this subparagraph, the
22 inability of a person to pay for the cost of corrective action shall be determined in
23 accordance with the policies of the Environmental Protection Agency for the
24 implementation of Section 9605 of Title 42 of the United States Code.

25 (C) If the person responsible for the release is unwilling to perform corrective
26 action to address the release. For purposes of this subparagraph, the unwillingness
27 of a person to take corrective action shall be determined in accordance with the
28 policies of the Environmental Protection Agency for the implementation of Section
29 9605 of Title 42 of the United States Code.

30 (D) If the release is part of a regional or multisite groundwater contamination
31 problem that cannot, in its entirety, be addressed using the legal remedies available
32 pursuant to this chapter and for which other releases that are part of the regional or
33 multisite groundwater contamination problem are being addressed using the legal
34 remedies available pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~, Part
35 2 (commencing with Section 78000) of Division 45.

36 (E) If an order for corrective action has already been issued against the person
37 responsible for the release, or the department and the person responsible for the
38 release have, prior to January 1, 1996, entered into an agreement to address the
39 required cleanup of the release pursuant to ~~Chapter 6.8 (commencing with Section~~
40 ~~25300)~~, Part 2 (commencing with Section 78000) of Division 45.

41 (F) If the hazardous waste facility is owned or operated by the federal government.

1 (2) The order shall include a requirement that the person take corrective action
2 with respect to the release of hazardous waste or constituents, abate the effects
3 thereof, and take any other necessary remedial action.

4 (3) If the order requires corrective action at a hazardous waste facility, the order
5 shall require that corrective action be taken beyond the facility boundary, where
6 necessary to protect human health or the environment.

7 (4) The order shall incorporate, as a condition of the order, any applicable waste
8 discharge requirements issued by the State Water Resources Control Board or a
9 California regional water quality control board, and shall be consistent with all
10 applicable water quality control plans adopted pursuant to Section 13170 of the
11 Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of
12 Division 7 of the Water Code and state policies for water quality control adopted
13 pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7
14 of the Water Code existing at the time of the issuance of the order, to the extent that
15 the department or unified program agency determines that those plans and policies
16 are not less stringent than this chapter and regulations adopted pursuant to this
17 chapter. The order may include any more stringent requirement that the department
18 or unified program agency determines is necessary or appropriate to protect water
19 quality.

20 (5) Persons who are subject to an order pursuant to this subdivision include
21 present and prior owners, lessees, or operators of the property where the hazardous
22 waste is located, present or past generators, storers, treaters, transporters, disposers,
23 and handlers of hazardous waste, and persons who arrange, or have arranged, by
24 contract or other agreement, to store, treat, transport, dispose of, or otherwise handle
25 hazardous waste.

26 (6) For purposes of this subdivision, “hazardous waste facility” includes the entire
27 site that is under the control of an owner or operator engaged in the management of
28 hazardous waste.

29 (c) Any order issued pursuant to this section shall be served by personal service
30 or certified mail and shall inform the person so served of the right to a hearing. If
31 the unified program agency issues the order pursuant to this section, the order shall
32 state whether the hearing procedure specified in paragraph (2) of subdivision (f)
33 may be requested by the person receiving the order.

34 (d) Any person served with an order pursuant to this section who has been unable
35 to resolve any violation or deficiency on an informal basis with the department or
36 unified program agency may, within 15 days after service of the order, request a
37 hearing pursuant to subdivision (e) or (f) by filing with the department or unified
38 program agency a notice of defense. The notice shall be filed with the office that
39 issued the order. A notice of defense shall be deemed filed within the 15-day period
40 provided by this subdivision if it is postmarked within that 15-day period. If a notice
41 of defense is not filed within the time limits provided by this subdivision, the order
42 shall become final.

1 (e) Any hearing requested on an order issued by the department shall be conducted
2 within 90 days after receipt of the notice of defense by an administrative law judge
3 of the Office of Administrative Hearings of the Department of General Services in
4 accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of
5 Division 3 of Title 2 of the Government Code, and the department shall have all the
6 authority granted to an agency by those provisions.

7 (f) Except as provided in subparagraph (B) of paragraph (2), a person requesting
8 a hearing on an order issued by a unified program agency may select the hearing
9 process specified in either paragraph (1) or (2) in the notice of defense filed with the
10 unified program agency pursuant to subdivision (d). Within 90 days of receipt of
11 the notice of defense by the unified program agency, the hearing shall be conducted
12 using one of the following procedures:

13 (1) An administrative law judge of the Office of Administrative Hearings of the
14 Department of General Services shall conduct the hearing in accordance with
15 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of
16 the Government Code.

17 (2)(A) A hearing officer designated by the unified program agency shall conduct
18 the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of
19 Part 1 of Division 3 of Title 2 of the Government Code, and the unified program
20 agency shall have all the authority granted to an agency by those provisions. When
21 a hearing is conducted by a unified program agency pursuant to this paragraph, the
22 unified program agency shall, within 60 days of the hearing, issue a decision.

23 (B) A person requesting a hearing on an order issued by a unified program agency
24 may select the hearing process specified in this paragraph in a notice of defense filed
25 pursuant to subdivision (d) only if the unified program agency has, as of the date
26 the order is issued pursuant to subdivision (c), selected a designated hearing officer
27 and established a program for conducting a hearing in accordance with this
28 paragraph.

29 (g) The hearing decision issued pursuant to subdivision (f) is effective and final
30 upon issuance. Copies of the decision shall be served by personal service or by
31 certified mail upon the party served with the order and upon other persons who
32 appeared at the hearing and requested a copy.

33 (h) Any provision of an order issued under this section, except the imposition of
34 an administrative penalty, takes effect upon issuance by the department or unified
35 program agency if the department or unified program agency finds that the violation
36 or violations of law associated with that provision may pose an imminent and
37 substantial endangerment to the public health or safety or the environment, and a
38 request for a hearing shall not stay the effect of that provision of the order pending
39 a hearing decision. However, if the department or unified program agency
40 determines that any or all provisions of the order are so related that the public health
41 or safety or the environment can be protected only by immediate compliance with
42 the order as a whole, then the order as a whole, except the imposition of an
43 administrative penalty, takes effect upon issuance by the department or unified

1 program agency. A request for a hearing shall not stay the effect of the order as a
2 whole pending a hearing decision.

3 (i) A decision issued pursuant to this section may be reviewed by the court
4 pursuant to Section 11523 of the Government Code. In all proceedings pursuant to
5 this section, the court shall uphold the decision of the department or unified program
6 agency if the decision is based upon substantial evidence in the whole record. The
7 filing of a petition for writ of mandate shall not stay any action required pursuant to
8 this chapter or the accrual of any penalties assessed pursuant to this chapter. This
9 subdivision does not prohibit the court from granting any appropriate relief within
10 its jurisdiction.

11 (j)(1) All administrative penalties collected from actions brought by the
12 department pursuant to this section shall be placed in a separate subaccount in the
13 Toxic Substances Control Account and shall be available only for transfer to the
14 Site Remediation Account or the Expedited Site Remediation Trust Fund and for
15 expenditure by the department upon appropriation by the Legislature.

16 (2) The administrative penalties collected from an action brought by the
17 department pursuant to Sections 25214.3, 25214.22.1, and 25215.82, in accordance
18 with this section, shall be deposited in the Toxic Substances Control Account, for
19 expenditure by the department for implementation and enforcement activities, upon
20 appropriation by the Legislature, pursuant to Section 25173.6.

21 (k) All administrative penalties collected from an action brought by a unified
22 program agency pursuant to this section shall be paid to the unified program agency
23 that imposed the penalty, and shall be deposited into a special account that shall be
24 expended to fund the activities of the unified program agency in enforcing this
25 chapter pursuant to Section 25180.

26 (l) The authority granted under this section to a unified program agency is limited
27 to both of the following:

28 (1) The issuance of orders to impose penalties and to correct violations of the
29 requirements of this chapter and its implementing regulations, only when the
30 violations are violations of requirements applicable to hazardous waste generators
31 and persons operating pursuant to a permit-by-rule, conditional authorization, or
32 conditional exemption, when the violations occur at a unified program facility
33 within the jurisdiction of the CUPA.

34 (2) The issuance of orders to require corrective action when there has been a
35 release of hazardous waste or constituents only when the unified program agency is
36 authorized to do so pursuant to Section 25404.1.

37 (m) The CUPA shall annually submit a summary report to the department on the
38 status of orders issued by the unified program agencies under this section and
39 Section 25187.1.

40 (n) The CUPA shall consult with the district attorney for the county on the
41 development of policies to be followed in exercising the authority delegated
42 pursuant to this section and Section 25187.1, as they relate to the authority of unified
43 program agencies to issue orders.

1 (o) The CUPA shall arrange to have appropriate legal representation in
2 administrative hearings that are conducted by an administrative law judge of the
3 Office of Administrative Hearings of the Department of General Services, and when
4 a decision issued pursuant to this section is appealed to the superior court.

5 (p) The department may adopt regulations to implement this section and
6 paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of
7 unified program agencies to issue orders. The regulations shall include, but not be
8 limited to, all of the following requirements:

9 (1) Provisions to ensure coordinated and consistent application of this section and
10 Section 25187.1 when both the department and the unified program agency have
11 issued or will be issuing orders under one or both of these sections with regard to
12 the same facility.

13 (2) Provisions to ensure that the enforcement authority granted to the unified
14 program agencies will be exercised consistently throughout the state.

15 (3) Minimum training requirements for staff of the unified program agency
16 relative to this section and Section 25187.1.

17 (4) Procedures to be followed by the department to rescind the authority granted
18 to a unified program agency under this section and Section 25187.1, if the
19 department finds that the unified program agency is not exercising that authority in
20 a manner consistent with this chapter and Chapter 6.11 (commencing with Section
21 25404) and the regulations adopted pursuant thereto.

22 (q) Except for an enforcement action taken pursuant to this chapter or ~~Chapter 6.8~~
23 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
24 Division 45, this section does not otherwise affect the authority of a local agency to
25 take any action under any other law.

26 **Comment.** Subdivisions (a), (b), and (q) of Section 25187 are amended to update cross-
27 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
28 Section 25300) of Division 20 of the Health and Safety Code.

29 **Health & Safety Code § 25187.3 (amended). Corrective action cost estimate and financial**
30 **assurances**

31 SEC. __. Section 25187.3 of the Health and Safety Code is amended to read:

32 25187.3. (a) An owner or operator of a facility for which corrective action under
33 department oversight is required shall include a corrective action cost estimate in
34 any corrective measures study submitted to the department pursuant to an order
35 issued or agreement entered into pursuant to Section 25187 for a release, as defined
36 in ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section
37 78000) of Division 45, of hazardous waste, hazardous waste constituents, or
38 hazardous substances, as defined in ~~Chapter 6.8 (commencing with Section 25300)~~,
39 Part 2 (commencing with Section 78000) of Division 45, into the environment from
40 the facility.

41 (b) An owner or operator of a facility for which corrective action under
42 department oversight is required shall demonstrate financial assurances within 90

1 days of the department’s approval of a corrective action cost estimate as required
2 by subdivision (a), or by Section 25246.1, and shall maintain financial assurances
3 until the department determines that all required corrective actions are complete.

4 (c)(1) For purposes of subdivision (b), an owner or operator of a facility for which
5 corrective action under department oversight is required shall demonstrate and
6 maintain one or more of the financial assurance mechanisms set forth in
7 subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California
8 Code of Regulations.

9 (2)(A) As an alternative to the financial assurance requirement of paragraph (1),
10 an owner or operator of a facility for which corrective action under department
11 oversight is required may demonstrate and maintain financial assurances by means
12 of a financial assurance mechanism other than those described in paragraph (1), if
13 the alternative financial assurance mechanism has been submitted to, and approved
14 by, the department as being at least equivalent to the financial assurance
15 mechanisms described in paragraph (1).

16 (B) The department shall evaluate the equivalency of the proposed alternative
17 financial assurance mechanism principally in terms of the certainty of the
18 availability of funds for required corrective action activities and the amount of funds
19 that will be made available. The department shall require the owner or operator of
20 the facility to submit any information deemed necessary by the department to make
21 a determination regarding the equivalency of the proposed alternative financial
22 assurance mechanism.

23 (d) The department shall waive the financial assurances required by subdivision
24 (b) if the owner or operator of the facility is a federal or state governmental entity.

25 (e) An owner or operator may satisfy the requirements of this section by
26 demonstrating to the department that it has provided financial assurance for
27 corrective action to the State Water Resources Control Board or a California
28 regional water quality control board for the same release identified by the
29 department.

30 (f) For facilities for which sole jurisdiction has been granted pursuant to
31 subdivision (b) of Section 25204.6, the department shall not require additional
32 financial assurances unless it is the lead agency or is directed by the lead agency
33 that has sole jurisdiction pursuant to subdivision (b) of Section 25204.6. This section
34 does not alter the State Water Resources Control Board’s rules and regulations
35 regarding financial assurances.

36 **Comment.** Section 25187.3 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 **Health & Safety Code § 25189.1 (amended). Civil liability for costs or expenses incurred by**
40 **state or local agency**

41 SEC. __. Section 25189.1 of the Health and Safety Code is amended to read:

1 25189.1. (a) In addition to liability under any other provision of law, any person
2 who is liable for a civil penalty pursuant to subdivision (c) or (d) of Section 25189
3 or subdivision (c) of Section 25189.2, or is convicted pursuant to subdivision (b) of
4 Section 25189.5, is also civilly liable for all the costs or expenses which may be
5 incurred by the state, or by a local agency, in doing any of the following:

6 (1) Assess short-term or long-term injury to, degradation or destruction of, or any
7 loss of, any natural resource resulting from the disposal of the hazardous waste
8 which is the subject of the civil penalty or conviction.

9 (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource
10 injured, degraded, destroyed, or lost as a result of the disposal of the hazardous
11 waste which is the subject of the civil penalty or conviction.

12 (b) The liability imposed by subdivision (a) is separate and in addition to any civil
13 penalty imposed pursuant to subdivision (c) or (d) of Section 25189 or subdivision
14 (c) of Section 25189.2 or any fine imposed pursuant to subdivision (e) of Section
15 25189.5.

16 (c) Any funds collected pursuant to this section are in addition to any other funds
17 which may be collected pursuant to this chapter.

18 (d) A state or local agency may collect funds pursuant to this section prior to
19 carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

20 (e) An action brought pursuant to this section may be brought by the trustee of the
21 natural resources specified in ~~subdivision (e) of Section 25352~~. Section 79685. The
22 action may be prosecuted by the Attorney General or the district attorney. The action
23 may be prosecuted by the district attorney only after the trustee, in consultation with
24 the Office of the Attorney General, approves that prosecution in writing. The trustee
25 shall have 30 days to consider any requested action and approval shall be presumed
26 to have been granted if a written denial is not issued within 30 days. The trustee may
27 not unreasonably withhold approval.

28 (f) All funds collected pursuant to this section by the trustee of the natural
29 resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife
30 Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund
31 or in a special deposit trust fund.

32 **Comment.** Section 25189.1 is amended to update a cross-reference 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 § 25198.3 (amended). Cooperative agreements**

36 SEC. __. Section 25198.3 of the Health and Safety Code is amended to read:

37 25198.3. (a) The secretary may enter into any cooperative agreement which meets
38 the requirements of this article.

39 (b) Each cooperative agreement shall include, but shall not be limited to, all
40 requirements determined to be necessary to meet the requirements of subdivision
41 (e) to do all of the following:

1 (1) Protect water quality, as determined by the State Water Resources Control
2 Board or the appropriate California regional water quality control board.

3 (2) Protect air quality, as determined by the State Air Resources Board or the
4 appropriate air pollution control officer.

5 (3) Provide for proper management of hazardous materials and hazardous wastes,
6 as determined necessary by the Department of Toxic Substances Control.

7 (4) In making these determinations, the state agencies shall consider any
8 applicable federal environmental and public health and safety laws.

9 (c) A decision by the secretary whether to enter into a cooperative agreement shall
10 be based on a good faith determination concerning whether a proposed cooperative
11 agreement meets the requirements of this article. The secretary shall take this action
12 within 130 days of a written request by the tribe that the secretary approve a draft
13 cooperative agreement. At least 60 days prior to determining whether to enter into
14 a cooperative agreement, the secretary shall provide notice, and make available for
15 public review and comment, drafts of ~~his or her~~ the secretary's proposed action and
16 drafts of the findings and determinations that are required by this section. The
17 secretary shall hold a public hearing in the affected area on the proposed action
18 within the time period for taking that action, as specified in this section. Within 10
19 days after the close of the public review and comment period, the agencies shall
20 complete the determinations required by this section and the secretary shall issue a
21 final decision.

22 (d) The findings and determinations of the secretary and relevant agencies made
23 pursuant to this section shall explain material differences between state laws and
24 regulations and the proposed tribal or federal functionally equivalent provisions.
25 The findings and determinations do not need to explain each difference between the
26 state and tribal or federal requirements as long as they identify and evaluate whether
27 the material differences meet the requirements of this article, including, but not
28 limited to, providing at least as much protection for public health and safety and the
29 environment as would the state requirements.

30 (e) Any cooperative agreement executed pursuant to this article shall provide for
31 regulation of the hazardous waste facility through inclusion in the agreement of
32 design, permitting, construction, siting, operation, monitoring, inspection, closure,
33 postclosure, liability, enforcement, and other regulatory provisions applicable to a
34 hazardous waste facility, or which relate to any environmental consequences that
35 may be caused by facility construction or operation, that are functionally equivalent
36 to all of the following:

37 (1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5
38 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section
39 13370) of, Division 7 of the Water Code.

40 (2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with
41 Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of,
42 and Part 6 (commencing with Section 44300) of, Division 26.

1 (3) This chapter, Chapter 6.6 (commencing with Section 25249.5), ~~Chapter 6.8~~
2 ~~(commencing with Section 25300)~~, and Chapter 6.95 (commencing with Section
3 25500) ~~, of this division, and Part 2 (commencing with Section 78000) of Division~~
4 45.

5 (4) All regulations adopted pursuant to the statutes specified in this section.

6 (5) Any other provision of state environmental, public health, and safety laws and
7 regulations germane to the hazardous waste facility proposed by the tribe.

8 (f) The tribal organizational structures or other means of implementing the
9 requirements specified in subdivision (e) are not required to be the same as the state
10 organizational structures or means of implementing its system of regulation.

11 (g) Neither the approval of any cooperative agreement nor amendments to the
12 agreement, nor any determination of sufficiency provided in Section 25198.5, shall
13 constitute a “project” as defined in Section 21065 of the Public Resources Code and
14 shall not be subject to review pursuant to the California Environmental Quality Act
15 (Division 13 (commencing with Section 21000) of the Public Resources Code).

16 (h) Each cooperative agreement shall provide for the incorporation of the
17 standards and requirements germane to the protection of the environment, public
18 health, and safety listed in subdivision (e), as enacted, or as those provisions may
19 be amended after January 1, 1992, or after the effective date of any cooperative
20 agreement, if those standards and requirements meet both of the following
21 requirements:

22 (1) The standards and requirements do not discriminate against a tribe which has
23 executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or
24 not more stringent than, other rules applicable to other similar or analogous facilities
25 or operations outside Indian country.

26 (2) Adequate notice and opportunity for comment on the incorporation of new and
27 amended standards or requirements are provided to the tribe, facility owner, and
28 operator to facilitate any physical or operational changes in the facility in
29 accordance with state law.

30 **Comment.** Section 25198.3(e)(3) is amended to update a cross-reference 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 This section is also amended to eliminate gendered pronouns.

34 **Health & Safety Code § 25201.9 (amended). Agreement for consultative services**

35 SEC. __. Section 25201.9 of the Health and Safety Code is amended to read:

36 25201.9. (a) Upon the written request of any person, the department may enter
37 into an agreement with that person pursuant to which the department will perform
38 consultative services for the purpose of providing assistance to the person, or any
39 facility owned or operated by the person, in complying with this chapter, ~~Chapter~~
40 ~~6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
41 Division 45, and any regulations adopted pursuant to those provisions. The
42 agreement shall require the person to reimburse the department for its costs of

1 performing the consultative services pursuant to Article 9.2 (commencing with
2 Section 25206.1). The agreement may provide for some or all of the reimbursement
3 to be made in advance of the performance of the consultative services.

4 (b) The consultative services performed pursuant to subdivision (a) shall be over
5 and above the routine functions of the department, and may include, but need not
6 be limited to, onsite inspections, regulation and compliance training, and technical
7 consultation.

8 (c) Any reimbursement received for assistance in complying with this chapter
9 pursuant to this section shall be placed in the Hazardous Waste Control Account for
10 disbursement in accordance with Section 25174. Any reimbursement received for
11 assistance in complying with ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2
12 (commencing with Section 78000) of Division 45 shall be deposited in the Toxic
13 Substances Control Account for expenditure in accordance with Section 25173.6.

14 (d) The consultative services shall be provided subject to available staff and
15 resources as determined by the department, and may include, but need not be limited
16 to, onsite inspections, regulation and compliance training, and technical
17 consultation.

18 (e) In scheduling limited onsite inspections, priority shall be given to businesses
19 with fewer than 50 employees.

20 (f)(1) The staff of the department providing consultation pursuant to this section
21 shall not initiate an administrative or civil enforcement action, except as specified
22 in subdivision (g), for violations identified during a limited onsite inspection
23 conducted pursuant to an agreement at a facility which does not require a permit
24 pursuant to the federal act.

25 (2) The staff of the department shall require the owner or operator to correct any
26 identified deficiencies and violations in accordance with a schedule for compliance
27 or correction issued by the department.

28 (g) If class I violations, as defined in regulations adopted by the department, are
29 identified during a limited onsite inspection, or an owner or operator refuses or fails
30 to correct any deficiencies or violations within the timeframe specified in the
31 schedule for compliance or correction issued by the department pursuant to
32 subdivision (f), the department may undertake any further inspection, investigation,
33 or enforcement action authorized by law.

34 (h) The failure of the department to discover any particular deficiencies or
35 violations during a limited onsite inspection shall not preclude the department, or
36 any other agency, from undertaking a subsequent enforcement action to address any
37 deficiencies or violations should they be discovered at a later time.

38 (i) Nothing in this section is intended to limit the authority of the department to
39 refer criminal violations to the Attorney General, a district attorney, a county
40 counsel, or a city attorney.

41 (j) Other than as expressly provided in this section, nothing in this section is
42 intended to limit or restrict the authority of the department under any other provision
43 of this division.

1 (k) This section shall become operative only if the department adopts regulations
2 defining “class I violations.”

3 **Comment.** Section 25201.9 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 § 25205.2, as added by Section 50 of Chapter 73 of the Statutes of**
7 **2021 (amended). Facility fees**

8 SEC. __. Section 25205.2 of the Health and Safety Code, as added by Section 50
9 of Chapter 73 of the Statutes of 2021, is amended to read:

10 25205.2. (a)(1) Except as provided in subdivisions (h) and (k), and in accordance
11 with Section 43152.6 of the Revenue and Taxation Code, the operator of a facility
12 shall pay a facility fee for each reporting period, or any portion of a reporting period,
13 to the California Department of Tax and Fee Administration based on the size and
14 type of the facility, as specified in this section. The fee rate shall be the rate
15 established for the fiscal year in which the payment is due. On or before October 1
16 of each calendar year, the department shall notify the California Department of Tax
17 and Fee Administration of all known facility operators by facility type and size. The
18 department shall also notify the California Department of Tax and Fee
19 Administration of any operator who is issued a permit or grant of interim status
20 within 30 days from the date that a permit or grant of interim status is issued to the
21 operator.

22 (2) For the 2022–23 fiscal year, the fee rates established in this section shall apply.
23 Commencing July 1, 2023, the fee rates established pursuant to Section 25205.2.1
24 shall apply.

25 (b)(1) The base rate for the fee imposed by this section is ninety-four thousand
26 nine hundred ten dollars (\$94,910).

27 (2) Except as provided in subdivision (c), in computing the facility fees, all of the
28 following shall apply:

29 (A) The fee to be paid by a ministorage facility shall equal 25 percent of the base
30 facility rate.

31 (B) The fee to be paid by a small storage facility shall equal the base facility rate.

32 (C) The fee to be paid by a large storage facility shall equal twice the base facility
33 rate.

34 (D) The fee to be paid by a minitreatment facility shall equal 50 percent of the
35 base facility rate.

36 (E) The fee to be paid by a small treatment facility shall equal twice the base
37 facility rate.

38 (F) The fee to be paid by a large onsite treatment facility shall equal three times
39 the base facility rate.

40 (G) The fee to be paid by a large offsite treatment facility shall be three times the
41 base facility rate.

1 (H) The fee to be paid by a disposal facility shall equal 10 times the base facility
2 rate.

3 (c) The fee to be paid by a facility with a postclosure permit during the first five
4 years of the postclosure period shall be:

5 (1) Twenty-six thousand nine hundred eighty dollars (\$26,980) annually for a
6 small facility.

7 (2) Fifty-three thousand nine hundred sixty dollars (\$53,960) annually for a
8 medium facility.

9 (3) Eighty thousand nine hundred forty dollars (\$80,940) annually for a large
10 facility.

11 (d) The fee to be paid by a facility with a postclosure permit after the first five
12 years of the postclosure care period shall be:

13 (1) Fourteen thousand three hundred seventy-five dollars (\$14,375) annually for
14 a small facility.

15 (2) Twenty-eight thousand seven hundred fifty dollars (\$28,750) annually for a
16 medium facility.

17 (3) Forty-eight thousand five hundred fifty dollars (\$48,550) annually for a large
18 facility.

19 (e) If a facility falls into more than one category listed in either subdivision (b) or
20 (d), or any combination of categories, or if multiple operations under a single
21 hazardous waste facilities permit or grant of interim status fall into more than one
22 category listed in subdivision (b) or (d), or any combination of categories, the
23 facility operator shall pay only the rate for the facility category that is the highest
24 rate.

25 (f) Notwithstanding subdivision (b), the fee for a facility that has been issued a
26 standardized permit shall be as follows:

27 (1) The fee to be paid for a facility that has been issued a Series A standardized
28 permit shall be fifty-five thousand two hundred eighty dollars (\$55,280).

29 (2) The fee to be paid for a facility that has been issued a Series B standardized
30 permit shall be twenty-five thousand nine hundred ten dollars (\$25,910).

31 (3) Except as specified in paragraph (4), the fee to be paid for a facility that has
32 been issued a Series C standardized permit shall be twenty-one thousand seven
33 hundred sixty dollars (\$21,760).

34 (4) The fee for a facility that has been issued a Series C standardized permit is ten
35 thousand eight hundred eighty dollars (\$10,880) if the facility meets all of the
36 following conditions:

37 (A) The facility treats not more than 1,500 gallons of liquid hazardous waste and
38 not more than 3,000 pounds of solid hazardous waste in any calendar month.

39 (B) The total facility storage capacity does not exceed 15,000 gallons of liquid
40 hazardous waste and 30,000 pounds of solid hazardous waste.

41 (C) If the facility both treats and stores hazardous waste, the facility does not
42 exceed the volume limitations specified in subparagraphs (A) and (B) for each
43 individual activity.

1 (g) The California Department of Tax and Fee Administration shall deposit all
2 fees collected pursuant to this section into the Hazardous Waste Facilities Account
3 in the Hazardous Waste Control Account. The fees so deposited may be expended
4 by the department, upon appropriation by the Legislature, for the purposes specified
5 in Section 25174.01.

6 (h) Notwithstanding subdivision (a), a person who is issued a variance by the
7 department from the requirement of obtaining a hazardous waste facilities permit or
8 grant of interim status is not subject to the fee, for any reporting period following
9 the reporting period in which the variance was granted by the department.

10 (i) Operators subject to facility fee liability pursuant to this section shall pay the
11 following amounts:

12 (1) The operator shall pay the applicable facility fee for each reporting period in
13 which the facility actually engaged in the treatment, storage, or disposal of
14 hazardous waste.

15 (2) The operator shall pay the applicable facility fee for one additional reporting
16 period immediately following the final reporting period in which the facility actually
17 engaged in that treatment or storage. The facility's size for that additional reporting
18 period shall be deemed to be the largest size at which the facility has ever been
19 subject to the fee. If the department previously approved a unit or portion of the
20 facility for a variance, closure, or permit-by-rule, the facility's size for that reporting
21 period shall be deemed to be its largest size since the department granted the
22 approval.

23 (3) The operator of a disposal facility shall pay twice the applicable facility fee
24 for one additional reporting period immediately following the final reporting period
25 in which the facility actually engaged in disposal of hazardous waste.

26 (4) A facility shall not be deemed to have stopped treating, storing, or disposing
27 of hazardous waste unless it has actually ceased that activity and has notified the
28 department of its intent to close.

29 (j)(1) Except as provided in Section 25404.5, the owner or operator of a facility
30 or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee
31 to the California Department of Tax and Fee Administration per facility or
32 transportable treatment unit for each reporting period, or portion of a reporting
33 period. The fee for the 2022 reporting period shall be four thousand six hundred
34 dollars (\$4,600). The reporting period shall begin January 1 of each calendar year.
35 On or before January 31 of each calendar year, the department shall notify the
36 California Department of Tax and Fee Administration of all known owners or
37 operators operating pursuant to a permit-by-rule who are not exempted from this fee
38 pursuant to Section 25404.5. The department shall also notify the California
39 Department of Tax and Fee Administration of any owner or operator authorized to
40 operate pursuant to a permit-by-rule, who is not exempted from this fee pursuant to
41 Section 25404.5, within 60 days after the owner or operator is authorized.

42 (2) Except as provided in Section 25404.5, a generator operating under a grant of
43 conditional authorization pursuant to Section 25200.3 shall pay a fee to the

1 California Department of Tax and Fee Administration per facility for each reporting
2 period, or portion of a reporting period, unless the generator is subject to a fee under
3 a permit-by-rule. The fee for the 2022 reporting period shall be four thousand six
4 hundred dollars (\$4,600). The reporting period shall begin January 1 of each
5 calendar year. On or before January 31 of each calendar year, the department shall
6 notify the California Department of Tax and Fee Administration of all known
7 generators operating pursuant to a grant of conditional authorization under Section
8 25200.3 who are not exempted from this fee pursuant to Section 25404.5. The
9 department shall also notify the California Department of Tax and Fee
10 Administration of any generator authorized to operate under a grant of conditional
11 authorization, who is not exempted from this fee pursuant to Section 25404.5, within
12 60 days of the receipt of notification.

13 (3) Except as provided in Section 25404.5, the fee for a generator performing
14 treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or
15 (c) of Section 25201.5 for the 2022 reporting period shall be one hundred eighty
16 dollars (\$180) paid to the California Department of Tax and Fee Administration per
17 facility for each reporting period, unless that generator is subject to a fee under a
18 permit-by-rule or a conditional authorization pursuant to Section 25200.3. The
19 reporting period shall begin January 1 of each calendar year. On or before January
20 31 of each calendar year, the department shall notify the California Department of
21 Tax and Fee Administration of all known facilities performing treatment
22 conditionally exempted by Section 25144.6 or subdivision (a) or (c) of Section
23 25201.5 who are not exempted from this fee pursuant to Section 25404.5. The
24 department shall also notify the California Department of Tax and Fee
25 Administration of any generator who notifies the department that the generator is
26 conducting a conditionally exempt treatment operation, and who is not exempted
27 from this fee pursuant to Section 25404.5, within 60 days of the receipt of the
28 notification.

29 (k) A treatment facility is not subject to the facility fee established pursuant to this
30 section, if the facility engages in treatment exclusively to accomplish a removal or
31 remedial action or a corrective action in accordance with an order issued by the
32 United States Environmental Protection Agency pursuant to the federal act or in
33 accordance with an order issued by the department pursuant to Section 25187, or if
34 the removal or remedial action is carried out pursuant to a removal action work plan
35 or a remedial action plan prepared pursuant to ~~Section 25356.1~~ Article 12
36 (commencing with Section 79195) of Chapter 5 of Part 2 of Division 45 and is
37 authorized to operate pursuant to ~~Section 25358.9~~, Article 14 (commencing with
38 Section 79290) of Chapter 5 of Part 2 of Division 45, if the facility was put in
39 operation solely for purposes of complying with that order. The department shall
40 instead assess a fee for that facility for the actual time spent by the department for
41 the inspection and oversight of that facility. The department shall base the fee on
42 the department's work standards and shall assess the fee on an hourly basis.

1 (l) The fee imposed pursuant to this section shall be paid in accordance with Part
2 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation
3 Code.

4 (m) This section shall become operative on July 1, 2022, and shall apply to the
5 annual facility fees due for the 2022–23 fiscal year, and each fiscal year thereafter.

6 **Comment.** Section 25205.2(k) 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 This section is also amended to make a technical correction.

10 **Health & Safety Code § 25205.23 (amended). Settlement of fee disputes**

11 SEC. __. Section 25205.23 of the Health and Safety Code is amended to read:

12 25205.23. Notwithstanding Chapter 3 (commencing with Section 43151) of Part
13 22 of Division 2 of the Revenue and Taxation Code, at the request of any party
14 contesting any fee imposed pursuant to this chapter or ~~Chapter 6.8 (commencing~~
15 ~~with Section 25300)~~, Part 2 (commencing with Section 78000) of Division 45, the
16 department may hold an informal conference to attempt to settle the dispute. Upon
17 the payment of any sum agreed upon between the contesting party and the
18 department in settlement of the disputed fee liability, the liable person shall be
19 released from any further liability for payment of the disputed fee.

20 **Comment.** Section 25205.23 is amended to update a cross-reference 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 § 25207.12 (amended). Collection of banned, unregistered, or**
24 **outdated agricultural wastes**

25 SEC. __. Section 25207.12 of the Health and Safety Code is amended to read:

26 25207.12. (a) Any eligible participant who submits banned, unregistered, or
27 outdated agricultural wastes for collection in a program established pursuant to this
28 article is exempt from the fees and reimbursements required by Sections 25205.2,
29 25205.5, and 25205.7, with regard to the wastes submitted for collection.

30 (b) An eligible participant who submits banned, unregistered, or outdated
31 agricultural wastes for collection is exempt from the hazardous waste facilities
32 permit requirements of Section 25201 with regard to the management of the wastes
33 submitted for collection.

34 (c) A county operating a collection program in compliance with this article shall
35 not be held liable in any cost recovery action brought pursuant to Section ~~25360~~
36 79650 for any hazardous waste that has been properly handled and transported to an
37 authorized hazardous waste treatment or disposal facility, in compliance with this
38 chapter, at a location other than that of the collection program.

39 (d) This section shall become operative on January 1, 2022, and shall apply to the
40 fees due for the 2022 reporting period and thereafter, including the prepayments due
41 during the reporting period and the fee due and payable following the reporting
42 period.

1 **Comment.** Section 25207.12 is amended to update a cross-reference 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 a cross-reference 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 § 25214.8.11.2 (amended). Required manufacturer payments and**
15 **rules for Mercury Thermostat Program Collection Fund**

16 SEC. __. Section 25214.8.11.2 of the Health and Safety Code is amended to read:
17 25214.8.11.2. (a)(1)(A) On or before March 30, 2022, and on or before March 30
18 of each year thereafter until March 30, 2028, each manufacturer shall, in accordance
19 with this section, individually, or collectively with a group of manufacturers, do
20 both of the following:

21 (i) Pay to the department an aggregate total of four hundred thousand dollars
22 (\$400,000).

23 (ii) Pay to the qualified third party the amount required pursuant to the annual
24 payment schedule outlined in paragraph (1) of subdivision (e) and provide to the
25 department written notice of each payment.

26 (B) If March 30 falls on a Saturday or Sunday, a payment required pursuant to
27 subparagraph (A) shall be due on the following Monday.

28 (C) A late payment shall be subject to interest beginning April 1 at a rate of 10
29 percent per annum pursuant to subdivision (a) of Section ~~25360.4~~ 79655.

30 (2)(A) The total aggregate amount required to be paid to the department pursuant
31 to clause (i) of subparagraph (A) of paragraph (1) shall not exceed the department's
32 actual and reasonable regulatory costs to administer, implement, and enforce this
33 act.

34 (B) If the department's actual and reasonable costs to administer, implement, and
35 enforce this act exceed the amount specified in clause (i) of subparagraph (A) of
36 paragraph (1), the department may submit a report to the Legislature regarding the
37 insufficiency of the funds and seeking additional funds.

38 (3)(A) The department shall deposit all moneys paid by a manufacturer, or group
39 of manufacturers, to the department pursuant to clause (i) of subparagraph (A) of
40 paragraph (1) into the Mercury Thermostat Collection Program Fund, which is
41 hereby established.

1 (B) Upon appropriation by the Legislature, moneys in the Mercury Thermostat
2 Collection Program Fund shall be used only for the following purposes:

3 (i) The department's actual and reasonable regulatory costs in administering,
4 implementing, and enforcing this act.

5 (ii) Reimbursement of any loans made to the Mercury Thermostat Collection
6 Program Fund to finance the department's initial costs incurred to implement this
7 act.

8 (iii) The actual and reasonable regulatory costs incurred by any other agency
9 assisting the department in administering, implementing, and enforcing this act.

10 (C) Notwithstanding any other law, moneys in the Mercury Thermostat Collection
11 Program Fund shall not be loaned to, or borrowed by, any other special fund or the
12 General Fund.

13 (D) Moneys in the Mercury Thermostat Collection Program Fund shall not be
14 expended for any purpose not enumerated in this act.

15 (b)(1) A manufacturer may individually remit a payment required pursuant to
16 subparagraph (A) of paragraph (1) of subdivision (a), or a group of manufacturers
17 may remit a payment on behalf of a group of manufacturers. Manufacturers shall
18 apportion a payment or payments required pursuant to subparagraph (A) of
19 paragraph (1) of subdivision (a) among themselves in a fair and reasonable manner.

20 (2) If a payment required pursuant to subparagraph (A) of paragraph (1) of
21 subdivision (a) is made on behalf of a group of manufacturers, the names of the
22 manufacturers shall be included with the payment and in the written notice to the
23 department required pursuant to clause (ii) of subparagraph (A) of paragraph (1) of
24 subdivision (a) so the department can determine each manufacturer's compliance
25 with this act. If a manufacturer that is part of a group of manufacturers making a
26 payment required pursuant to subparagraph (A) of paragraph (1) of subdivision (a)
27 fails to make a payment, the group of manufacturers shall provide to the department
28 a written notice of the nonpaying manufacturer's identity and the apportioned
29 payment amount for which the nonpaying manufacturer is responsible.

30 (c) If a manufacturer fails to make a payment pursuant to subparagraph (A) of
31 paragraph (1) of subdivision (a) in accordance with this section, or pursuant to
32 subdivision (f), the manufacturer's thermostats shall be subject to a sales ban
33 pursuant to subdivision (b) of Section 25214.8.12.

34 (d)(1) The Legislature intends that, by making all payments required pursuant to
35 subparagraph (A) of paragraph (1) of subdivision (a) on or before March 30, 2022,
36 and on or before March 30 of each year thereafter until March 30, 2028, and all
37 payments required pursuant to subdivision (f) on or before January 1, 2023, and on
38 or before January 1 of each year thereafter until January 1, 2029, a manufacturer
39 shall be deemed to have satisfied, and will have discharged or be released from, any
40 liability, obligation, or violation established or alleged pursuant to this article,
41 including the regulations adopted by the department pursuant to former Section
42 25214.8.17, as it existed before January 1, 2022.

1 (2) If a manufacturer makes all payments required pursuant to subparagraph (A)
2 of paragraph (1) of subdivision (a) on or before March 30, 2022, and on or before
3 March 30 of each year thereafter until March 30, 2028, and all payments required
4 pursuant to subdivision (f) on or before January 1, 2023, and on or before January
5 1 of each year thereafter until January 1, 2029, any consent order, summary of
6 violation or violations, or other instrument or document, including, but not limited
7 to, the February 10, 2016, Consent Order entered into between the department and
8 25 mercury-added thermostat manufacturers pursuant to Section 25187 and former
9 Section 25214.8.17, establishing or alleging liability, obligations, or violations of
10 that manufacturer pursuant to this article, including the regulations adopted by the
11 department pursuant to former Section 25214.8.17, as it existed before January 1,
12 2022, shall be deemed stayed prior to the expiration of this act and deemed satisfied,
13 discharged, released, or terminated upon the expiration of this act.

14 (e)(1) A manufacturer, or group of manufacturers, shall do all of the following:

15 (A) Provide to the qualified third party two million dollars (\$2,000,000) in the
16 first program year to effectively and efficiently develop and implement the
17 education and outreach campaign required pursuant to subdivisions (c) to (f),
18 inclusive, of Section 25214.8.11.5.

19 (B) Provide to the qualified third party one million two hundred thousand dollars
20 (\$1,200,000) annually in each of the subsequent five program years to carry out the
21 education and outreach campaign required pursuant to subdivisions (c) to (f),
22 inclusive, of Section 25214.8.11.5.

23 (C) Provide to the qualified third party one million one hundred thousand dollars
24 (\$1,100,000) in the seventh program year to carry out the education and outreach
25 campaign required pursuant to subdivisions (c) to (f), inclusive, of Section
26 25214.8.11.5.

27 (D) Provide to the qualified third party an amount equal to the annual costs
28 estimated by the qualified third party to develop and implement the program
29 pursuant to this act.

30 (2) Any funds provided to the qualified third party pursuant to paragraph (1) that
31 are not expended by the qualified third party in the program year in which the funds
32 were received may be used by the qualified third party the following program year
33 for the education and outreach campaign required pursuant to subdivisions (c) to (f),
34 inclusive, of Section 25214.8.11.5.

35 (f) A manufacturer, or group of manufacturers, on or before January 1, 2023, and
36 on or before January 1 of each year thereafter until January 1, 2029, shall provide
37 to the qualified third party an amount equal to the actual costs incurred by the
38 qualified third party that exceed the amount provided to the qualified third party
39 pursuant to subparagraph (D) of paragraph (1) of subdivision (e).

40 **Comment.** Section 25214.8.11.2(a)(1)(C) is amended to update a cross-reference in accordance
41 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
42 Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 25215.1 (amended). Definitions**

2 SEC. __. Section 25215.1 of the Health and Safety Code is amended to read:

3 25215.1. For purposes of this article, the following definitions shall apply:

4 (a) “Board” means the California Department of Tax and Fee Administration.

5 (b) “Business” means any person, as defined in subdivision (k), except a natural
6 person or a city, county, city and county, district, commission, the state, or any
7 department, agency, or political subdivision of any of those, or an interstate body
8 or, to the extent permitted by law, the United States and its agencies and
9 instrumentalities.

10 (c) “California battery fee” means the fee imposed pursuant to Section 25215.25.

11 (d) “Dealer” means a person who engages in the retail sale of replacement lead-
12 acid batteries directly to persons in California. “Dealer” includes a manufacturer of
13 a new lead-acid battery that sells at retail that lead-acid battery directly to a person
14 through any means, including, but not limited to, a transaction conducted through a
15 sales outlet, catalog, or internet website or any other similar electronic means.

16 (e) “Importer” means a person described in paragraph (2) of subdivision (h).

17 (f) “Lead-acid battery” means a battery weighing over five kilograms that is
18 primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid,
19 solid, or gel state, with a capacity of six volts or more that is used for any of the
20 following purposes:

21 (1) As a starting battery that is designed to deliver a high burst of energy to an
22 internal combustion engine until it starts.

23 (2) As a motive power battery that is designed to provide the source of power for
24 propulsion or operation of a vehicle, including a watercraft.

25 (3) As a stationary storage or standby battery that is designed to be used in systems
26 where the battery acts as either electrical storage for electricity generation
27 equipment or a source of emergency power, or otherwise serves as a backup in case
28 of failure or interruption in the flow of power from the primary source.

29 (4) As a source of auxiliary power to support the electrical systems in a vehicle,
30 as defined in Section 670 of the Vehicle Code, including an implement of
31 husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft.

32 (g)(1) “Lead-acid battery recycling facility” means a site at which lead-acid
33 batteries are or have been disassembled for the purpose of making components
34 available for reclamation to produce elemental lead or lead alloys or at which lead-
35 acid batteries or their components, or both, are or have been reclaimed to produce
36 elemental lead or lead alloys.

37 (2) “Lead-acid battery recycling facility” does not include a facility designed and
38 operated for the primary purpose of recovering lead from materials other than used
39 lead-acid batteries or a facility that incidentally processes lead-acid batteries. The
40 processing of lead previously reclaimed from a lead-acid battery at a separate
41 facility or the incidental processing of lead-acid batteries shall not be sufficient to
42 establish that a facility is a lead-acid battery recycling facility.

43 (h) “Manufacturer” means either of the following:

1 (1) The person who manufactures the lead-acid battery and who sells, offers for
2 sale, or distributes the lead-acid battery in the state.

3 (2)(A) If there is no person described in paragraph (1) that is subject to the
4 jurisdiction of the state, the manufacturer is the person who imports the lead-acid
5 battery into the state for sale or distribution.

6 (B) For purposes of this article, a person is subject to the jurisdiction of the state
7 with respect to a lead-acid battery if the person is engaged in business in this state.
8 For purposes of this subparagraph, a person shall be considered to be engaged in
9 business in this state if the person is a “retailer engaged in business in this state,” as
10 defined in subdivision (c) of Section 6203 of the Revenue and Taxation Code, with
11 respect to that lead-acid battery, or if the person has a substantial nexus with this
12 state for purposes of the commerce clause of the United States Constitution.

13 (i) “Manufacturer battery fee” means the fee imposed pursuant to Section
14 25215.35.

15 (j) “Owner or operator” has the same meaning given in Section 9601(20) of Title
16 42 of the United States Code and any person that previously met that definition or
17 is the legal successor to a person that meets the definition or previously met the
18 definition.

19 (k) “Person” means an individual, trust, firm, joint stock company, business
20 concern, corporation, including, but not limited to, a government corporation,
21 partnership, limited liability company, or association. “Person” also includes any
22 city, county, city and county, district, commission, the state, or any department,
23 agency, or political subdivision of any of those, interstate body, and the United
24 States and its agencies and instrumentalities to the extent permitted by law.

25 (l) “Remedial action” has the same meaning as in Section ~~25322~~. 78125.

26 (m) “Removal” has the same meaning as in Section ~~25323~~. 78135.

27 (n) “Replacement lead-acid battery” means a new lead-acid battery that is sold at
28 retail subsequent to the original sale or lease of the equipment or vehicle in which
29 the lead-acid battery is intended to be used. “Replacement lead-acid battery” does
30 not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-
31 acid battery.

32 (o) “Response action” has the same meaning as in Section ~~25323.3~~. 78140.

33 (p)(1) A “retail sale” or a “sale at retail” has the same meaning as defined in
34 Section 6007 of the Revenue and Taxation Code.

35 (2) The following shall not be considered a “retail sale” or a “sale at retail” for
36 purposes of this article:

37 (A) The sale of a battery for which a California battery fee has previously been
38 paid.

39 (B) The sale of a replacement lead-acid battery that is temporarily stored or used
40 in California for the sole purpose of preparing the replacement lead-acid battery for
41 use thereafter solely outside of the state and that is subsequently transported outside
42 the state and thereafter used solely outside of the state.

1 (C) The sale of a battery for incorporation into new equipment for subsequent
2 resale.

3 (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle
4 service contract described under Section 12800 of the Insurance Code.

5 (E) The sale of any battery intended for use with or contained within a medical
6 device, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.
7 321(h)), as that definition may be amended.

8 (q) “Used lead-acid battery” means a lead-acid battery no longer fully capable of
9 providing the power for which it was designed or that a person no longer wants for
10 any other reason.

11 (r) “Wholesaler” means a person who purchases a lead-acid battery from a
12 manufacturer for the purpose of selling the lead-acid battery to a dealer, high-
13 volume customer, or person for incorporation into new equipment for resale.

14 **Comment.** Subdivisions (l), (m), and (o) of Section 25215.1 are amended to update cross-
15 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
16 Section 25300) of Division 20 of the Health and Safety Code.

17 **Health & Safety Code § 25215.56 (amended). Manufacturer battery fees**

18 SEC. __. Section 25215.56 of the Health and Safety Code is amended to read:

19 25215.56. (a) Any manufacturer battery fees remitted pursuant to this article shall,
20 subject to subdivision (b) of Section 25215.3, be credited to the account of the
21 manufacturer remitting those fees to the California Department of Tax and Fee
22 Administration and shall be credited against amounts owed by the manufacturer to
23 the state pursuant to a judgment or determination of liability under ~~Chapter 6.8~~
24 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
25 Division 45 or any other law for removal, remediation, or other response costs
26 relating to a release of a hazardous substance from a lead-acid battery recycling
27 facility. A manufacturer shall not seek more than one credit for the same fee amount.
28 This subdivision does not apply to any manufacturer who is also an owner or
29 operator of a lead-acid battery recycling facility in California.

30 (b) The amount paid by a manufacturer for a manufacturer battery fee shall be
31 considered to reduce the manufacturer’s share of liability in the allocation or
32 apportionment of costs among potentially responsible parties in a contribution
33 action brought by a private party related to a release of hazardous substances from
34 a lead-acid battery recycling facility. This subdivision does not apply to any
35 manufacturer who is also an owner or operator or a former owner or operator of a
36 lead-acid battery recycling facility in California where a release occurred.

37 (c) This article does not create a private cause of action. Nothing in this article
38 shall be construed to affect, expand, alter, or limit any requirements, duties, rights,
39 or remedies under other law, or limit the state or any other party from bringing any
40 cause of action that may exist under any law.

41 **Comment.** Section 25215.56 is amended to update a cross-reference 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 **Health & Safety Code § 25220 (amended). Recorded land use restriction**

2 SEC. __. Section 25220 of the Health and Safety Code is amended to read:

3 25220. (a) The department shall notify the planning and building department of
4 each city, county, or regional council of governments of any recorded land use
5 restriction imposed within the jurisdiction of the local agency pursuant to the former
6 Section 25229, 25230, or 25398.7, as those sections read prior to the effective date
7 of this article, or Section 25202.5, 25221, or ~~25355.5~~. 79055. Upon receiving this
8 notification, the planning and building department shall do both of the following:

9 (1) File all recorded land use restrictions in the property files of the city, county,
10 or regional council of government.

11 (2) Require that a person requesting a land use that differs from those filed land
12 use restrictions on the property apply to the department for a variance or a removal
13 of the land use restrictions pursuant to Section 25223 or 25224.

14 (b) A planning and building department of a city, county, or regional council of
15 governments may assess a property owner a reasonable fee to cover the costs of
16 taking the actions required by subdivision (a). For purposes of this subdivision,
17 “property owner” does not include a person who holds evidence of ownership solely
18 to protect a security interest in the property, unless the person participates, or has a
19 legal right to participate, in the management of the property.

20 (c) The department shall maintain a list of all recorded land use restrictions,
21 including deed restrictions, recorded pursuant to the former Sections 25229, 25230,
22 and 25398.7, as those sections read prior to the effective date of this article, and
23 Sections 25202.5, 25221, and ~~25355.5~~. 69055. The list shall, at a minimum, provide
24 the street address, or, if a street address is not available, an equivalent description
25 of location for a rural location or the latitude and longitude of each property. The
26 department shall update the list as new deed restrictions are recorded. The
27 department shall make the list available to the public, upon request, and shall make
28 the list available on the department’s ~~Internet Web site~~. internet website. The list
29 shall also be incorporated into the list of sites compiled pursuant to Section 65962.5
30 of the Government Code.

31 **Comment.** Section 25220 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 This section is also amended to make a technical change.

35 **Health & Safety Code § 25224 (amended). Application for removal of land use restriction**

36 SEC. __. Section 25224 of the Health and Safety Code is amended to read:

37 25224. (a) A person may apply to the department to remove a land use restriction
38 imposed by the department on the grounds that the waste no longer creates a
39 significant existing or potential hazard to present or future public health or safety.
40 A person shall not make a subsequent application pursuant to this section within 12
41 months of a final decision on an application by the department. A person applying
42 to the department pursuant to this section shall pay the department all costs incurred

1 by the department relating to the application. An application shall contain sufficient
2 evidence for the department to make a finding upon any or all of the following
3 grounds:

4 (1) The hazardous waste that caused the land to be restricted or designated has
5 since been removed or altered in a manner that precludes any significant existing or
6 potential hazard to present or future public health.

7 (2) New scientific evidence is available since the restriction or designation of the
8 land or the making of any previous application pursuant to this section, concerning
9 either of the following:

10 (A) The nature of the hazardous waste that caused the land to be designated.

11 (B) The geology or other physical environmental characteristics of the designated
12 land.

13 (b) An aggrieved person may appeal a determination of the department made
14 pursuant to subdivision (a) by submitting a request for a hearing to the director. The
15 request shall be mailed by certified mail not later than 30 days after the date of the
16 mailing of the department's decision on the application.

17 (c) Upon receipt of a timely appeal, the director shall give notice of a hearing
18 pursuant to the procedures set forth in this article.

19 (d) The department shall record within 10 days any new and final determination
20 made by the department pursuant to this section as provided in Section 25225.

21 (e) A determination made by the department, after a hearing held pursuant to this
22 section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil
23 Procedure and shall be upheld if the court finds that it is supported by substantial
24 evidence.

25 (f) Whenever there is a final determination pursuant to this section removing a
26 land use restriction, the easement, covenant, restriction, or servitude imposed on the
27 land created by Section 25221 or ~~25355.5~~ 79055 or the former Section 25222.1 or
28 25230 shall automatically terminate. The department shall record or cause to be
29 recorded within 10 days a termination of the easement, covenant, restriction, or
30 servitude, which shall particularly describe the real property subject to the easement,
31 covenant, restriction, or servitude and shall be indexed by the recorder in the grantee
32 index in the name of the record title owner of the real property subject to the
33 easement, covenant, restriction, or servitude and in the grantor index in the name of
34 the department.

35 **Comment.** Section 25224(f) is amended to update a cross-reference 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 **Health & Safety Code § 25225 (amended). Recordation of final written instrument**

39 SEC. __. Section 25225 of the Health and Safety Code is amended to read:

40 25225. The department shall record within 10 days any final written instrument
41 made pursuant to Section 25221 or 25224 with the county recorder of the county in
42 which the property is located. Any recordation made pursuant to this article or

1 Section 25202.5 or ~~25355.5~~ 79055 shall include the street address, assessor’s parcel
2 number, or legal description of each parcel affected and the name of the owner
3 thereof, and the recordation shall be recorded by the recorder in the grantor index in
4 the name of the record title owner of the real property and in the grantee index in
5 the name of the department.

6 **Comment.** Section 25225 is amended to update a cross-reference 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 § 25226 (amended). Assessment of land subject to land use restriction**

10 SEC. __. Section 25226 of the Health and Safety Code is amended to read:

11 25226. An assessor shall consider a restrictive easement, covenant, restriction, or
12 servitude adopted pursuant to the former Section 25230, as that section read prior
13 to the effective date of this article, or Section 25202.5, 25221, or ~~25355.5~~ 79055 as
14 an enforceable easement, covenant, restriction, or servitude subject to Section 402.1
15 of the Revenue and Taxation Code and shall appropriately reassess the land, those
16 of which has been restricted, at the lien date following the adoption or imposition
17 of the easement, covenant, restriction, or servitude.

18 **Comment.** Section 25226 is amended to update a cross-reference in accordance with the
19 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
20 the Health and Safety Code.

21 **Health & Safety Code § 25227 (amended). Prohibited activities on land subject to land use**
22 **restriction**

23 SEC. __. Section 25227 of the Health and Safety Code is amended to read:

24 25227. A person shall not engage in any of the following on land that is subject
25 to a recorded land use restriction pursuant to former Section 25229, 25230, or
26 25398.7, as those sections read on January 1, 2012, or pursuant to Section 25202.5,
27 25221, or ~~25355.5~~, 79055, unless the person obtains a specific approval in writing
28 from the department for the land use on the land in question:

29 (a) A new use of the land, other than the use, modification, or expansion of an
30 existing industrial or manufacturing facility or complex on land that is owned by, or
31 held for the beneficial use of, the facility or complex on or before January 1, 1981.

32 (b) Subdivision of the land, as that term is used in Division 2 (commencing with
33 Section 66410) of Title 7 of the Government Code, except that this subdivision does
34 not prevent the division of a parcel of land so as to divide that portion of the parcel
35 that contains hazardous materials, as defined in subdivision (d) of Section 25260,
36 from other portions of that parcel.

37 (c) Construction or placement of a building or structure on the land that is intended
38 for use as any of the following, or the new use of an existing structure for the purpose
39 of serving as any of the following:

40 (1)(A) Except as provided in subparagraph (B), a residence, including a
41 mobilehome or factory built housing constructed or installed for use as permanently
42 occupied human habitation.

1 (B) The addition of rooms or living space to an existing single-family dwelling or
2 other minor repairs or improvements to residential property that do not change the
3 use of the property, increase the population density, or impair the effectiveness of a
4 response action, shall not constitute construction or placement of a building or
5 structure for the purposes of subparagraph (A).

6 (2) A hospital for humans.

7 (3) A school for persons under 21 years of age.

8 (4) A day care center for children.

9 (5) A permanently occupied human habitation, other than those used for industrial
10 purposes.

11 **Comment.** Section 25227 is amended to update a cross-reference 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 § 25242 (amended). Unauthorized disposal of hazardous waste**

15 SEC. __. Section 25242 of the Health and Safety Code is amended to read:

16 25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee,
17 knows or has probable cause to believe that a disposal of hazardous waste which is
18 not authorized pursuant to this chapter has occurred on, under, or into the land which
19 the city, county, or state agency owns or leases shall notify the department. Upon
20 receiving that notice, the department shall determine if there has been a disposal of
21 hazardous waste which is not authorized pursuant to this chapter.

22 (b) If the department determines that there has been a disposal of hazardous waste
23 which is not authorized pursuant to this chapter, the department shall do all of the
24 following:

25 (1) Conduct, or arrange for the conducting of, tests to determine the general
26 chemical and mineral composition of the hazardous waste.

27 (2) Require the city, county, or state agency which submitted the notice pursuant
28 to subdivision (a) to prepare a hazardous waste management plan specifying those
29 removal or remedial actions, as defined in Sections ~~25322 and 25323~~, 78125 and
30 78135, which are needed to be taken concerning the hazardous waste. The
31 hazardous waste management plan shall provide for the protection of human health
32 and the environment and minimize or eliminate the escape of hazardous waste
33 constituents, leachate, contaminated rainfall, and waste decomposition products into
34 ground and surface waters and into the atmosphere.

35 (3) Send notice of the department's findings made pursuant to paragraph (1) to
36 the county in which the land is located, the city, if any, in which the land is located,
37 the owner of the property, and residents living within 2,000 feet of the property line
38 of the land on which the hazardous wastes were disposed. The department shall also
39 post signs in the vicinity of the land which contain this information and are visible
40 to the public. The department may also provide this notice to other persons, or post
41 these signs in any other area, to protect the public health and safety or to provide the
42 maximum opportunity for comment from the potentially affected public.

1 (4) Conduct public hearings on the proposed hazardous waste management plan
2 during those times and at those places which are convenient to the affected public.
3 These hearings shall be conducted even if the hazardous waste management plan
4 provides that no removal or remedial actions will be taken. The department shall
5 publish notice of these hearings in newspapers of general circulation, as defined in
6 Section 6000 of the Government Code, and shall use all other reasonable means to
7 publicize these hearings.

8 (5) Take all actions required by Section ~~25358.7~~ 78930 concerning any proposed
9 removal or remedial actions.

10 (6) Take any other actions authorized by this chapter or ~~Chapter 6.8 (commencing~~
11 ~~with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 to
12 carry out the legislative intent specified in Section 25242.1.

13 (c) The city, county, or state agency which is required to prepare a hazardous
14 waste management plan pursuant to paragraph (2) of subdivision (b) shall submit
15 the proposed hazardous waste management plan for approval to the department or
16 a California Regional Water Quality Control Board, whichever the department
17 determines is appropriate. A city or state agency shall submit the plan to the county
18 in which the land is located, and a county or state agency shall submit the plan to
19 the city, if any, in which the land is located, for comments and recommendations.
20 The city, county, or state agency shall also consider whether to incorporate any
21 changes in the plan which are recommended by the county, city, and the public.

22 **Comment.** Section 25242(b)(2), (b)(5), and (b)(6) are amended to update cross-references in
23 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
24 25300) of Division 20 of the Health and Safety Code.

25 **Health & Safety Code § 25246.1 (amended). Conditions requiring written cost estimate for**
26 **corrective action**

27 SEC. __. Section 25246.1 of the Health and Safety Code is amended to read:

28 25246.1. (a)(1) The department shall request, and an owner or operator of a
29 facility shall submit to the department for review and approval, a written cost
30 estimate for corrective action if all of the following are met:

31 (A) The department has identified a release or releases of a hazardous waste or
32 hazardous waste constituent into the environment from the facility.

33 (B) The source of the release or releases of a hazardous waste or hazardous waste
34 constituent is a hazardous waste facility, hazardous waste management unit, or an
35 activity regulated by the department under this chapter.

36 (C) The department determines that corrective action is necessary at the facility,
37 either during the active life of the facility or pursuant to an order or agreement for
38 corrective action.

39 (2) The written cost estimate for corrective action required by paragraph (1) shall
40 be based on available data, the history of releases, and facility activities.

41 (b)(1) Other than for an obligation for corrective action described in subdivision
42 (a), the department shall request, and an owner or operator of a facility or a

1 respondent or proponent required to conduct corrective action at a facility from
2 which releases that necessitate corrective action have occurred shall submit to the
3 department for review and approval, a written cost estimate to cover activities
4 associated with necessary corrective action if the department determines that
5 corrective action is necessary at any site undergoing a response action, as defined
6 in ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section
7 78000) of Division 45, overseen by the department pursuant to its authority in any
8 of the following circumstances:

9 (A) The department has issued an order, entered into an agreement, or otherwise
10 initiated action with respect to a release at the site, as defined in ~~Chapter 6.8~~
11 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
12 Division 45, pursuant to ~~Section 25355, 25355.5, or 25358.3~~. Article 1
13 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with
14 Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79005,
15 79055, 79060, or 79065.

16 (B) The source of the release or releases, as defined in ~~Chapter 6.8 (commencing~~
17 ~~with Section 25300)~~, Part 2 (commencing with Section 78000) of Division 45, is a
18 hazardous waste facility, hazardous waste management unit, or an activity regulated
19 by the department under this chapter.

20 (C) The department is conducting, or has conducted, oversight of the site
21 investigation and response action at the site at the request of the responsible party,
22 as defined in ~~Chapter 6.8 (commencing with Section 25300)~~. Part 2 (commencing
23 with Section 78000) of Division 45.

24 (2) The written cost estimate required pursuant to paragraph (1) shall be based on
25 available data, the history of releases, and activities at the site, as defined in ~~Chapter~~
26 ~~6.8 (commencing with Section 25300)~~. Part 2 (commencing with Section 78000) of
27 Division 45.

28 (c) An owner or operator may satisfy the requirements of this section by
29 demonstrating to the department that it has provided financial assurance for
30 corrective action to the State Water Resources Control Board or a California
31 regional water quality control board for the same release identified by the
32 department.

33 (d) For facilities for which sole jurisdiction has been granted pursuant to
34 subdivision (b) of Section 25204.6, the department shall not require additional
35 financial assurances unless it is the lead agency or is directed by the lead agency
36 that has sole jurisdiction pursuant to subdivision (b) of Section 25204.6. This section
37 does not alter the State Water Resources Control Board's rules and regulations
38 regarding financial assurances.

39 **Comment.** Section 25246.1 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 § 25246.2 (amended). Requirements for written cost estimate for**
2 **corrective action**

3 SEC. __. Section 25246.2 of the Health and Safety Code is amended to read:

4 25246.2. (a) All of the following requirements apply if a written cost estimate for
5 corrective action is required pursuant to Section 25246.1:

6 (1) A corrective action cost estimate shall be based on, and be no less stringent
7 than, the ASTM International Standard E2150.

8 (2)(A) An owner or operator of a facility requiring corrective action under
9 department oversight shall submit the corrective action cost estimate to the
10 department within 60 days of the department's request.

11 (B) If the department determines that the corrective action cost estimate is
12 substantially incomplete or includes substantially unsatisfactory information, the
13 department shall provide a written notice of deficiency to the owner or operator of
14 the hazardous waste facility or a respondent or proponent required to conduct
15 corrective action under department oversight at a facility within 60 days of receipt
16 of the corrective action cost estimate.

17 (C) The owner or operator of the hazardous waste facility or a respondent or
18 proponent required to conduct corrective action under department oversight at a
19 facility shall submit a revised corrective action cost estimate based on the
20 information provided in the written notice of deficiency within 30 days.

21 (D) The department shall approve or deny the revised corrective action cost
22 estimate within 30 days of receipt of the revised corrective action cost estimate.

23 (E) If the corrective action cost estimate does not address the information
24 provided in the written notice of deficiency, as determined by the department, the
25 department shall deny the revised corrective action cost estimate and shall, within
26 60 days of denial of the corrective action cost estimate, develop its own corrective
27 action cost estimate that will be the approved corrective action cost estimate for the
28 facility.

29 (3) Within 90 days of approval by the department of a corrective action cost
30 estimate, the owner or operator of a hazardous waste facility or a respondent or
31 proponent required to conduct corrective action under department oversight at a
32 facility shall fund the approved corrective action cost estimate or enter into a
33 schedule of compliance for assurances of financial responsibility for completing the
34 corrective action.

35 (4) If the owner or operator of a hazardous waste facility or a respondent or
36 proponent required to conduct corrective action under department oversight at a
37 facility is required to submit a financial assurance mechanism for corrective action,
38 the financial assurances shall be in the form of a trust fund, surety bond, letter or
39 credit, insurance, or any other mechanism authorized under the federal act and the
40 regulations adopted by the department for financial assurance mechanisms.

41 (5) The financial assurances for an owner or operator of a hazardous waste facility
42 or a respondent or proponent required to conduct corrective action under department
43 oversight at a facility that is required to submit a financial assurance mechanism for

1 corrective action shall be governed by ~~Section 25355.3~~, Article 11 (commencing
2 with Section 79180) of Chapter 5 of Part 2 of Division 45.

3 (b) The department may adopt, and revise, when appropriate, standards and
4 regulations to implement this section. Additionally, the department may adopt
5 emergency regulations in accordance with Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this
7 section. The adoption of these regulations shall be declared an emergency and
8 necessary for the immediate preservation of the public peace, health and safety, or
9 general welfare for purposes of Sections 11346.1 and 11349.6 of the Government
10 Code.

11 **Comment.** Section 25246.2(a)(5) is amended to update a cross-reference 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 § 25250.54 (amended). Extension of deadline**

15 SEC. __. Section 25250.54 of the Health and Safety Code is amended to read:

16 25250.54. (a)(1) On and after January 1, 2019, a manufacturer may apply to the
17 department for a one-year, two-year, or three-year extension of the January 1, 2025,
18 deadline established in Section 25250.53, except as provided in subdivision (h).

19 (2) An extension application submitted pursuant to this section shall be submitted
20 based on vehicle model, class, platform, or other vehicle-based category, and not on
21 the basis of the brake friction material formulation.

22 (3) The application shall be accompanied by documentation that will allow the
23 advisory committee to make a recommendation pursuant to subdivisions (e) and (f).

24 (4) The documentation shall include a scientifically sound quantitative estimate
25 of the quantity of copper that would be emitted if the extension is granted, including
26 a description of the assumptions used in arriving at that estimate.

27 (b) No more than 30 days after receipt of an application for an extension pursuant
28 to subdivision (a), the department shall do all of the following:

29 (1) Post a notice of receipt on the department's ~~Internet Web-site~~ internet website
30 that includes the vehicle model, class, platform, or other vehicle-based category,
31 whether the brake friction material is intended for use in original equipment or
32 replacement parts, and the quantity of copper that would be emitted if the extension
33 is granted.

34 (2) Consult with the board and the State Air Resources Board.

35 (3) Solicit comment from the public and from scientific and vehicle engineering
36 experts on the availability of generally affordable compliant brake friction materials,
37 their safety and performance characteristics, and the feasibility of brake pad copper
38 emissions reduction through means other than friction material reformulation.

39 (c)(1) In consultation with the board, the department shall determine if sufficient
40 documentation has been presented upon which to base a decision. If the department
41 determines that further documentation is needed, it shall deliver a detailed request
42 for further documentation to the applicant.

1 (2) Not later than 30 days after receipt of the application for an extension pursuant
2 to subdivision (a), the department shall forward the application to the advisory
3 committee for the purpose of the advisory committee making a recommendation
4 pursuant to subdivisions (e) and (f).

5 (d)(1) In considering any application for an extension, the advisory committee
6 shall consider all of the documentation supplied by the applicant pursuant to
7 subdivision (a).

8 (2) The advisory committee may request, no later than 75 days after receipt of the
9 application from the department pursuant to subdivision (c), further documentation
10 from the applicant.

11 (3) The advisory committee shall hold at least one public hearing at which it shall
12 accept and consider comments from the public on each category of application. The
13 advisory committee meetings shall be open to the public and are subject to the
14 Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of
15 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

16 (e)(1) The advisory committee shall recommend to the secretary that the extension
17 be approved if the advisory committee determines that there are no brake friction
18 materials that are safe and available for individual or multiple vehicle models,
19 classes, platforms, or other vehicle-based categories identified in the application.

20 (2) The advisory committee shall recommend to the secretary that the extension
21 not be approved if the advisory committee determines that alternative brake friction
22 materials are safe and available for individual or multiple vehicle models, classes,
23 platforms, or other vehicle-based categories identified in the application.

24 (3) For purposes of this section, “safe and available” shall mean all of the
25 following:

26 (A) The brake system for which the alternative brake friction material is
27 manufactured meets applicable federal safety standards, or if no federal standard
28 exists, a widely accepted safety standard.

29 (B) Acceptable alternative brake friction materials are commercially available for
30 the individual or multiple vehicles, classes, platforms, or vehicle-based categories
31 identified in the application.

32 (C) Adequate industry testing and production capacity exists to supply the
33 alternative brake friction materials for use on the individual or multiple vehicles,
34 classes, platforms, or vehicle-based categories identified in the application.

35 (D) The alternative brake friction material is technically feasible for use on the
36 individual or multiple vehicles, classes, platforms, or vehicle-based categories
37 identified in the application.

38 (E) The alternative brake friction materials meet customer performance
39 expectations, including noise, wear, vibration, and durability for the individual or
40 multiple vehicles, classes, platforms, or vehicle-based categories identified in the
41 application.

42 (F) The alternative acceptable brake friction material is economically feasible
43 with respect to the industry and the cost to the consumer for the individual or

1 multiple vehicles, classes, platforms, or vehicle-based categories identified in the
2 application.

3 (4) The advisory committee shall provide relevant data to the department and the
4 board concerning the potential impacts of the extension on California watersheds
5 for purposes of the report required pursuant to Section 25250.65.

6 (f)(1) No sooner than 60 days and no later than 120 days after the department
7 solicits comments pursuant to paragraph (3) of subdivision (b), the advisory
8 committee shall make a recommendation to the secretary in accordance with
9 subdivisions (d) and (e) as to whether the application for extension should be
10 approved or not approved.

11 (2) The recommendation of the advisory committee that the secretary approve or
12 not approve the application for extension shall be accompanied by documentation
13 of the basis for the recommendation.

14 (g)(1) The secretary shall make available the recommendation of the advisory
15 committee and the accompanying documentation for public review and comment
16 for 60 days following receipt of the recommendation from the advisory committee.

17 (2) The secretary shall consider public comments on the advisory committee's
18 recommendation and issue a final decision on the application for extension no later
19 than 45 days after the conclusion of the 60-day comment period.

20 (3) In making the determination whether to approve or disapprove the extension,
21 the secretary shall rely upon the recommendations made by the advisory committee
22 pursuant to subdivision (f).

23 (4) If the secretary does not follow the recommendation of the advisory committee
24 made pursuant to subdivision (f), ~~he or she~~ the secretary shall explain in writing the
25 basis of ~~his or her~~ the secretary's decision.

26 (h)(1) On or before December 31, 2029, a manufacturer with an approved
27 extension of the January 1, 2025, deadline established in Section 25250.53, may
28 reapply to the department for additional two-year extensions from the deadline in
29 accordance with a schedule that may be established by the department.

30 (2) Except as provided in subdivision (i), a manufacturer may not apply on or after
31 January 1, 2030, for an extension of the January 1, 2025, deadline established in
32 Section 25250.53.

33 (3) The department shall comply with all of the requirements of this section when
34 granting an additional extension of the January 1, 2025, deadline pursuant to this
35 subdivision.

36 (i)(1) On and after January 1, 2030, a manufacturer of vehicle brake friction
37 materials to be used on heavy-duty vehicles with an approved extension of the
38 January 1, 2025, deadline established in Section 25250.53, may reapply to the
39 department for additional two-year extensions from the deadline established in
40 Section 25250.53, that results in an extension of that deadline to a date on and after
41 January 1, 2032.

1 (2) The department shall comply with all of the requirements of this section when
2 granting an additional extension of the January 1, 2025, deadline pursuant to this
3 subdivision.

4 (j) The department shall assess a fee for each application for an extension
5 sufficient to cover actual costs incurred in implementing this section. The
6 department may expend the fees collected pursuant to this subdivision, upon
7 appropriation by the Legislature, for reimbursement for the costs incurred in
8 implementing this section.

9 (k) When granting an extension pursuant to this section, the department, board,
10 advisory committee, and secretary shall comply with the requirements of ~~Section~~
11 25358.2, Article 5 (commencing with Section 78480) of Chapter 3 of Part 2 of
12 Division 45, to ensure the protection of trade secrets, as defined in ~~Section 25358.2-~~
13 78480.

14 **Comment.** Section 25250.54(k) 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 eliminate gendered pronouns and make a technical change.

18 **Health & Safety Code § 25260 (amended). Definitions**

19 SEC. __. Section 25260 of the Health and Safety Code is amended to read:

20 25260. The definitions set forth in this section shall govern the interpretation of
21 this chapter. Unless the context requires otherwise and except as provided in this
22 chapter, the definitions contained in ~~Article 2 (commencing with Section 25310) of~~
23 Chapter 6.8 Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of
24 Division 45 shall apply to the terms used in this chapter.

25 (a) “Administering agency” means the agency designated by the committee
26 pursuant to Section 25262.

27 (b) “Advisory team” means the team convened by the committee pursuant to
28 Section 25263.

29 (c) “Agency” means any city, county, district, commission, the state, or any
30 department, agency, or political subdivision thereof, that has jurisdiction under a
31 state or local law, ordinance, or regulation to supervise, oversee, or approve a site
32 investigation and a remedial action at a hazardous materials release site.

33 (d) “Hazardous material” means a substance or waste that, because of its physical,
34 chemical, or other characteristics, may pose a risk of endangering human health or
35 safety or of degrading the environment. “Hazardous material” includes, but is not
36 limited to, all of the following:

37 (1) A hazardous substance, as defined in Section 25281 or ~~25316-~~ subdivision (a)
38 of Section 78075.

39 (2) A hazardous waste, as defined in Section 25117.

40 (3) A waste, as defined in Section 470 or as defined in Section 13050 of the Water
41 Code.

1 (e) “Hazardous materials release site” or “site” means any area, location, or
2 facility where a hazardous material has been released or threatens to be released into
3 the environment. “Hazardous materials release site” does not include a site subject
4 to a response and cleanup operation under Chapter 7.4 (commencing with Section
5 8670.1) of Division 1 of Title 2 of the Government Code or a corrective action under
6 Part 6 (commencing with Section 46000) of Division 30 of the Public Resources
7 Code.

8 (f) “Committee” means the Site Designation Committee created by Section
9 25261.

10 (g) “Remedial action” means actions required by state or local laws, ordinances,
11 or regulations that are necessary to prevent, minimize, or mitigate damage that may
12 otherwise result from a release or threatened release of a hazardous material, and
13 that are consistent with a permanent remedy for a hazardous materials release.
14 “Remedial action” includes, but is not limited to, the cleanup or removal of released
15 hazardous materials from the environment, monitoring, testing and analysis of the
16 site, site operation and maintenance, and the placing of conditions, limitations, or
17 restrictions on the uses of the site after remedial action has been completed.

18 (h) “Responsible party” means any person, except for an independent contractor,
19 who agrees to carry out a site investigation and remedial action at a hazardous
20 materials release site for one of the following reasons:

21 (1) The person is liable under a state or local law, ordinance, or regulation for the
22 site investigation or remedial action.

23 (2) The site investigation or remedial action is required by a state or local law,
24 ordinance, or regulation because of a hazardous materials release.

25 (i) “Site investigation” means those actions that are necessary to determine the
26 full extent of a release or threatened release of a hazardous material at a hazardous
27 materials release site, identify the public health and safety or environmental threat
28 posed by the release or threatened release, collect data on possible remedies, and
29 otherwise evaluate the hazardous materials release site for the purpose of
30 implementing remedial action.

31 **Comment.** Section 25260 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 **Health & Safety Code § 25262 (amended). Designation of administering agency for site**

35 SEC. __. Section 25262 of the Health and Safety Code is amended to read:

36 25262. (a) A responsible party for a hazardous materials release site may request
37 the committee at any time to designate an administering agency to oversee a site
38 investigation and remedial action at the site. The committee shall designate an
39 administering agency as responsible for the site within 45 days of the date the
40 request is received. A request to designate an administering agency may be denied
41 only if the committee makes one of the following findings:

1 (1) No single agency in state or local government has the expertise needed to
2 adequately oversee a site investigation and remedial action at the site.

3 (2) Designating an administering agency will have the effect of reversing a
4 regulatory or enforcement action initiated by an agency that has jurisdiction over
5 the site, a facility on the site, or an activity at the site.

6 (3) Designating an administering agency will prevent a regulatory or enforcement
7 action required by federal law or regulations.

8 (4) The administering agency and the responsible party are local agencies formed,
9 in whole or in part, by the same political subdivision.

10 (b) A responsible party who requests the designation of an administering agency
11 for a hazardous materials release site shall provide the committee with a brief
12 description of the site, an analysis of the known or suspected nature of the release
13 or threatened release that is the subject of required site investigation or remedial
14 action, a description of the type of facility from which the release occurred or the
15 type of activity that caused the release, a specification of the regulatory or
16 enforcement actions that have been taken, or are pending, with respect to the release,
17 and a statement of which agency the responsible party believes should be designated
18 as administering agency for the site.

19 (c)(1) The committee shall take all of the following factors into account in
20 determining which agency to designate as administering agency for a site:

21 (A) The type of release that is the subject of site investigation and remedial action.

22 (B) The nature of the threat that the release poses to human health and safety or
23 to the environment.

24 (C) The source of the release, the type of facility or activity from which the release
25 occurred, the regulatory programs that govern the facility or activity involved, and
26 the agency or agencies that administer those regulatory programs.

27 (D) The regulatory history of the site, the types of regulatory actions or
28 enforcement actions that have been taken with respect to the site or the facility or
29 activity from which the release occurred, and the experience and involvement that
30 various agencies have had with the site.

31 (E) The capabilities and expertise of the agencies that are candidates for
32 designation as the administering agency for the site and the degree to which those
33 capabilities and that expertise are applicable to the type of release at the site, the
34 nature of the threat that the release poses to health and safety or the environment
35 and the probable remedial measures that will be required.

36 (2) After weighing the factors described in paragraph (1) as they apply to the site,
37 the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D)
38 as guidelines for designating the administering agency. If more than one of the
39 criteria apply to the site, the committee shall use its best judgment, taking into
40 account the known facts concerning the hazardous materials release at the site and
41 its regulatory history, in determining which agency may best serve as the
42 administering agency. The criteria are as follows:

1 (A) The administering agency shall be the Department of Toxic Substances
2 Control if one of the following applies:

3 (i) The department has issued an order, or otherwise initiated action, with respect
4 to the release at the site pursuant to ~~Section 25355, 25355.5, or 25358.3~~. Article 1
5 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with
6 Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79055,
7 79060, or 79065.

8 (ii) The department has issued an order for corrective action at the site pursuant
9 to Section 25187.

10 (iii) The source of the release is a facility or hazardous waste management unit or
11 an activity that is, or was, regulated by the department pursuant to Chapter 6.5
12 (commencing with Section 25100).

13 (iv) The department is conducting, or has conducted, oversight of the site
14 investigation and remedial action at the site at the request of the responsible party.

15 (B) The administering agency shall be the California regional water quality
16 control board for the region in which the site is located, if one of the following
17 applies:

18 (i) The California regional water quality control board has issued a cease and
19 desist order pursuant to Section 13301, or a cleanup and abatement order pursuant
20 to Section 13304 of the Water Code in connection with the release at the site.

21 (ii) The source of the release is a facility or an activity that is subject to waste
22 discharge requirements issued by the California regional water quality control board
23 pursuant to Section 13263 of the Water Code or that is regulated by the California
24 regional water quality control board pursuant to Article 5.6 (commencing with
25 Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter
26 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

27 (iii) The California regional water quality control board has jurisdiction over the
28 site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the
29 Water Code.

30 (C) The administering agency shall be the Department of Fish and ~~Game~~ Wildlife
31 if the release has polluted or contaminated the waters of the state and the department
32 has taken action against the responsible party pursuant to Section 2014 or 12015 of,
33 or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6
34 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive
35 Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C.
36 Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33
37 U.S.C. Sec. 1321).

38 (D) The administering agency shall be a local agency if any one of the following
39 circumstances is applicable:

40 (i) The source of the release at the site is an underground storage tank, as defined
41 in subdivision (y) of Section 25281, the local agency is the agency described in
42 subdivision (i) of Section 25281, and there is no evidence of any extensive
43 groundwater contamination at the site.

1 (ii) The local agency has accepted responsibility for overseeing the site
2 investigation or remedial action at the site and a state agency is not involved.

3 (iii) The local agency has agreed to oversee the site investigation or remedial
4 action at the site and is certified, or has been approved, by a state agency to conduct
5 that oversight.

6 (d) A responsible party for a hazardous materials release site may request the
7 designation of an administering agency for the site pursuant to this section only
8 once. The action of the committee on the request is a final action and is not subject
9 to further administrative or judicial review.

10 **Comment.** Section 25262(c)(2)(A)(i) is amended to update cross-references in accordance with
11 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
12 of the Health and Safety Code.

13 This section is also amended to correct a reference to the “Department of Fish and Game” to
14 refer instead to the “Department of Fish and Wildlife.” See Fish and Game Code § 700.

15 **Health & Safety Code § 25269.2 (amended). Recovery of oversight costs**

16 SEC. __. Section 25269.2 of the Health and Safety Code is amended to read:

17 25269.2. (a) The department shall comply with this chapter when recovering
18 oversight costs for corrective action pursuant to Chapter 6.5 (commencing with
19 Section 25100), for removal or remedial action pursuant to ~~Chapter 6.8~~
20 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 78000) of
21 Division 45, and for response actions pursuant to former Chapter 6.85 (commencing
22 with Section 25396).

23 (b) The department shall develop a concise statement of its cost recovery policies
24 and billing procedures, including dispute resolution procedures and availability of
25 program guidance and policies, and distribute the statement to all responsible
26 parties.

27 **Comment.** Section 25269.2 is amended to update a cross-reference 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 § 25281 (amended). Definitions**

31 SEC. __. Section 25281 of the Health and Safety Code is amended to read:

32 25281. For purposes of this chapter and unless otherwise expressly provided, the
33 following definitions apply:

34 (a) “Automatic line leak detector” means any method of leak detection, as
35 determined in regulations adopted by the board, that alerts the owner or operator of
36 an underground storage tank to the presence of a leak. “Automatic line leak
37 detector” includes, but is not limited to, any device or mechanism that alerts the
38 owner or operator of an underground storage tank to the presence of a leak by
39 restricting or shutting off the flow of a hazardous substance through piping, or by
40 triggering an audible or visual alarm, and that detects leaks of three gallons or more
41 per hour at 10 pounds per square inch line pressure within one hour.

1 (b) “Board” means the State Water Resources Control Board. “Regional board”
2 means a California regional water quality control board.

3 (c) “Compatible” means the ability of two or more substances to maintain their
4 respective physical and chemical properties upon contact with one another for the
5 design life of the tank system under conditions likely to be encountered in the tank
6 system.

7 (d)(1) “Certified Unified Program Agency” or “CUPA” means the agency
8 certified by the Secretary for Environmental Protection to implement the unified
9 program specified in Chapter 6.11 (commencing with Section 25404) within a
10 jurisdiction.

11 (2) “Participating Agency” or “PA” means an agency that has a written agreement
12 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by
13 the secretary to implement or enforce the unified program element specified in
14 paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections
15 25404.1 and 25404.2.

16 (3) “Unified Program Agency” or “UPA” means the CUPA, or its participating
17 agencies to the extent each PA has been designated by the CUPA, pursuant to a
18 written agreement, to implement or enforce the unified program element specified
19 in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a
20 UPA has the responsibility and authority, to the extent provided by this chapter and
21 Sections 25404.1 to 25404.2, inclusive, to implement and enforce only those
22 requirements of this chapter listed in paragraph (3) of subdivision (c) of Section
23 25404 and the regulations adopted to implement those requirements. Except as
24 provided in Section 25296.09, after a CUPA has been certified by the secretary, the
25 UPA shall be the only local agency authorized to enforce the requirements of this
26 chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the
27 jurisdiction of the CUPA. This paragraph shall not be construed to limit the
28 authority or responsibility granted to the board and the regional boards by this
29 chapter to implement and enforce this chapter and the regulations adopted pursuant
30 to this chapter.

31 (e) “Department” means the Department of Toxic Substances Control.

32 (f) “Facility” means any one, or combination of, underground storage tanks used
33 by a single business entity at a single location or site.

34 (g) “Federal act” means Subchapter IX (commencing with Section 6991) of
35 Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and
36 Solid Waste Amendments of 1984 (Public Law 98-616), or as it may subsequently
37 be amended or supplemented.

38 (h) “Hazardous substance” means either of the following:

39 (1) All of the following liquid and solid substances, unless the department, in
40 consultation with the board, determines that the substance could not adversely affect
41 the quality of the waters of the state:

42 (A) Substances on the list prepared by the Director of Industrial Relations
43 pursuant to Section 6382 of the Labor Code.

1 (B) Hazardous substances, as defined in ~~Section 25316~~, subdivision (a) of Section
2 78075.

3 (C) Any substance or material that is classified by the National Fire Protection
4 Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class
5 III-A combustible liquid.

6 (2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title
7 42 of the United States Code, as that section reads on January 1, 2012, or as it may
8 subsequently be amended or supplemented.

9 (i) “Local agency” means one of the following, as specified in subdivision (b) of
10 Section 25283:

11 (1) The unified program agency.

12 (2) Before July 1, 2013, a city or county.

13 (3) On and after July 1, 2013, a city or county certified by the board to implement
14 the local oversight program pursuant to Section 25297.01.

15 (j) “Operator” means any person in control of, or having daily responsibility for,
16 the daily operation of an underground storage tank system.

17 (k) “Owner” means the owner of an underground storage tank.

18 (l) “Person” means an individual, trust, firm, joint stock company, corporation,
19 including a government corporation, partnership, limited liability company, or
20 association. “Person” also includes any city, county, district, the state, another state
21 of the United States, any department or agency of this state or another state, or the
22 United States to the extent authorized by federal law.

23 (m) “Pipe” means any pipeline or system of pipelines that is used in connection
24 with the storage of hazardous substances and that is not intended to transport
25 hazardous substances in interstate or intrastate commerce or to transfer hazardous
26 materials in bulk to or from a marine vessel.

27 (n) “Primary containment” means the first level of containment, such as the
28 portion of a tank that comes into immediate contact on its inner surface with the
29 hazardous substance being contained.

30 (o) “Product tight” means impervious to the substance that is contained, or is to
31 be contained, so as to prevent the seepage of the substance from the containment.

32 (p) “Release” means any spilling, leaking, emitting, discharging, escaping,
33 leaching, or disposing from an underground storage tank into or on the waters of the
34 state, the land, or the subsurface soils.

35 (q) “Secondary containment” means the level of containment external to, and
36 separate from, the primary containment.

37 (r) “Single walled” means construction with walls made of only one thickness of
38 material. For the purposes of this chapter, laminated, coated, or clad materials are
39 considered single walled.

40 (s) “Special inspector” means a professional engineer, registered pursuant to
41 Chapter 7 (commencing with Section 6700) of Division 3 of the Business and
42 Professions Code, who is qualified to attest, at a minimum, to structural soundness,
43 seismic safety, the compatibility of construction materials with contents, cathodic

1 protection, and the mechanical compatibility of the structural elements of
2 underground storage tanks.

3 (t)(1) “Storage” or “store” means the containment, handling, or treatment of
4 hazardous substances, either on a temporary basis or for a period of years.

5 (2) “Storage” or “store” does not include the storage of hazardous wastes in an
6 underground storage tank if the person operating the tank has been issued a
7 hazardous waste facilities permit by the department pursuant to Section 25200 or
8 25201.6 or granted interim status under Section 25200.5.

9 (3) “Storage” or “store” does not include the storage of hazardous wastes in an
10 underground storage tank if all of the following apply:

11 (A) The facility has been issued a unified program facility permit pursuant to
12 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous
13 waste in a tank.

14 (B) The tank is located in an underground area, as defined in Section 280.12 of
15 Title 40 of the Code of Federal Regulations.

16 (C) The tank is subject to Chapter 6.67 (commencing with Section 25270).

17 (D) The tank complies with the hazardous waste tank standards pursuant to Article
18 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California
19 Code of Regulations.

20 (4) “Storage” or “store” does not include the storage of hazardous wastes in an
21 underground storage tank if all of the following apply:

22 (A) The facility has been issued a unified program facility permit pursuant to
23 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous
24 waste in a tank.

25 (B) The tank is located in a structure that is at least 10 percent below the ground
26 surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.

27 (C) The structure in which the tank is located, at a minimum, provides for
28 secondary containment of the contents of the tank, piping, and ancillary equipment,
29 until cleanup occurs.

30 (D) The tank complies with the hazardous waste tank standards pursuant to Article
31 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California
32 Code of Regulations.

33 (u) “Tank” means a stationary device designed to contain an accumulation of
34 hazardous substances which is constructed primarily of nonearthen materials,
35 including, but not limited to, wood, concrete, steel, or plastic that provides structural
36 support.

37 (v) “Tank integrity test” means a test method capable of detecting an unauthorized
38 release from an underground storage tank consistent with the minimum standards
39 adopted by the board.

40 (w) “Tank tester” means an individual who performs tank integrity tests on
41 underground storage tanks.

1 (x) “Unauthorized release” means any release of any hazardous substance that
2 does not conform to this chapter, including an unauthorized release specified in
3 Section 25295.5.

4 (y)(1) “Underground storage tank” means any one or combination of tanks,
5 including pipes connected thereto, that is used for the storage of hazardous
6 substances and that is substantially or totally beneath the surface of the ground.
7 “Underground storage tank” does not include any of the following:

8 (A) A tank with a capacity of 1,100 gallons or less that is located on a farm and
9 that stores motor vehicle fuel used primarily for agricultural purposes and not for
10 resale.

11 (B) A tank that is located on a farm or at the residence of a person, that has a
12 capacity of 1,100 gallons or less, and that stores home heating oil for consumptive
13 use on the premises where stored.

14 (C) Structures, such as sumps, separators, storm drains, catch basins, oil field
15 gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars,
16 separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a
17 part of a monitoring system required under Section 25290.1, 25290.2, 25291, or
18 25292 and sumps or other structures defined as underground storage tanks under the
19 federal act are not exempted by this subparagraph.

20 (D) A tank holding hydraulic fluid for a closed loop mechanical system that uses
21 compressed air or hydraulic fluid to operate lifts, elevators, and other similar
22 devices.

23 (E) A tank in an underground area, as defined in Section 25270.2, and associated
24 piping, that is subject to Chapter 6.67 (commencing with Section 25270).

25 (2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be
26 regulated by the board and any regional board pursuant to the Porter-Cologne Water
27 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
28 Code) to ensure that they do not pose a threat to water quality.

29 (z) “Underground tank system” or “tank system” means an underground storage
30 tank, connected piping, ancillary equipment, and containment system, if any.

31 (aa)(1) “Unified program facility” means all contiguous land and structures, other
32 appurtenances, and improvements on the land that are subject to the requirements
33 of paragraph (3) of subdivision (c) of Section 25404.

34 (2) “Unified program facility permit” means a permit issued pursuant to Chapter
35 6.11 (commencing with Section 25404), and that encompasses the permitting
36 requirements of Section 25284.

37 (3) “Permit” means a permit issued pursuant to Section 25284 or a unified
38 program facility permit as defined in paragraph (2).

39 **Comment.** Section 25281(h)(1)(B) is amended to update a cross-reference 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 § 25297 (amended). Request by local agency for agency action**

2 SEC. __. Section 25297 of the Health and Safety Code is amended to read:

3 25297. The local agency may request the following agencies to utilize that
4 agency's authority to remedy the effects of, and remove, any hazardous substance
5 which has been released from an underground storage tank:

6 (a) The department which may take action pursuant to ~~Chapter 6.8 (commencing~~
7 ~~with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 and,
8 for this purpose, any unauthorized release shall be deemed a release as defined in
9 ~~Section 25320.~~ subdivision (a) of Section 78105.

10 (b) A regional water quality control board may take action pursuant to Division 7
11 (commencing with Section 13000) of the Water Code and, for this purpose, the
12 discharged hazardous substance shall be deemed a waste as defined in subdivision
13 (d) of Section 13050.

14 **Comment.** Section 25297 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 § 25297.01 (amended). Local oversight program**

18 SEC. __. Section 25297.01 of the Health and Safety Code is amended to read:

19 25297.01. (a) In addition to the authority granted to the board pursuant to Division
20 7 (commencing with Section 13000) of the Water Code and to the department
21 pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing
22 with Section 78000) of Division 45, the board, in cooperation with the department,
23 shall develop and implement a local oversight program for the abatement of, and
24 oversight of the abatement of, unauthorized releases of hazardous substances from
25 underground storage tanks by a local agency certified pursuant to this section.

26 (b) On and after July 1, 2013, only a city or county certified pursuant to
27 subdivision (c) may implement a local oversight program. The board may enter into
28 an agreement pursuant to Section 25297.1 with a certified city or county to
29 implement the oversight program.

30 (c) The board may certify a city or county if the board determines that the city or
31 county is qualified to oversee or perform the abatement of unauthorized releases of
32 hazardous substances from underground storage tanks. The board shall consider, as
33 criteria for determining whether a city or county is qualified, at a minimum, all of
34 the following factors:

35 (1) Adequacy of the technical expertise possessed by the city or county.

36 (2) Adequacy of staff resources.

37 (3) Adequacy of budget resources and funding mechanisms.

38 (4) Training requirements.

39 (5) Past performance in implementing and enforcing corrective action
40 requirements.

41 (6) Recordkeeping and accounting systems.

1 (d) The board shall adopt procedures and criteria for certifying and withdrawing
2 certification from cities and counties pursuant to this section. The adoption of these
3 procedures and criteria shall not be considered as regulations subject to, and shall
4 be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of
5 Division 3 of Title 2 of the Government Code.

6 (e) If the board does not, by July 1, 2013, certify a city or county that has been
7 implementing a local oversight program pursuant to an agreement entered into with
8 the board on or before January 1, 2013, the board shall assign the cases from that
9 city or county to the appropriate regional board or to a city or county that is certified
10 by the board. An order or directive issued by that uncertified city or county on or
11 before July 1, 2013, shall remain in effect and may be enforced by the regional board
12 or certified city or county that receives the case.

13 (f) The board shall review, at least once every three years, the ability of the
14 certified city or county to carry out the local oversight program. When conducting
15 this review, the board shall consider the certification criteria contained in paragraphs
16 (1) to (6), inclusive, of subdivision (c) and the criteria adopted pursuant to
17 subdivision (d). The board may, after conducting the review, withdraw the
18 certification of the city or county. Upon making this withdrawal, the cases of the
19 former certified city or county shall be transferred from the city or county and the
20 orders and directives issued by the former certified city or county shall remain
21 effective and enforceable in accordance with subdivision (e). The board shall not
22 make the effective date for the withdrawal of a certification before the expiration
23 date of the local oversight program agreement entered into between the board and
24 the certified city or county pursuant to Section 25297.1, unless the certified city or
25 county fails to comply with the agreement.

26 **Comment.** Section 25297.01(a) is amended to update a cross-reference 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 **Health & Safety Code § 25297.1 (amended). Agreement for implementation of local**
30 **oversight program**

31 SEC. __. Section 25297.1 of the Health and Safety Code is amended to read:

32 25297.1. (a)(1) For purposes of implementing, pursuant to Section 25297.01, the
33 local oversight program for the abatement of, and oversight of the abatement of,
34 unauthorized releases of hazardous substances from underground storage tanks, the
35 board may enter into in an agreement specified in subdivision (b) with the local
36 agency.

37 (2) A city or county that the board selected pursuant to this section, as it read on
38 January 1, 2012, which entered into an agreement with the board before July 1,
39 2013, may apply to the board for certification pursuant to Section 25297.01. The
40 city or county may continue to implement the oversight program until July 1, 2013,
41 and after that date the city or county shall either be certified or be subject to
42 subdivision (e) of Section 25297.01.

1 (3) On and after June 30, 2013, the board may enter into an agreement pursuant
2 to this section only with a city or county certified pursuant to Section 25297.01.

3 (b) In implementing the local oversight program for the abatement of, and
4 oversight of the abatement of, unauthorized releases of hazardous substances from
5 underground storage tanks, the board may select a local agency to enter into an
6 agreement with the board. When selecting a local agency, the board shall, from
7 among those local agencies that apply to the board, give first priority to those local
8 agencies that have demonstrated prior experience in cleanup, abatement, or other
9 actions necessary to remedy the effects of unauthorized releases of hazardous
10 substances from underground storage tanks. The board shall enter into an agreement
11 with only those local agencies that have implemented this chapter and that, except
12 as provided in Section 25404.5, have begun to collect and transmit to the board the
13 surcharge or fees pursuant to subdivision (b) of Section 25287. The agreement shall
14 provide for the local agency to perform, or cause to be performed, any cleanup,
15 abatement, or other action necessary to remedy the effects of a release of hazardous
16 substances from an underground storage tank with respect to which the local agency
17 has enforcement authority pursuant to this section. The board may not enter into an
18 agreement with a local agency for soil contamination cleanup or for groundwater
19 contamination cleanup unless the board determines that the local agency has a
20 demonstrated capability to oversee or perform the cleanup. The implementation of
21 the cleanup, abatement, or other action shall be consistent with procedures adopted
22 by the board pursuant to subdivision (d) and shall be based upon cleanup standards
23 specified by the board or regional board.

24 (c) The board shall provide funding to a local agency that enters into an agreement
25 pursuant to subdivision (b) for the reasonable costs incurred by the local agency in
26 overseeing any cleanup, abatement, or other action taken by a responsible party to
27 remedy the effects of unauthorized releases from underground storage tanks.

28 (d) The board shall adopt administrative and technical procedures, as part of the
29 state policy for water quality control adopted pursuant to Section 13140 of the Water
30 Code, for cleanup and abatement actions taken by a local agency with which the
31 board has entered into an agreement pursuant to this section. The procedures shall
32 include, but not be limited to, all of the following:

33 (1) Guidelines as to which sites may be assigned to the local agency.

34 (2) The content of the agreements.

35 (3) Procedures by which a responsible party may petition the board or a regional
36 board for review, pursuant to Article 2 (commencing with Section 13320) of
37 Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing
38 with Section 2250) of Division 3 of Title 23 of the California Code of Regulations,
39 or any successor regulation, as applicable, of actions or decisions of the local agency
40 in implementing the cleanup, abatement, or other action.

41 (4) Protocols for assessing and recovering money from responsible parties for any
42 reasonable and necessary costs incurred by the local agency in implementing this

1 section, as specified in subdivision (i), unless the cleanup or abatement action is
2 subject to subdivision (d) of Section 25296.10.

3 (5) Quantifiable measures to evaluate the outcome of a pilot program established
4 pursuant to this section.

5 (e) Any agreement between the regional board and a local agency to carry out a
6 local oversight program pursuant to this section shall require both of the following:

7 (1) The local agency shall establish and maintain accurate accounting records of
8 all costs it incurs pursuant to this section and shall periodically make these records
9 available to the board. The Controller may annually audit these records to verify the
10 hourly oversight costs charged by a local agency. The board shall reimburse the
11 Controller for the cost of the audits of a local agency's records conducted pursuant
12 to this section.

13 (2) The board and the department shall make reasonable efforts to recover costs
14 incurred pursuant to this section from responsible parties, and may pursue any
15 available legal remedy for this purpose.

16 (f) The board shall develop a system for maintaining a database for tracking
17 expenditures of funds pursuant to this section, and shall make this data available to
18 the Legislature upon request.

19 (g)(1) ~~Sections 25355.5 and 25356~~ Sections 78780 and 79055 do not apply to
20 expenditures from the Toxic Substances Control Account for oversight of abatement
21 of releases from underground storage tanks as part of the local oversight program
22 conducted pursuant to an agreement entered into pursuant to this section.

23 (2) A local agency that enters into an agreement pursuant to subdivision (b) shall
24 notify the responsible party, for any site subject to a cleanup, abatement, or other
25 action taken pursuant to the local oversight program established pursuant to this
26 section, that the responsible party is liable for not more than 150 percent of the total
27 amount of site-specific oversight costs actually incurred by the local agency.

28 (h) Any aggrieved person may petition the board or regional board for review of
29 the action or failure to act of a local agency that enters into an agreement pursuant
30 to subdivision (b), at a site subject to cleanup, abatement, or other action conducted
31 as part of the local oversight program established pursuant to this section, in
32 accordance with the procedures adopted by the board or regional board pursuant to
33 subdivision (d).

34 (i)(1) For purposes of this section, site-specific oversight costs include only the
35 costs of the following activities, when carried out by the staff of a local agency or
36 the local agency's authorized representative, that are either technical program staff
37 or their immediate supervisors:

38 (A) Responsible party identification and notification.

39 (B) Site visits.

40 (C) Sampling activities.

41 (D) Meetings with responsible parties or responsible party consultants.

42 (E) Meetings with the regional board or with other affected agencies regarding a
43 specific site.

1 (F) Review of reports, workplans, preliminary assessments, remedial action plans,
2 or postremedial monitoring.

3 (G) Development of enforcement actions against a responsible party.

4 (H) Issuance of a closure document.

5 (2) The responsible party is liable for the site-specific oversight costs, calculated
6 pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any
7 cleanup, abatement, or other action taken pursuant to an agreement entered into
8 pursuant to this section to remedy an unauthorized release from an underground
9 storage tank.

10 (3) Notwithstanding the requirements of any other law, the amount of liability of
11 a responsible party for the oversight costs incurred by the local agency and by the
12 board and regional boards in overseeing any action pursuant to an agreement entered
13 into pursuant to this section shall be calculated as an amount not more than 150
14 percent of the total amount of the site-specific oversight costs actually incurred by
15 the local agency and shall not include the direct or indirect costs incurred by the
16 board or regional boards.

17 (4)(A) The total amount of oversight costs for which a local agency may be
18 reimbursed shall not exceed one hundred fifteen dollars (\$115) per hour, multiplied
19 by the total number of site-specific hours performed by the local agency.

20 (B) The total amount of the costs per site for administration and technical
21 assistance to local agencies by the board and the regional board entering into
22 agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-
23 five dollars (\$35) for each hour of site-specific oversight. The board shall base its
24 costs on the total hours of site-specific oversight work performed by all participating
25 local agencies. The regional board shall base its costs on the total number of hours
26 of site-specific oversight costs attributable to the local agency that received regional
27 board assistance.

28 (C) The amounts specified in subparagraphs (A) and (B) are base rates for the
29 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter,
30 the board shall adjust the base rates annually to reflect increases or decreases in the
31 cost of living during the prior fiscal year, as measured by the implicit price deflator
32 for state and local government purchases of goods and services, as published by the
33 United States Department of Commerce or by a successor agency of the federal
34 government.

35 (5) In recovering costs from responsible parties for costs incurred under this
36 section, the local agency shall prorate any costs identifiable as startup costs over the
37 expected number of cases that the local agency will oversee during a 10-year period.
38 A responsible party who has been assessed startup costs for the cleanup of any
39 unauthorized release that, as of January 1, 1991, is the subject of oversight by a local
40 agency, shall receive an adjustment by the local agency in the form of a credit, for
41 the purposes of cost recovery. Startup costs include all of the following expenses:

42 (A) Small tools, safety clothing, cameras, sampling equipment, and other similar
43 articles necessary to investigate or document pollution.

1 (B) Office furniture.

2 (C) Staff assistance needed to develop computer tracking of financial and site-
3 specific records.

4 (D) Training and setup costs for the first six months of the local agency program.

5 (6) This subdivision does not apply to costs that are required to be recovered
6 pursuant to ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8.~~ Article 5
7 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

8 (j) The inoperation of former paragraph (1) of this subdivision does not affect the
9 validity of any action taken by the Santa Clara Valley Water District before June
10 30, 2005, and does not provide a defense for an owner, operator, or other responsible
11 party who fails to comply with that action.

12 (k) Notwithstanding subdivisions (a) and (b), any agreement entered into before
13 January 1, 2013, between a regional board and a water district to oversee,
14 coordinate, or implement a cooperative oversight program will remain in effect in
15 accordance with the terms of that agreement or the terms of that agreement as may
16 be amended from time to time.

17 **Comment.** Section 25297.1(g)(1) and (i)(6) are amended to update cross-references in
18 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
19 25300) of Division 20 of the Health and Safety Code.

20 **Health & Safety Code § 25299.5 (amended). Construction of chapter**

21 SEC. __. Section 25299.5 of the Health and Safety Code is amended to read:

22 25299.5. (a) This chapter shall be construed to assure consistency with the
23 requirements for state programs implementing the federal act.

24 (b) This chapter shall not be construed to limit or abridge the powers and duties
25 granted to the department by Chapter 6.5 (commencing with Section 25100) and
26 ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section
27 78000) of Division 45 or to the board and each regional board by Division 7
28 (commencing with Section 13000) of the Water Code.

29 **Comment.** Section 25299.5 is amended to update a cross-reference 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 § 25299.50.6 (amended). Site Cleanup Subaccount**

33 SEC. __. Section 25299.50.6 of the Health and Safety Code is amended to read:

34 25299.50.6. (a) The Site Cleanup Subaccount is hereby established in the State
35 Treasury. Moneys shall be deposited in the subaccount pursuant to subdivision (m)
36 of Section 25299.51.

37 (b) The board may expend the funds in the Site Cleanup Subaccount, upon
38 appropriation by the Legislature, for the following purposes:

39 (1) To pay for reasonable and necessary expenditures that the board, the
40 department, a regional board, a local agency, or a water replenishment district incurs
41 to investigate the source of surface or groundwater contamination.

1 (2)(A) To pay for reasonable and necessary expenditures to remediate the harm
2 or threat of harm to human health, safety, and the environment caused by existing
3 or threatened surface or groundwater contamination incurred by any of the
4 following:

5 (i) The board.

6 (ii) The department.

7 (iii) A regional board.

8 (iv) A local agency.

9 (v) A water replenishment district, under the direction of the board, a regional
10 board, a local agency, or another appropriate regulatory agency with authority over
11 surface or groundwater cleanup oversight.

12 (B) The board shall consider the following factors when approving expenditures
13 for specific locations:

14 (i) The degree to which human health, safety, and the environment are threatened
15 by contamination at the location.

16 (ii) Whether the location is located in a small or financially disadvantaged
17 community.

18 (iii) The cost and potential environmental benefit of the investigation or cleanup.

19 (iv) Whether there are other potential sources of funding for the investigation or
20 cleanup.

21 (v) Any other information the board identifies as necessary for consideration.

22 (3) To issue grants pursuant to this section for the reasonable and necessary costs
23 of actions to remediate the harm or threat of harm to human health, safety, and the
24 environment caused by existing or threatened surface or groundwater contamination
25 at a location if both of the following conditions are met:

26 (A) The board, the department, a regional board, local agency, unified program
27 agency, or a local officer requires the responsible parties to undertake or contract
28 for investigation or cleanup pursuant to an oral or written order, directive,
29 notification, or approval issued pursuant to Section 25187, 25187.1, 25296.10,
30 ~~25355.5, 25358.3, 78870, 79055~~, or 101480, or any section of the Water Code. The
31 board may waive this requirement if the board finds that it is infeasible for an order
32 to be issued before initiation of remediation.

33 (B) No responsible party has sufficient financial resources to pay for the required
34 response actions.

35 (4) For payments to the Attorney General by the board pursuant to subdivision
36 (g).

37 (c) At least annually, the board shall review grant applications and adopt a list of
38 applicants to be awarded grants pursuant to paragraph (3) of subdivision (b). In
39 addition to the conditions specified in paragraph (3) of subdivision (b), the board
40 shall consider all of the following factors when awarding grants:

41 (1) The degree to which human health, safety, and the environment are threatened
42 by surface water or groundwater contamination at the location.

1 (2) Whether the location is located in a small or financially disadvantaged
2 community.

3 (3) The cost and potential environmental benefit of the investigation or cleanup.

4 (4) Whether there are other potential sources of funding for the investigation or
5 cleanup.

6 (5) Any other information the board identifies as necessary for consideration.

7 (d)(1) The board shall specify the information that shall be included in a grant
8 application, consistent with this section, including, but not limited to, a provision
9 requiring the applicant to make a sworn verification of the information in the
10 application to the best of the applicant's knowledge.

11 (2) The board may adopt procedures to implement this section.

12 (3) The board shall post any procedures or information requirements adopted
13 pursuant to this section on its internet website.

14 (e)(1) The recipient of grant moneys shall expend those funds only for the
15 reasonable costs necessary to protect human health, safety, and the environment,
16 incurred on or after September 25, 2014.

17 (2) The board shall not issue a grant for any costs for which the applicant has
18 been, or will be, paid by another source.

19 (3) The board may terminate a grant and may bar the applicant from receiving any
20 future grants from the Site Cleanup Subaccount if the board finds that the applicant
21 has made a misrepresentation or false claim.

22 (f)(1) Any funds in the Site Cleanup Subaccount that are not expended in a fiscal
23 year shall remain in the subaccount until they are encumbered.

24 (2) Notwithstanding Section 16304.1 of the Government Code, the board shall
25 encumber the funds appropriated pursuant to this section within three years of the
26 appropriation and the board may make a disbursement in liquidation of an
27 encumbrance before or during the three years following the last day the
28 appropriation is available for encumbrance.

29 (3) Notwithstanding Section 16475 of the Government Code, any interest earned
30 upon the money in the Site Cleanup Subaccount shall be deposited in the Site
31 Cleanup Subaccount.

32 (g) The Attorney General may recover the actual, reasonable costs of investigation
33 or cleanup undertaken pursuant to this section in a civil action, upon request from
34 the board, from any responsible party. All money recovered by the Attorney General
35 pursuant to this section shall be deposited in the Site Cleanup Subaccount.

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

37 (1) "Local officer" has the meaning provided for in Section 101480.

38 (2) "Unified program agency" has the meaning provided for in Section 25404.

39 (3) "Water replenishment district" has the meaning provided for in Section 60012
40 of the Water Code.

41 **Comment.** Section 25299.50.6(b)(3)(A) is amended to update cross-references in accordance
42 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of
43 Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 25395.63 (amended). Application of definitions**

2 SEC. __. Section 25395.63 of the Health and Safety Code is amended to read:

3 25395.63. The definitions set forth in this article and in Article 6 (commencing
4 with Section 25395.90) shall govern the interpretation of this chapter. If a term is
5 not otherwise defined in this chapter, the definition contained in ~~Chapter 6.8~~
6 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
7 Division 45 shall apply to that term.

8 **Comment.** Section 25395.63 is amended to update a cross-reference in accordance with the
9 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
10 the Health and Safety Code.

11 **Health & Safety Code § 25395.66 (amended). “Applicable law”**

12 SEC. __. Section 25395.66 of the Health and Safety Code is amended to read:

13 25395.66. “Applicable law” means all of the provisions of the following state
14 statutory and common laws that impose liability on an owner or occupant of
15 property for pollution conditions caused by a release or threatened release of
16 hazardous material on, under, or adjacent to the property:

17 (a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section
18 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of
19 the Civil Code.

20 (b) Chapter 2 (commencing with Section 731) of Title 10 of Part 2 of the Code of
21 Civil Procedure, but not including Section 736 of the Code of Civil Procedure.

22 (c) Section 5650 of the Fish and Game Code.

23 (d) Chapter 6.7 (commencing with Section 25280); and Chapter 6.75
24 (commencing with Section 25299.10); and Chapter 6.8 (commencing with Section
25 25300), of this division. of this division, and Part 2 (commencing with Section
26 78000) of Division 45.

27 (e) Chapter 1 (commencing with Section 13000) to Chapter 5 (commencing with
28 Section 13300), inclusive, of Division 7 of the Water Code.

29 (f) State common law regarding contribution, nuisance, trespass, and equitable
30 indemnity.

31 **Comment.** Section 25395.66 is amended to update a cross-reference 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 **Health & Safety Code § 25395.79 (amended). “Release”**

35 SEC. __. Section 25395.79 of the Health and Safety Code is amended to read:

36 25395.79. “Release” has the same meaning as defined in ~~Section 25320.~~
37 subdivision (a) of Section 78105.

38 **Comment.** Section 25395.79 is amended to update a cross-reference 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.

1 **Health & Safety Code § 25395.79.2 (amended). “Site”**

2 SEC. __. Section 25395.79.2 of the Health and Safety Code is amended to read:
3 25395.79.2. (a) “Site” means real property located in an urban infill area for which
4 the expansion, redevelopment, or reuse may be complicated by the presence or
5 perceived presence of hazardous materials.

6 (b) “Site” does not include any of the following:

7 (1) A facility that is listed or proposed for listing on the National Priorities List
8 established under Section 105 of the Comprehensive Environmental Response,
9 Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

10 (2) A site on the list maintained by the department pursuant to ~~Section 25356.~~
11 Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45.

12 (3) A site that is solely impacted by a petroleum release from an underground
13 storage tank eligible for reimbursement from the California Underground Storage
14 Tank Cleanup Fund.

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

16 (1) “Infill area” means a vacant or underutilized lot of land within an urban area
17 that has been previously developed or that is surrounded by parcels that are or have
18 been previously developed.

19 (2) “Urban area” means either of the following:

20 (A) An incorporated city.

21 (B) An unincorporated area that is completely surrounded by one or more
22 incorporated cities that meets both of the following criteria:

23 (i) The population of the unincorporated area and the population of the
24 surrounding incorporated cities is equal to a population of 100,000 or more.

25 (ii) The population density of the unincorporated area is equal to, or greater than,
26 the population density of the surrounding cities.

27 **Comment.** Section 25395.79.2 is amended to update a cross-reference 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 § 25395.90 (amended). Definitions**

31 SEC. __. Section 25395.90 of the Health and Safety Code is amended to read:
32 25395.90. (a) Except as otherwise expressly provided in this article, the
33 definitions in Article 2 (commencing with Section 25395.63) apply to the terms used
34 in this article.

35 (b) “Action level” has the same meaning as defined in paragraph (1) of
36 subdivision (c) of Section 116455.

37 (c) “Host jurisdiction” means the city or county in which the site is located and
38 which has the authority to take action regarding the site pursuant to Title 7
39 (commencing with Section 65000) of the Government Code.

40 (d) “Unreasonable risk” at a site means that a condition at a site requires a
41 response action pursuant to ~~Chapter 6.8 (commencing with Section 25300) Part 2~~

1 (commencing with Section 78000) of Division 45 of this code or Division 7
2 (commencing with Section 13000) of the Water Code.

3 **Comment.** Section 25395.90 is amended to update a cross-reference 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 § 25395.92 (amended). Agreement for immunity**

7 SEC. __. Section 25395.92 of the Health and Safety Code is amended to read:

8 25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property
9 owner who seeks to qualify for the immunity provided by this chapter shall enter
10 into an agreement with an agency pursuant to this article that includes the
11 performance of a site assessment, and, if the agency determines that a response plan
12 is necessary pursuant to Section 25395.96, the preparation and implementation of a
13 response plan.

14 (b) Before finalizing the agreement, the requested agency shall notify other
15 appropriate agencies, including the host jurisdiction.

16 (c) A person who enters into an agreement with an agency pursuant to this section
17 shall submit sufficient information to the agency for the agency to determine
18 whether the site is an eligible site, whether the person meets the conditions to qualify
19 as a bona fide purchaser, innocent landowner, or contiguous property owner
20 pursuant to this chapter, and to prepare an agreement pursuant to this section.

21 (d)(1) A person who enters into an agreement pursuant to this section shall agree
22 to take all actions required for a response action pursuant to ~~Chapter 6.8~~
23 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
24 Division 45 and Division 7 (commencing with Section 13000) of the Water Code.
25 These actions may include actions necessary to prevent an unreasonable risk before
26 the approval of a response plan.

27 (2) In determining whether there is unreasonable risk at a site for purposes of this
28 subdivision, the agency shall take into account the intended use of the property, in
29 accordance with any changed use of the property, as specified in subdivision (d) of
30 Section 25395.96.

31 **Comment.** Section 25395.92 is amended to update a cross-reference 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 **Health & Safety Code § 25395.93 (amended). Withdrawal from agreement**

35 SEC. __. Section 25395.93 of the Health and Safety Code is amended to read:

36 25395.93. (a) A person may withdraw from an agreement entered into pursuant
37 to this article by providing a 30-day written notice to the agency and doing both of
38 the following:

39 (1) Reimbursing the agency for all costs incurred by the agency pursuant to the
40 agreement.

41 (2) Demonstrating to the satisfaction of the agency that conditions at the site to
42 which the agreement applies do not pose an endangerment to public health and

1 safety or the environment. If the agency determines that conditions at the site pose
2 an endangerment to public health, safety, or the environment, this article does not
3 prevent the agency from exercising its authority to take appropriate response actions
4 or to cause the person or persons responsible for the endangerment to take
5 appropriate response actions.

6 (b) A person who enters into an agreement with an agency pursuant to this article
7 shall reimburse the agency for all agency costs, including, but not limited to, costs
8 incurred while reviewing a site assessment plan or a response plan or overseeing the
9 implementation of a site assessment or response plan by the person pursuant to this
10 article, except that the department's costs shall be reimbursed pursuant to Chapter
11 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section
12 ~~25360. 79650.~~

13 (c) The entry into an agreement pursuant to this article shall not constitute an
14 admission of fact or liability or conclusion of law for any purpose or proceeding and
15 a person who enters into an agreement under this article shall not be deemed liable
16 under any other provision of law solely by reason of entering into that agreement.

17 (d) If the conditions described in paragraph (1) of subdivision (c) of Section
18 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw
19 from an agreement entered into pursuant to this chapter by providing a 30-day
20 written notice to the other party.

21 **Comment.** Section 25395.93 is amended to update a cross-reference 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 § 25395.94 (amended). Site assessment plan**

25 SEC. __. Section 25395.94 of the Health and Safety Code is amended to read:

26 25395.94. (a)(1) A person who enters into an agreement pursuant to this article
27 with an agency for the oversight of a site assessment shall submit a site assessment
28 plan to the agency to conduct a site assessment of the site in accordance with the
29 requirements of this section.

30 (2) If the agency requires a health risk assessment as part of that agreement, the
31 health assessment shall be prepared in accordance with ~~subdivisions (b), (c), and (d)~~
32 ~~of Section 25356.1.5. Sections 79265, 79270, and subdivision (a) of Section 79275.~~

33 (b) The site assessment plan shall provide for the evaluation of all of the
34 following:

35 (1) Whether a release of hazardous materials has occurred at the site, a threat of a
36 release of hazardous materials exists at the site, or there is a threat of a release of
37 hazardous materials from the site.

38 (2) If a release or threatened release of hazardous materials exists at the site or
39 there is a release or a threatened release from the site, whether the release or
40 threatened release poses an unreasonable risk to public health and safety or the
41 environment.

42 (c) The site assessment plan shall also include all of the following:

1 (1) Adequate characterization of the hazardous materials released or threatened to
2 be released at, or from, the site and documentation of the findings.

3 (2) Reasonably available information about the site, including, where appropriate,
4 a risk assessment that evaluates the risk posed by any hazardous materials released
5 or threatened to be released at, or from, the site, and information regarding
6 reasonably anticipated foreseeable uses of the site based on current and projected
7 land use and zoning designations.

8 (3) If the release has impacted groundwater, reasonable characterization of
9 underlying groundwater, including present and anticipated beneficial uses of that
10 water.

11 (d) A person shall submit the site assessment plan to the agency for review and
12 approval.

13 (e) The agency shall evaluate the adequacy of the site assessment plan to ensure
14 that it contains all necessary information.

15 (f) After evaluating the site assessment plan, if the agency finds that the site
16 assessment plan is adequate, the agency shall approve the site assessment plan and
17 provide notification to appropriate persons, including notification of any public
18 water system that relies on impacted groundwater for public drinking water
19 purposes.

20 **Comment.** Section 25395.94(a)(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 § 25395.101 (amended). Effect of article**

24 SEC. __. Section 25395.101 of the Health and Safety Code is amended to read:

25 25395.101. (a) Except as expressly provided in this article, this article does not
26 affect the authority of an agency to issue an order or take any other action under any
27 provision of law to protect public health and safety or the environment.

28 (b) Except as otherwise expressly provided in this article, this article does not
29 affect the authority of the agency or any other public agency to pursue any existing
30 legal, equitable, or administrative remedies pursuant to state or federal law.

31 (c) Except as otherwise expressly provided in this article, ~~Chapter 6.8~~
32 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of
33 Division 45 does not apply to this article.

34 (d) If a local agency determines that, due to an emergency, it is necessary to gain
35 access to a site that is the subject of a finding of no further action or a certificate of
36 completion, the person who has obtained immunity pursuant to this chapter with
37 regard to that site shall allow the local agency access to the site to take any action
38 necessary to mitigate that emergency, or take any other necessary response action.
39 However, that person shall not be required to pay for, or undertake, any of those
40 actions taken by or required by the local agency, unless the person caused or
41 contributed to the release at the site that constituted the emergency.

1 **Comment.** Section 25395.101 is amended to update a cross-reference 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 § 25395.104 (amended). Immunities for bona fide ground tenant**

5 SEC. __. Section 25395.104 of the Health and Safety Code is amended to read:

6 25395.104. (a) Except as otherwise provided in this section, a bona fide ground
7 tenant shall qualify for the following immunities:

8 (1) The bona fide ground tenant shall not be liable under any applicable statute
9 for a claim made by a person, other than an agency, for response costs or other relief
10 associated with a release or threatened release of a hazardous material at the site
11 once the bona fide ground tenant obtains a certification pursuant to subdivision (b)
12 or (c) that the immunity provided by this section has attached.

13 (2)(A) Except as provided in subparagraph (B), an agency shall not, subsequent
14 to the date of the agreement, take any action under any applicable statute to require
15 a bona fide ground tenant to take a response action on account of a release or
16 threatened release of a hazardous material at a site.

17 (B) The agency that entered into the agreement pursuant to this article may take
18 action under any applicable statute to enforce the conditions imposed on the bona
19 fide ground tenant pursuant to the agreement.

20 (b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a),
21 the immunity provided in this section shall attach to a bona fide ground tenant once
22 the agency certifies in writing that all of the following have occurred:

23 (1) A site assessment has been completed sufficient for the agency to determine
24 the remedial measures necessary to allow the site to be used for its intended purposes
25 without unreasonable risk to the human health and safety of the intended site
26 occupants.

27 (2) Except for site monitoring, reporting, institutional controls, operation and
28 maintenance activities, and other ongoing obligations of the bona fide ground
29 tenant, if any, the portion of the site investigation and the response plan necessary
30 to allow the site to be used for its intended purposes without unreasonable risk to
31 the human health and safety of the intended site occupants, including any
32 confirmation sampling required by the agency to confirm that this standard has been
33 met, has been implemented to the agency's satisfaction.

34 (3) To the extent required in the agreement entered into pursuant to this article,
35 all wells, piping, extraction systems, or similar materials or equipment required for
36 the conduct of remediation efforts to be performed by a person other than the bona
37 fide ground tenant have either been installed to the agency's satisfaction or have
38 been accounted for to the agency's satisfaction in site development plans and
39 specifications.

40 (4) If applicable, an instrument that restricts or imposes obligations on the present
41 of future uses or activities on the site has been executed and recorded pursuant to
42 Section 1471 of the Civil Code.

1 (c) A party to an agreement pursuant to this article may request the agency to issue
2 a written certification confirming that the conditions stated in subdivision (b) have
3 been met and that the immunity provided for in this section is in effect. The agency
4 shall provide this certification within 60 days of the date it finds that the conditions
5 stated in subdivision (b) have been met.

6 (d) The agency that issued a certification pursuant to subdivision (c) may
7 withdraw that certification if it first provides reasonable notice and opportunity for
8 the bona fide ground tenant to take action to prevent the withdrawal, and subsequent
9 to the notice and cure opportunity makes any of the following findings:

10 (1) A material deviation from those requirements applicable to the bona fide
11 ground tenant under the agreement entered into pursuant to this article that has not
12 been approved by the agency exists and continues to exist subsequent to the notice
13 and cure period.

14 (2) The bona fide ground tenant induced the agency to issue the certification by
15 fraud, or intentional nondisclosure or misrepresentation.

16 (e) Upon the agency's certification pursuant to subdivision (c), the immunity
17 provided in this section extends to all of the following:

18 (1) The bona fide ground tenant and any successor who demonstrates to the
19 agency that the person meets the qualifying conditions of subdivision (b) of Section
20 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who
21 assumes the bona fide ground tenant's obligations of any agreement entered into
22 pursuant to this article.

23 (2) A person who provides financing to a person specified in paragraph (1).

24 (f) The immunity provided in this section does not extend to, and may not be
25 transferred to, a person who was a responsible party, as that term is defined in
26 Section ~~25323.5~~ 78145 for the release at the site prior to acquiring an interest in the
27 site from the bona fide ground tenant or providing financing as specified in
28 paragraph (3) of subdivision (e).

29 (g) The immunity provided in this section shall be in addition to any other
30 immunity provided by law.

31 (h) This section shall not modify or limit the existing authority of a state or local
32 agency to impose a condition on the issuance of a discretionary permit relating to
33 the development, use, or occupancy of a site.

34 (i) This section shall not relieve a bona fide ground tenant from reporting,
35 disclosure, and notification requirements under any applicable statute.

36 (j) The entry into an agreement pursuant to this article shall not constitute an
37 admission of any fact or liability or conclusion of law for any purpose or proceeding
38 and a person who enters into an agreement under this article shall not be deemed
39 liable under any other provision of law solely by reason of entering into the
40 agreement.

41 (k) If the use of the property changes, after a response plan is approved, to a use
42 that requires a higher level of protection, the agency may require the preparation
43 and implementation of a new response plan pursuant to this article.

1 (l) A bona fide ground tenant that purchases a site subsequent to leasing, or taking
2 an easement in the site, may convert its status to that of a bona fide purchaser
3 pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground
4 tenant otherwise meets the requirements of Section 25395.69 and Article 6
5 (commencing with Section 25395.90). Upon the conversion, the bona fide ground
6 tenant shall qualify for any and all immunities available to a bona fide purchaser
7 under this chapter.

8 (m) If the response plan relies on the use of institutional or engineering controls
9 to make the site suitable for its intended purposes without unreasonable risk to the
10 human health and safety of the intended occupants of the site, the bona fide ground
11 tenant seeking immunity shall provide any applicable financial assurances, using
12 financial assurance guidelines and mechanisms approved by a board, department,
13 or organization of the California Environmental Protection Agency; periodic reports
14 as required by the agency to demonstrate that there remains no unreasonable risk to
15 the human health and safety of the intended occupants. The bona fide ground tenant
16 shall not make any change in use of the site that is inconsistent with any land use
17 control recorded for the site unless the change is approved by the agency pursuant
18 to Sections 25233 and 25234 or, in the case of the board or a regional board,
19 substantially similar procedures.

20 **Comment.** Section 25395.104(f) is amended to update a cross-reference 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 § 25395.117 (amended). Database and website requirements**

24 SEC. __. Section 25395.117 of the Health and Safety Code is amended to read:
25 25395.117. (a) On or before January 1, 2006, the agency and the California
26 Environmental Protection Agency shall implement the requirements imposed by
27 this section.

28 (b) The department shall revise and upgrade the department's database systems,
29 including the list of hazardous substances release sites adopted pursuant to ~~Section~~
30 ~~25356~~ Article 5 (commencing with Section 78000) of Chapter 4 of Part 2 of Division
31 45 and the information sent to the agency pursuant to Section 65962.5 of the
32 Government Code, to enable compatibility with existing databases of the board,
33 including the GIS mapping system established pursuant to Section 25299.97. The
34 department shall also install improvements to the database systems to maintain and
35 display information that includes the number of brownfield sites, each brownfield
36 site's location, acreage, response action, site assessments, and the number of orphan
37 sites where the department is overseeing the response action.

38 (c) The California Environmental Protection Agency, the department, the regional
39 boards, and the board shall expand their respective ~~Web sites~~ internet websites
40 to allow access to information about brownfield sites and other response action sites
41 through a single ~~Web site~~ internet website portal.

1 **Comment.** Section 25395.117 is amended to update a cross-reference 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 § 25400.12 (amended). Definitions for terms not defined by this**
5 **article**

6 SEC. __. Section 25400.12 of the Health and Safety Code is amended to read:
7 25400.12. Any term not defined expressly by this article shall have the same
8 meaning as defined in ~~Chapter 6.8 (commencing with Section 25300)~~. Part 2
9 (commencing with Section 78000) of Division 45.

10 **Comment.** Section 25400.12 is amended to update a cross-reference 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 § 25403 (amended). Definitions**

14 SEC. __. Section 25403 of the Health and Safety Code is amended to read:
15 25403. For purposes of this chapter, the following terms shall have the following
16 meanings:

17 (a) “Blighted area” means an area in which the local agency determines there are
18 vacancies, abandonment of property, or a reduction or lack of proper utilization of
19 property, and the presence or perceived presence of a release or releases of
20 hazardous material contributes to the vacancies, abandonment of property, or
21 reduction or lack of proper utilization of property.

22 (b) “Blighted property” means property with the presence or perceived presence
23 of a release or releases of hazardous material that contributes to the vacancies,
24 abandonment of property, or reduction or lack of proper utilization of property.

25 (c) “Clean up” or “cleanup” means an action taken to remove, as defined in
26 Section ~~25323, 78135~~, remediate, as described in subdivision (a) or (b) of Section
27 ~~25322, 78125~~, or otherwise abate the effects of a release of hazardous material.

28 (d) “Cleanup plan” means a document that details the actions to be taken to clean
29 up a release of a hazardous material.

30 (e) “CUPA” means the Certified Unified Program Agency certified to implement
31 the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

32 (f) “Department” means the Department of Toxic Substances Control.

33 (g) “Designated agency” means an agency designated by the local agency
34 pursuant to paragraph (1) or (2) of subdivision (e) of Section 25403.1.

35 (h) “Director” means the Director of Toxic Substances Control.

36 (i) “Hazardous material” has the same meaning as defined in subdivision (d) of
37 Section 25260.

38 (j) “Investigation” means an action taken to determine the source, nature, and
39 extent of a release of hazardous material with sufficient detail to provide a
40 reasonable basis for decisions regarding the cleanup of the hazardous material. An
41 investigation does not include a Phase I or Phase II environmental site assessment.

1 (k) “Investigation plan” means a document that specifies actions to be taken to
2 investigate a suspected release of hazardous material. An investigation plan does
3 not include a Phase I or Phase II environmental site assessment.

4 (l) “Local agency” means both of the following:

5 (1) A county, a city, or a city and county.

6 (2) A “housing authority,” as provided in Section 34240, if the housing authority
7 is an entity assuming the housing functions of a former redevelopment agency
8 pursuant to paragraph (2) of subdivision (a) of Section 34176 and the property
9 subject to this chapter was transferred from that successor agency to the housing
10 authority.

11 (m) “Person” means an individual, trust, firm, joint stock company, business
12 concern, partnership, limited liability company, association, and corporation,
13 including, but not limited to, a government corporation. “Person” also includes any
14 local agency, county, district, commission, the state or any department, agency, or
15 political subdivision thereof, any interstate body, and the federal government or any
16 department or agency thereof to the extent permitted by law.

17 (n) “Phase I environmental assessment” means a preliminary assessment of a
18 property to determine whether there has been, or may have been, a release of
19 hazardous material based on reasonable available information about the property
20 and general vicinity. A Phase I environmental assessment shall meet the most
21 current requirements adopted by the American Society for Testing and Materials
22 (ASTM) for Standard Practice for Environmental Site Assessment: Phase I
23 Environmental Site Assessment Process or meet the requirements of Part 312
24 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations.

25 (o) “Phase II environmental assessment” means an intrusive study where actual
26 physical environmental samples are collected and analyzed to characterize the type
27 and distribution of hazardous material in the environment. A phase II environmental
28 assessment shall meet the most current requirements adopted by the American
29 Society for Testing and Materials (ASTM) for Standard Practice for Environmental
30 Site Assessments: Phase II Environmental Site Assessment Process.

31 (p) “Qualified independent contractor” means an independent contractor who is
32 any of the following:

33 (1) An engineering geologist who is certified pursuant to Section 7842 of the
34 Business and Professions Code.

35 (2) A geologist who is registered pursuant to Section 7850 of the Business and
36 Professions Code.

37 (3) A civil engineer who is registered pursuant to Section 6762 of the Business
38 and Professions Code.

39 (q) “Regional board” means a California regional water quality control board.

40 (r) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,
41 discharging, injecting, escaping, leaching, dumping, or disposing into the
42 environment on blighted property.

1 (s) “Responsible party” means a person described in subdivision (a) of Section
2 ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

3 (t) “Site designation committee” means the committee established pursuant to
4 Section 25261.

5 (u) “State board” means the State Water Resources Control Board.

6 **Comment.** Subdivisions (c) and (s) of Section 25403 are amended to update cross-references in
7 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
8 25300) of Division 20 of the Health and Safety Code.

9 **Health & Safety Code § 25403.1 (amended). Local agency action to address release affecting**
10 **blighted property**

11 SEC. __. Section 25403.1 of the Health and Safety Code is amended to read:

12 25403.1. (a)(1)(A) A local agency may, in accordance with this chapter, take any
13 action that the local agency determines is necessary and that is consistent with other
14 state and federal laws to investigate or clean up a release on, under, or from blighted
15 property that the local agency has found to be within a blighted area within the local
16 agency’s boundaries due to the presence of hazardous materials following a Phase I
17 or Phase II environmental assessment pursuant to subdivision (f), whether the local
18 agency owns that property or not. When taking action pursuant to this chapter, if the
19 local agency does not own property that is the subject of the investigation and
20 cleanup activities, the local agency has the right to enter that property, if, upon
21 providing notice to the owner of that property in accordance with subparagraph (A)
22 of paragraph (2) of subdivision (b), the owner of the property does not respond to
23 the notice or the local agency reasonably deems the response inadequate.

24 (B) The local agency shall contact the department or the appropriate regional
25 board prior to issuing a notice pursuant to paragraph (2) of subdivision (b) in
26 connection with a property on the National Priority List or a property or release
27 subject to any of the following:

28 (i) Chapter 6.5 (commencing with Section 25100).

29 (ii) A Cease and Desist Order issued under Section 13301 of the Water Code.

30 (iii) A Cleanup and Abatement Order issued under Section 13304 of the Water
31 Code.

32 (iv) An existing voluntary cleanup agreement between the regional board or the
33 department and a responsible party that requires a cleanup by a specified date.

34 (v) An order issued by a regional board pursuant to Section 13267 of the Water
35 Code, or an agreement entered into by the department pursuant to Article 1
36 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section
37 25187, ~~25355.5, or 25358.3~~, 78870, or 79055, for the investigation or cleanup at a
38 site.

39 (vi) A remedial action order, an imminent or substantial endangerment order or
40 agreement, a prospective purchase agreement, or an order on consent issued
41 pursuant to Section ~~25355.5, 25356.1.3, or 25358.3~~, 78660, 78870, 79020, or 79055,
42 as applicable.

1 (vii) An expedited remediation order issued pursuant to the former Chapter 6.86
2 (commencing with Section 25396), as that chapter read on January 1, 2012.

3 (viii) An agreement entered into pursuant to the California Land Reuse and
4 Revitalization Act (Chapter 6.82 (commencing with Section 25395.60)), as
5 specified in Section 25395.92.

6 (ix) An agreement for the environmental oversight of schools entered into
7 pursuant to Section 17213.1 of the Education Code and in accordance with Sections
8 17201 and 17210.1 of the Education Code.

9 (C)(i) If the department or the regional board objects within 30 days to the local
10 agency issuing the notice, the local agency and the department or regional board
11 shall promptly meet and confer to resolve the department's or regional board's
12 concerns. If the local agency and the department or the regional board cannot reach
13 a mutually acceptable resolution on sites identified in clause (iv) of subparagraph
14 (B) of paragraph (1), the matter shall be submitted to the site designation committee
15 created pursuant to Section 25261.

16 (ii) Notwithstanding subdivision (a) of Section 25261, the designee of the
17 department or the regional board on the site designation committee shall not
18 participate in the review of a dispute involving the department or a regional board,
19 respectively. The decision of the site designation committee shall resolve the matter
20 impartially, by majority vote, and within 45 days of the date on which the matter is
21 presented. Either party to the dispute may present the matter to the site designation
22 committee, and each party shall be given a reasonable opportunity to be heard.

23 (2) A local agency shall, before taking action to clean up the release, do all of the
24 following:

25 (A) If the investigation has not been completed or additional investigation is
26 necessary, have an investigation plan prepared by an independent qualified
27 contractor.

28 (B) Submit an investigation plan and cost recovery agreement to the regional
29 board or the department for review and approval.

30 (C) After completion of the investigation plan, have a cleanup plan prepared by
31 an independent qualified contractor.

32 (D) Submit a cleanup plan and existing applicable documents required pursuant
33 to the California Environmental Quality Act (Division 13 (commencing with
34 Section 21000) of the Public Resources Code) to the regional board or to the
35 department for approval.

36 (E) Comply with the public participation requirements specified in Section
37 25403.7.

38 (3) The regional board or the department shall act on the investigation plan within
39 30 days of receipt of the investigation plan.

40 (4) The regional board or the department shall respond to the local agency's
41 request for approval of a cleanup plan within 60 days of the receipt of the plan.

42 (5) Within 60 days after approval of the cleanup plan, pursuant to applicable
43 statutes and regulations, the director or the regional board, as appropriate, shall

1 acknowledge, in writing, that upon proper completion of the cleanup in accordance
2 with the cleanup plan, the immunity provided by Section 25403.2 shall apply.

3 (6) The local agency shall notify the department and local health and building
4 departments and the regional board of any cleanup activity pursuant to this section
5 at least 30 days before the commencement of the activity.

6 (7) If an action taken by a local agency or a responsible party to clean up a release
7 of a hazardous material does not meet, or is not consistent with, a cleanup plan
8 approved by the regional board or the department, the department or the regional
9 board that approved the cleanup plan may require the responsible party or local
10 agency to take, or cause the taking of, additional action to clean up the release, as
11 provided by applicable law.

12 (8) If an administering agency for the site has been designated pursuant to Section
13 25262, the department or the regional board may impose any requirements for
14 additional action pursuant to paragraph (7) only as provided in Sections 26263 and
15 25265.

16 (9) If methane or landfill gas is present, the local agency shall obtain written
17 approval from the Department of Resources Recycling and Recovery prior to taking
18 action authorized under this subdivision.

19 (b) Except as provided in subdivision (c), a local agency may take the actions
20 specified in subdivision (a) only under one of the following conditions:

21 (1) There is no responsible party for the release identified by the local agency.

22 (2) Both of the following apply:

23 (A) A party determined by the local agency to be a responsible party for the
24 release has been notified by the local agency, or has received adequate notice from
25 the department, a regional board, the California Environmental Protection Agency,
26 or other governmental agency with relevant authority, and has been given 60 days
27 to respond and to propose an investigation plan and schedule if in the opinion of the
28 responsible party's qualified independent contractor there is not enough site-
29 specific data to prepare a cleanup plan, and 60 days to propose a cleanup plan and
30 schedule following completion of the investigation plan in accordance with the
31 investigation plan schedule approved by the local agency.

32 (B) The responsible party specified in subparagraph (A) has not agreed within an
33 additional 60 days to implement an investigation plan and schedule to investigate or
34 clean up the release that meets both of the following requirements:

35 (i) The investigation plan and schedule and the cleanup plan and schedule are
36 acceptable to the local agency.

37 (ii) The local agency makes a finding that the investigation plan and schedule and
38 the cleanup plan and schedule are consistent with the intended development
39 schedule and use of the property.

40 (3)(A) The party determined by the local agency to be the responsible party for
41 the hazardous material release entered into an agreement with the local agency to
42 prepare an investigation plan or cleanup plan for approval by the department, the
43 regional board, or the appropriate local agency, and to implement the investigation

1 plan or cleanup plan in accordance with an agreed schedule, but failed to do any of
2 the following:

3 (i) Prepare the investigation plan or cleanup plan.

4 (ii) Implement the investigation plan or cleanup plan in accordance with the
5 agreed schedule.

6 (iii) Otherwise failed to carry out the investigation in an appropriate and timely
7 manner.

8 (B) An action taken by the local agency pursuant to this paragraph shall be
9 consistent with any agreement between the local agency and the responsible party
10 and with the requirements of the state agency or the designated agency that approved
11 or will approve the cleanup plan and is overseeing or will oversee the preparation
12 and implementation of the cleanup plan.

13 (c) The responsible party specified in subparagraph (A) of paragraph (2) of
14 subdivision (b) may appeal a 60-day notice issued pursuant to this section to the
15 local agency's governing body by filing a written request to appeal the notice with
16 the clerk of the local agency within 30 days of receipt of the notice. Filing an appeal
17 to the local agency's governing body tolls the 60-day notice period until the appeal
18 is heard and decided by the local agency's governing body. Any challenge to the
19 decision reached by the local agency's governing body shall be presented only as
20 part of a cost recovery or injunctive proceeding initiated by the local agency under
21 Section 25403.5. The local agency's decision shall be upheld if supported by
22 substantial evidence presented in the action commenced under Section 25403.5, and
23 shall not be invalidated on the grounds that the local agency failed to include all
24 responsible parties in a 60-day notice issued pursuant to this section. A claim of
25 failure to include all responsible parties in a 60-day notice issued pursuant to this
26 section shall not be a defense to the liability provided for in Section 25403.5.

27 (d) Subdivision (b) does not apply to either of the following:

28 (1) A local agency taking actions to conduct a Phase I or Phase II environmental
29 assessment in accordance with standard real estate practices.

30 (2) A local agency taking the actions specified in subdivision (a) if the local
31 agency determines that conditions require immediate action due to an imminent
32 threat to human health or the environment.

33 (e)(1) A local agency may designate another agency, in lieu of the department or
34 the regional board, to review and approve a cleanup plan and to oversee the cleanup
35 of hazardous materials from a specific hazardous material release site if the agency
36 is designated as the administering agency under Section 25262. In that event, the
37 designated agency shall conduct the oversight of the cleanup in accordance with
38 Chapter 6.65 (commencing with Section 25260), and all provisions of that chapter
39 shall apply to the cleanup.

40 (2) A local agency may designate another agency to review and approve a cleanup
41 plan for a site and oversee the cleanup at the site if all of the following conditions
42 exist:

43 (A) The designated agency is certified as a CUPA.

1 (B) The site is an underground storage tank site subject to Chapter 6.7
2 (commencing with Section 25280).

3 (C) The designated agency is certified pursuant to Section 25297.01 and the state
4 board has entered into an agreement with the designated agency pursuant to Section
5 25297.1.

6 (D) The designated agency determines that the site is within the guidelines and
7 protocols established in, and pursuant to, the agreement specified in subparagraph
8 (C).

9 (E) The designated agency consents to the designation.

10 (3) Within 60 days after approving a cleanup plan pursuant to paragraph (1) or
11 (2), the designated agency shall issue a notice that, upon proper completion of the
12 cleanup plan, the immunity specified in Section 25403.2 shall apply. If the
13 designated agency was formed by the local agency, the cleanup plan shall also be
14 subject to the approval of the department or regional board.

15 (4)(A) An agency may not consent to the designation pursuant to paragraph (1) or
16 (2) unless the designated agency determines that it has adequate staff resources and
17 the requisite technical expertise and capabilities available to adequately supervise
18 the cleanup.

19 (B) If an agency has been designated pursuant to paragraph (2), the department or
20 a regional board may require the designated agency to withdraw from the
21 designation or stop taking action pursuant to that designation, after providing the
22 designated agency with adequate notice, if both of the following conditions are met:

23 (i) The department or a regional board determines that the agency's designation
24 was not consistent with paragraph (2), or makes one of the findings specified in
25 subdivision (d) of Section 101480.

26 (ii) The department or a regional board determines that it has adequate staff
27 resources and capabilities available to adequately supervise the cleanup, and
28 assumes that responsibility.

29 (C) This paragraph does not prevent a regional board from taking an action
30 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

31 (5) If an agency has been designated pursuant to paragraph (1) or (2), the
32 designated agency may, after providing the local agency with adequate notice,
33 withdraw from its designation or stop taking action pursuant to that designation after
34 making one of the findings specified in subdivision (d) of Section 101480.

35 (f)(1) To facilitate remedial planning, the local agency may require the owner or
36 operator of a site within the local agency's jurisdictional boundaries to provide the
37 local agency with all existing environmental information pertaining to the site,
38 including the results of any phase I or subsequent environmental assessment, any
39 assessment conducted pursuant to an order from, or agreement with, any federal,
40 state, or local agency, and any other environmental assessment information, except
41 that which is determined to be privileged.

42 (2) A person requested to furnish the information pursuant to paragraph (1) shall
43 be required only to furnish that information that may be within that person's

1 possession or control, including actual knowledge of information within the
2 possession or control of any other party. If environmental assessment information
3 is not available, the local agency may require the owner of the property to conduct,
4 and to pay the expenses of conducting, an assessment in accordance with standard
5 real estate practices for conducting phase I or phase II environmental assessments.
6 If the local agency conducts the phase I or phase II environmental assessment
7 because the owner or operator failed to provide this information, the local agency
8 shall have a right of entry, upon reasonable notice, to enter the property and conduct
9 the phase I or phase II environmental assessment. The local agency may recover the
10 costs of the phase I or phase II environmental assessment in accordance with Section
11 25403.5.

12 **Comment.** Section 25403.1(a)(1)(B)(v) and (vi) are amended to update cross-references in
13 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
14 25300) of Division 20 of the Health and Safety Code.

15 **Health & Safety Code § 25403.2 (amended). Liability of local agency for release addressed**
16 **by completed action**

17 SEC. __. Section 25403.2 of the Health and Safety Code is amended to read:

18 25403.2. (a)(1) Notwithstanding any other law, except as otherwise provided in
19 this chapter, a local agency that undertakes and completes an action, or causes
20 another person to undertake and complete an action pursuant to Section 25403.1 for
21 which a finding of completion is made pursuant to subdivision (b), to clean up a
22 hazardous material release on, under, or from property within the local agency's
23 boundaries, in accordance with a cleanup plan prepared by a qualified independent
24 contractor and approved by the department, a regional board, or the designated
25 agency, in accordance with Section 25403.1, is not liable, with respect to that release
26 only, pursuant to any of the following:

27 (A) Division 7 (commencing with Section 13000) of the Water Code.

28 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing
29 with Section 25280), or Chapter 6.75 (commencing with Section 25299.10), ~~or~~
30 ~~Chapter 6.8 (commencing with Section 25300)~~, of Division ~~20~~. 20, or Part 2
31 (commencing with Section 78000) of Division 45.

32 (C) Any other state or local law imposing liability for cleanup of releases of
33 hazardous materials.

34 (2) If the cleanup was also performed pursuant to Chapter 6.65 (commencing with
35 Section 25260) of Division 20, and a certificate of completion is issued pursuant to
36 subdivision (b) of Section 25264, the immunity from local agency action provided
37 by the certificate of completion, as specified in subdivision (c) of Section 25264,
38 shall apply to the local agency, in addition to the immunity conferred by this section.

39 (3) In the case of a cleanup performed pursuant to Chapter 6.65 (commencing
40 with Section 25260) of Division 20, and for which the administering agency is a
41 local agency, the limitations on the certificate of completion set forth in paragraphs

1 (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity
2 provided for by this section and subdivision (c) of Section 25264.

3 (b) Notwithstanding any provision of law or policy providing for certification by
4 a person conducting a cleanup that the action has been properly completed, a
5 determination that a cleanup has been properly completed pursuant to this section
6 shall be made only upon the affirmative approval of the director, the regional board,
7 or the designated agency, as appropriate. The department or regional board, as
8 appropriate, shall, within 60 days of the date it finds that a cleanup has been
9 completed, notify the local agency in writing that the immunity provided by this
10 section is in effect. If another agency is designated to oversee the cleanup pursuant
11 to paragraph (1) or (2) of subdivision (d) of Section 25403.1, the designated agency
12 shall issue a notice within 60 days of the date it finds that a cleanup has been
13 completed.

14 (c) Upon proper completion of a cleanup, as specified in subdivision (b), the
15 immunity from action provided by the certificate of completion provided pursuant
16 to subdivision (c) of Section 25264 and the immunity provided by this section
17 extends to all of the following, but only for the release or releases specifically
18 identified in the approved cleanup plan and not for any subsequent release or any
19 release not specifically identified in the approved cleanup plan:

20 (1) An employee or agent of the local agency, including an instrumentality of the
21 local agency authorized to exercise some, or all, of the powers of a local agency
22 within, or for the benefit of, a local agency and an employee or agent of the
23 instrumentality.

24 (2) A person that enters into an agreement with a local agency for the development
25 of property, if the agreement requires the person to acquire property affected by a
26 hazardous material release or to clean up a hazardous material release with respect
27 to that property.

28 (3) A person that acquires the property after a person has entered into an
29 agreement with a local agency for development of the property, as described in
30 paragraph (2).

31 (4) A person that provides financing to a person specified in paragraph (2) or (3).

32 (d) Notwithstanding any other law, the immunity provided by this section does
33 not extend to any of the following:

34 (1) A person that was a responsible party for the release before entering into an
35 agreement, acquiring property, or providing financing, as specified in subdivision
36 (c).

37 (2) A person specified in subdivision (a) or (c) for any subsequent release of a
38 hazardous material or any release of a hazardous material not specifically identified
39 in the approved cleanup plan.

40 (3) A contractor who prepares the cleanup plan or conducts the cleanup.

41 (4) A person that obtains an approval of a cleanup plan pursuant to Section
42 25403.1, or pursuant to a finding, as specified in subdivision (b), by fraud, negligent
43 or intentional nondisclosure, or misrepresentation, and a person that knows before

1 the approval or determination is obtained or before the person enters into an
2 agreement, acquires the property, or provides financing, as specified in subdivision
3 (c), that the approval or determination was obtained by these means.

4 (e) The immunity provided by this section is in addition to any other immunity
5 provided by law to a local agency.

6 (f) This section does not impair any cause of action by a local agency or any other
7 party against the person responsible for the hazardous material release that is the
8 subject of the cleanup taken by the local agency or other person immune from
9 liability pursuant to this section.

10 (g) This section does not apply to, or limit, alter, or restrict, an action for personal
11 injury or wrongful death.

12 (h) This section does not limit liability of a person described in paragraph (3) or
13 (4) of subdivision (d) for damages under the federal Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
15 9601 et seq.).

16 (i) This section does not establish, limit, or affect the liability of a local agency
17 for a release of a hazardous material that is not investigated or cleaned up pursuant
18 to this section or Chapter 6.65 (commencing with Section 25260).

19 **Comment.** Section 25403.2(a)(1)(B) is amended to update a cross-reference 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 **Health & Safety Code § 25403.5 (amended). Local agency cost recovery**

23 SEC. __. Section 25403.5 of the Health and Safety Code is amended to read:

24 25403.5. (a) Except as otherwise provided in this chapter, if a local agency
25 undertakes action to investigate property or clean up, or to require others to
26 investigate or clean up, including compelling a responsible party through a civil
27 injunctive action, a release of hazardous material, the responsible party shall be
28 liable to the local agency for the costs incurred in the action. A local agency may
29 not recover the costs of goods and services that were not procured in accordance
30 with procurement procedures, where applicable. The amount of the costs shall
31 include the interest on the costs accrued from the date of expenditure and reasonable
32 attorney's fees and shall be recoverable in a civil action. Interest shall be calculated
33 based on the average annual rate of return on a local agency's investment of surplus
34 funds for the fiscal year in which costs were incurred.

35 (b) The only defenses available to a responsible party shall be the defenses
36 specified in subdivision (b) of Section ~~25323.5~~. 78145.

37 (c) A local agency may recover any costs incurred to develop and to implement a
38 cleanup plan approved pursuant to this chapter, to the same extent the department is
39 authorized to recover those costs. The scope and standard of liability for cost
40 recovery pursuant to this section shall be the scope and standard of liability under
41 the federal Comprehensive Environmental Response, Compensation, and Liability
42 Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to

1 the department. However, any reference to hazardous substance in that act shall be
2 deemed to refer to hazardous material as defined in Section 25403. It is the intent of
3 the Legislature that local agencies diligently pursue reimbursement for investigation
4 and cleanup costs incurred pursuant to this chapter, but each local agency is
5 authorized to assess whether and to what extent cost recovery is practicable.

6 (d) An action for recovery of the costs of a cleanup undertaken by a local agency
7 under this section shall be commenced within three years after completion of the
8 cleanup.

9 (e) The action to recover costs provided by this section is in addition to, and is not
10 to be construed as restricting, any other cause of action available to a local agency.

11 **Comment.** Section 25403.5(b) is amended to update a cross-reference 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 § 25404 (amended). Unified program general provisions**

15 SEC. __. Section 25404 of the Health and Safety Code is amended to read:

16 25404. (a) For purposes of this chapter, the following terms shall have the
17 following meanings:

18 (1)(A) “Certified Unified Program Agency” or “CUPA” means the agency
19 certified by the secretary to implement the unified program specified in this chapter
20 within a jurisdiction.

21 (B) “Participating Agency” or “PA” means a state or local agency that has a
22 written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3,
23 and is approved by the secretary, to implement or enforce one or more of the unified
24 program elements specified in subdivision (c), in accordance with Sections 25404.1
25 and 25404.2.

26 (C) “Unified Program Agency” or “UPA” means the CUPA, or its participating
27 agencies to the extent each PA has been designated by the CUPA, pursuant to a
28 written agreement, to implement or enforce a particular unified program element
29 specified in subdivision (c). The UPAs have the responsibility and authority to
30 implement and enforce the requirements listed in subdivision (c), and the
31 regulations adopted to implement the requirements listed in subdivision (c), to the
32 extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67
33 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280),
34 Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 to 25404.2,
35 inclusive. After a CUPA has been certified by the secretary, the unified program
36 agencies and the state agencies carrying out responsibilities under this chapter shall
37 be the only agencies authorized to enforce the requirements listed in subdivision (c)
38 within the jurisdiction of the CUPA.

39 (2) “Department” means the Department of Toxic Substances Control.

40 (3) “Minor violation” means the failure of a person to comply with a requirement
41 or condition of an applicable law, regulation, permit, information request, order,
42 variance, or other requirement, whether procedural or substantive, of the unified

1 program that the UPA is authorized to implement or enforce pursuant to this chapter,
2 and that does not otherwise include any of the following:

3 (A) A violation that results in injury to persons or property, or that presents a
4 significant threat to human health or the environment.

5 (B) A knowing, willful, or intentional violation.

6 (C) A violation that is a chronic violation, or that is committed by a recalcitrant
7 violator. In determining whether a violation is chronic or a violator is recalcitrant,
8 the UPA shall consider whether there is evidence indicating that the violator has
9 engaged in a pattern of neglect or disregard with respect to applicable regulatory
10 requirements.

11 (D) A violation that results in an emergency response from a public safety agency.

12 (E) A violation that enables the violator to benefit economically from the
13 noncompliance, either by reduced costs or competitive advantage.

14 (F) A class I violation, as provided in Section 25110.8.5.

15 (G) A violation that hinders the ability of the UPA to determine compliance with
16 any other applicable local, state, or federal rule, regulation, information request,
17 order, variance, permit, or other requirement.

18 (4) “Secretary” means the Secretary for Environmental Protection.

19 (5) “Unified program facility” means all contiguous land and structures, other
20 appurtenances, and improvements on the land that are subject to the requirements
21 listed in subdivision (c).

22 (6) “Unified program facility permit” means a permit issued pursuant to this
23 chapter. For purposes of this chapter, a unified program facility permit encompasses
24 the permitting requirements of Section 25284, and permit or authorization
25 requirements under a local ordinance or regulation relating to the generation or
26 handling of hazardous waste or hazardous materials, but does not encompass the
27 permitting requirements of a local ordinance that incorporates provisions of the
28 California Fire Code or the California Building Code.

29 (b) The secretary shall adopt implementing regulations and implement a unified
30 hazardous waste and hazardous materials management regulatory program, which
31 shall be known as the unified program, after holding an appropriate number of
32 public hearings throughout the state. The unified program shall be developed in
33 close consultation with the director, the Director of Emergency Services, the State
34 Fire Marshal, the executive officers and chairpersons of the State Water Resources
35 Control Board and the California regional water quality control boards, the local
36 health officers, local fire services, and other appropriate officers of interested local
37 agencies, and affected businesses and interested members of the public, including
38 environmental organizations.

39 (c) The unified program shall consolidate the administration of the following
40 requirements and, to the maximum extent feasible within statutory constraints, shall
41 ensure the coordination and consistency of any regulations adopted pursuant to
42 those requirements:

1 (1)(A) Except as provided in subparagraphs (B) and (C), the requirements of
2 Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the
3 department pursuant to that chapter, that are applicable to all of the following:

4 (i) Hazardous waste generators, persons operating pursuant to a permit-by-rule,
5 conditional authorization, or conditional exemption, pursuant to Chapter 6.5
6 (commencing with Section 25100) or the regulations adopted by the department.

7 (ii) Persons managing perchlorate materials.

8 (iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter
9 6.5.

10 (iv) Persons operating a collection location that has been established under an
11 architectural paint stewardship plan approved by the Department of Resources
12 Recycling and Recovery pursuant to the architectural paint recovery program
13 established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of
14 Division 30 of the Public Resources Code.

15 (v) A transfer facility, as defined in paragraph (3) of subdivision (a) of Section
16 25123.3, that is operated by a door-to-door household hazardous waste collection
17 program or household hazardous waste residential pickup service, as defined in
18 subdivision (c) of Section 25218.1.

19 (vi) Persons who receive used oil from consumers pursuant to Section 25250.11.

20 (B) The unified program shall not include the requirements of paragraph (3) of
21 subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and
22 25200.14, and the authority to issue an order under Sections 25187 and 25187.1,
23 with regard to those portions of a unified program facility that are subject to one of
24 the following:

25 (i) A corrective action order issued by the department pursuant to Section 25187.

26 (ii) An order issued by the department pursuant to ~~Chapter 6.8 (commencing with~~
27 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~
28 division or Part 2 (commencing with Section 78000) of Division 45.

29 (iii) A remedial action plan approved pursuant to ~~Chapter 6.8 (commencing with~~
30 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~
31 division or Part 2 (commencing with Section 78000) of Division 45.

32 (iv) A cleanup and abatement order issued by a California regional water quality
33 control board pursuant to Section 13304 of the Water Code, to the extent that the
34 cleanup and abatement order addresses the requirements of the applicable section
35 or sections listed in this subparagraph.

36 (v) Corrective action required under subsection (u) of Section 6924 of Title 42 of
37 the United States Code or subsection (h) of Section 6928 of Title 42 of the United
38 States Code.

39 (vi) An environmental assessment pursuant to Section 25200.14 or a corrective
40 action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section
41 25200.3, that is being overseen by the department.

42 (C) The unified program shall not include the requirements of Chapter 6.5
43 (commencing with Section 25100), and the regulations adopted by the department

1 pursuant to that chapter, applicable to persons operating transportable treatment
2 units, except that any required notice regarding transportable treatment units shall
3 also be provided to the CUPAs.

4 (2) The requirements of Chapter 6.67 (commencing with Section 25270)
5 concerning aboveground storage tanks.

6 (3)(A) Except as provided in subparagraphs (B) and (C), the requirements of
7 Chapter 6.7 (commencing with Section 25280) concerning underground storage
8 tanks and the requirements of any underground storage tank ordinance adopted by
9 a city or county.

10 (B) The unified program shall not include the responsibilities assigned to the State
11 Water Resources Control Board pursuant to Section 25297.1.

12 (C) The unified program shall not include the corrective action requirements of
13 Sections 25296.10 to 25296.40, inclusive.

14 (4) The requirements of Article 1 (commencing with Section 25500) of Chapter
15 6.95 concerning hazardous material release response plans and inventories.

16 (5) The requirements of Article 2 (commencing with Section 25531) of Chapter
17 6.95, concerning the accidental release prevention program.

18 (6) The requirements for the hazardous materials plan and hazardous materials
19 inventory statement of the California Fire Code, as adopted by the State Fire
20 Marshal pursuant to Section 13143.9.

21 (d) To the maximum extent feasible within statutory constraints, the secretary
22 shall consolidate, coordinate, and make consistent these requirements of the unified
23 program with other requirements imposed by other federal, state, regional, or local
24 agencies upon facilities regulated by the unified program.

25 (e)(1) The secretary shall establish standards applicable to CUPAs, participating
26 agencies, state agencies, and businesses specifying the data to be collected and
27 submitted by unified program agencies in administering the programs listed in
28 subdivision (c).

29 (2)(A) The secretary shall establish a statewide information management system
30 capable of receiving all data collected by the unified program agencies and reported
31 by regulated businesses pursuant to this subdivision, in a manner that is most cost
32 efficient and effective for both the regulated businesses and state and local agencies.
33 The secretary shall prescribe an XML or other compatible web-based format for the
34 transfer of data from CUPAs and regulated businesses and make all nonconfidential
35 data available on the internet.

36 (B) The secretary shall establish milestones to measure the implementation of the
37 statewide information management system and shall provide periodic status updates
38 to interested parties.

39 (3)(A)(i) Except as provided in subparagraph (B), in addition to any other funding
40 that becomes available, the secretary shall increase the oversight surcharge provided
41 for in subdivision (b) of Section 25404.5 by an amount necessary to meet the
42 requirements of this subdivision for a period of three years, to establish the statewide
43 information management system, consistent with paragraph (2). The increase in the

1 oversight surcharge shall not exceed twenty-five dollars (\$25) in any one year of the
2 three-year period. The secretary shall thereafter maintain the statewide information
3 management system, funded by the assessment the secretary is authorized to impose
4 pursuant to Section 25404.5.

5 (ii) No less than 75 percent of the additional funding raised pursuant to clause (i)
6 shall be provided to CUPAs and PAs through grant funds or statewide contract
7 services, in the amounts determined by the secretary to assist these local agencies
8 in meeting these information management system requirements.

9 (B) A facility that is owned or operated by the federal government and that is
10 subject to the unified program shall pay the surcharge required by this paragraph to
11 the extent authorized by federal law.

12 (C) The secretary, or one or more of the boards, departments, or offices within the
13 California Environmental Protection Agency, shall seek available federal funding
14 for purposes of implementing this subdivision.

15 (4) No later than three years after the statewide information management system
16 is established, each CUPA, PA, and regulated business shall report program data
17 electronically. The secretary shall work with the CUPAs to develop a phase-in
18 schedule for the electronic collection and submittal of information to be included in
19 the statewide information management system, giving first priority to information
20 relating to those chemicals determined by the secretary to be of greatest concern.
21 The secretary, in making this determination shall consult with the CUPAs, the
22 California Emergency Management Agency, the State Fire Marshal, and the boards,
23 departments, and offices within the California Environmental Protection Agency.

24 (5) The secretary, in collaboration with the CUPAs, shall provide technical
25 assistance to regulated businesses to comply with the electronic reporting
26 requirements and may expend funds identified in clause (i) of subparagraph (A) of
27 paragraph (3) for that purpose.

28 **Comment.** Section 25404(c)(1)(B)(ii) and (iii) are amended to update cross-references in
29 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
30 25300) of Division 20 of the Health and Safety Code.

31 **Health & Safety Code § 25404.1 (amended). Agency responsibilities and certification for**
32 **unified program**

33 SEC. __. Section 25404.1 of the Health and Safety Code is amended to read:

34 25404.1. (a)(1) All aspects of the unified program related to the adoption and
35 interpretation of statewide standards and requirements shall be the responsibility of
36 the state agency which is charged with that responsibility under existing law. For
37 underground storage tanks, that agency shall be the State Water Resources Control
38 Board. The California regional water quality control boards shall have responsibility
39 for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The
40 Department of Toxic Substances Control shall have the sole responsibility for the
41 issuances of variances from the requirements of Chapter 6.5 (commencing with
42 Section 25100) and the regulations adopted pursuant thereto, for the determination

1 of whether or not a waste is hazardous or nonhazardous, for the determination of
2 whether or not a person is eligible to be deemed to be operating pursuant to a permit-
3 by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5
4 (commencing with Section 25100) or the regulations adopted by the department,
5 and for the suspension and revocation of permits-by-rule, conditional
6 authorizations, and conditional exemptions.

7 (2) Except as provided in paragraphs (1) and (3), those aspects of the unified
8 program related to the application of statewide standards to particular facilities,
9 including the issuance of unified program facility permits, the review of reports and
10 plans, environmental assessment, compliance and correction, and the enforcement
11 of those standards and requirements against particular facilities, shall be the
12 responsibility of the unified program agencies.

13 (3)(A) Except in those jurisdictions for which the UPA has been determined by
14 the department, in accordance with regulations adopted pursuant to subparagraph
15 (C), to be qualified to implement the environmental assessment and removal and
16 remediation corrective action aspects of the unified program, the department shall
17 have sole responsibility and authority under the unified program for all of the
18 following:

19 (i) Implementing and enforcing the requirements of paragraph (3) of subdivision
20 (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations
21 adopted by the department to implement those sections. As a pilot program in up to
22 10 counties, pending the adoption and implementation of regulations pursuant to
23 subparagraph (C), the department may delegate to the CUPA, through a delegation
24 agreement, responsibility and authority for implementing and enforcing the
25 requirements of Section 25200.14.

26 (ii) The issuance of orders under Section 25187 requiring removal or remedial
27 action.

28 (iii) The issuance of orders under Section 25187.1.

29 (B) Notwithstanding subparagraph (A), a UPA may issue an order under Section
30 25187 specifying a schedule for compliance or correction and imposing an
31 administrative penalty for any violation of the requirements of Chapter 6.5
32 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of
33 Section 25404, or the requirements of any permit, rule, regulation, standard or
34 requirement issued or adopted pursuant to the requirements of Chapter 6.5
35 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of
36 Section 25404, if one of the following applies:

37 (i) The order does not require removal or remedial action.

38 (ii) The only removal or remedial actions required by the order are those actions
39 determined to be necessary to address an imminent and substantial endangerment
40 based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

41 (C) The department shall adopt emergency regulations specifying the criteria and
42 procedures for implementing paragraph (3) of subdivision (c) of Section 25200.3
43 and Sections 25200.10 and 25200.14, including criteria and procedures for

1 determining whether or not a unified program agency is qualified to implement the
2 environmental assessment and removal and remediation corrective action portions
3 of the unified program under paragraph (3) of subdivision (c) of Section 25200.3
4 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining
5 whether a unified program agency is qualified shall, at a minimum, include
6 consideration of the following factors:

7 (i) Adequacy of the technical expertise possessed by the unified program agency.

8 (ii) Adequacy of staff resources.

9 (iii) Adequacy of budget resources and funding mechanisms.

10 (iv) Training requirements.

11 (v) Past performance in implementing and enforcing requirements related to
12 environmental assessments, and removal and remediation corrective actions.

13 (vi) Recordkeeping and accounting systems.

14 (D) The regulations adopted by the department pursuant to subparagraph (C) shall
15 include provisions to ensure coordinated and consistent application of paragraph (3)
16 of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and
17 25200.14, when both the department and the unified program agency are, or will be,
18 implementing and enforcing the requirements of one or more of these sections at the
19 same facility.

20 (E) For purposes of subparagraph (D), “facility” means the entire site that is under
21 the control of the owner or operator.

22 (F) If the department is designated as a unified program agency, the department
23 is deemed qualified to implement all of the following:

24 (i) The environmental assessment, removal and remedial action, and corrective
25 action aspects of the unified program.

26 (ii) Paragraph (3) of subdivision (c) of Section ~~25300.3~~, 25200.3, Sections
27 25200.10, 25200.14, 25187, and 25287.1, and the regulations adopted by the
28 department to implement those provisions.

29 (b)(1) On or before January 1, 1996, each county shall apply to the secretary to be
30 certified as a unified program agency to implement the unified program within the
31 unincorporated area of the county and within each city in the county, in which area
32 or city, as of January 1, 1996, the city or other local agency has not applied to be the
33 certified unified program agency.

34 (2)(A) Any city or other local agency which, as of December 31, 1995, has been
35 designated as an administering agency pursuant to Section 25502, or which has
36 assumed responsibility for the implementation of Chapter 6.7 (commencing with
37 Section 25280) pursuant to Section 25283, may apply to the secretary to become the
38 certified unified program agency to implement the unified program within the
39 jurisdictional boundaries of the city or local agency.

40 (B) A city or other local agency which, as of December 31, 1995, has not been
41 designated as an administering agency pursuant to Section 25502, or which has not
42 assumed responsibility for the implementation of Chapter 6.7 (commencing with
43 Section 25280) pursuant to Section 25283, may apply to the secretary to become the

1 certified unified program agency within the jurisdictional boundaries of the city or
2 local agency if it enters into an agreement with the county to become the certified
3 unified program agency within those boundaries. A county shall not refuse to enter
4 into an agreement unless it specifies in writing its reasons for failing to enter into
5 the agreement. However, if the city does not enter into the agreement with the
6 county, within 30 days of receiving a county's reasons for failing to enter into
7 agreement, a city may request that the secretary allow it to apply to be a certified
8 unified program agency and the secretary may, in ~~his or her~~ the secretary's
9 discretion, approve the request.

10 (3) A city, county, or other local agency may propose, in its application for
11 certification to the secretary, to allow other public agencies to implement certain
12 elements of the unified program, but the secretary shall accept that proposal only if
13 the secretary makes the findings specified in subdivision (d) of Section 25404.3.

14 (4) If a city or other local agency which, as of December 31, 1995, has been
15 designated as an administering agency pursuant to Section 25502, or has assumed
16 responsibility for the implementation of Chapter 6.7 (commencing with Section
17 25280) pursuant to Section 25283, requests that the county propose in its application
18 for certification to the secretary that the city or local agency implement, within the
19 jurisdictional boundaries of the city or local agency, those elements of the unified
20 program which, as of December 31, 1995, the city or local agency has authority to
21 administer, the county shall grant that request. If ~~such~~ an agency described in this
22 paragraph is subsequently removed or withdraws from the unified program, the
23 agency shall not act as an administering agency under Section 25502 or act as a
24 local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as
25 provided in subdivision (c) of Section 25283.

26 **Comment.** Section 25404.1(a)(3)(F)(ii) is amended to correct an erroneous cross-reference to
27 "Section 25300.3." This cross-reference was corrected to refer to "Section 25200.3."

28 This section is also amended to eliminate gendered pronouns and to make technical changes.

29 **Health & Safety Code § 25411 (amended). Definitions**

30 SEC. __. Section 25411 of the Health and Safety Code is amended to read:
31 25411. As used in this chapter:

32 (a) ~~"Agency" means the Environmental Affairs Agency.~~

33 ~~(b)~~ "Handle" means to use, generate, process, produce, package, treat, store, or
34 dispose of a hazardous material in any fashion.

35 ~~(c)~~ (b) "Hazardous material" means any of the following materials:

36 (1) A material listed in subdivision (b) of Section 6382 of the Labor Code.

37 (2) A material defined in Section 25115, 25117, or ~~25316~~. subdivision (a) of
38 Section 78075.

39 (3) Any other material which the director determines, because of its quantity,
40 concentration, or physical or chemical characteristics, poses a significant present or
41 potential hazard to human health and safety or to the environment if released into
42 the community.

1 ~~(d)~~ (c) “Release” means any spilling, leaking, pumping, pouring, emitting,
2 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
3 environment.

4 ~~(e) “Secretary” means the Secretary of the Environmental Affairs Agency.~~

5 **Comment.** Section 25411 is amended to update a cross-reference 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 delete obsolete definitions for terms that are not used in the
9 chapter governed by the definitions.

10 **Health & Safety Code § 25416 (amended). Conduct of studies and information programs**

11 SEC. __. Section 25416 of the Health and Safety Code is amended to read:

12 25416. (a) All studies and community information programs conducted pursuant
13 to this section shall be done only if either subdivision (b) applies or if funds are
14 available without restructuring the department’s funding priorities. The department
15 shall conduct these studies and information programs in the following manner:

16 (1) The department shall, except as provided in subdivision (b), and in conjunction
17 with the local health officer, the State Department of Health Services, and the Office
18 of Environmental Health Hazard Assessment, conduct or contract for
19 epidemiological studies to identify and monitor health effects related to exposure to
20 hazardous materials, as defined in Section 66084 of Title 22 of the California Code
21 of Regulations. A study may be conducted in any area of the state identified by the
22 department or the local health officer as a site of potential exposure to hazardous
23 materials, including, but not limited to, any of the following areas:

24 (A) All communities located near hazardous waste disposal facilities.

25 (B) In all communities containing hazardous substance release sites listed
26 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter
27 4 of Part 2 of Division 45 or listed pursuant to the Comprehensive Environmental
28 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

29 (C) In all areas around the location of major generators of hazardous waste.

30 (D) In all other areas identified by local health officers or the State Department of
31 Health Services as possible locations of public exposure to hazardous materials.

32 (2) The department, in consultation with the State Department of Health Services
33 and the Office of Environmental Health Hazard Assessment, shall determine which
34 epidemiological studies are to be conducted pursuant to this section based on the
35 potential for public exposure to hazardous materials. Studies in areas near Class I
36 hazardous waste disposal facilities, as defined in Section 2531 of Title 23 of the
37 California Code of Regulations, shall be given the highest priority for funding. If a
38 hearing is conducted pursuant to Section 25149 and the hearing officer determines
39 that there is a significant potential for endangerment to the public as a result of the
40 suspected or actual release of a hazardous material, the department shall give
41 priority to conducting an epidemiological study for that facility.

42 (3) If a local health officer determines that a study should be conducted pursuant
43 to this section because of a potential public exposure to hazardous materials, the

1 local health officer may request that the department initiate or contract for a study
2 pursuant to this section by demonstrating to the department that there is sufficient
3 evidence that justifies the need for a study. The department shall respond to the local
4 health officer's request within 90 days.

5 (4) A local health officer may contract with qualified persons or firms to produce
6 the epidemiological studies specified in paragraph (1).

7 (5) The design and methodology of any study conducted pursuant to this section
8 shall be reviewed and approved by the department, the State Department of Health
9 Services, and the Office of Environmental Health Hazard Assessment prior to the
10 initiation of the study.

11 (6) In any county in which hazardous waste disposal facilities are located and in
12 all other counties in which the State Department of Health Services identifies
13 significant actual or potential public exposure to hazardous materials, the
14 department shall, in conjunction with the local health officer, conduct or contract
15 for a community information program with respect to sites of potential exposure to
16 hazardous materials identified under paragraph (1) to do all of the following:

17 (A) Organize and conduct educational programs for local physicians and other
18 health professionals on the effects of exposure to hazardous materials and reporting
19 requirements.

20 (B) Disseminate information to high risk populations on the health effects of
21 exposure to hazardous materials.

22 (C) Conduct public forums on the health effects of exposure to hazardous
23 substances and methods of limiting exposure.

24 (7) Paragraph (6) does not apply to hazardous substance release sites listed on the
25 National Priorities List for which the Environmental Protection Agency has
26 assumed lead responsibility for community relations.

27 (b) If a county is authorized to impose a license tax pursuant to Section 25149.5
28 for revenue purposes, the department may require the county to provide funding for
29 carrying out epidemiological studies or the community information program
30 concerning the hazardous waste facility subject to the license tax. The department
31 shall provide the county with technical assistance to conduct an epidemiological
32 study pursuant to this subdivision. The department may exempt a county from the
33 requirements of this subdivision if the county demonstrates to the department that
34 the revenue potential from the facility would not be adequate to conduct an
35 epidemiological study or community information program. When considering a
36 county request for an exemption, the department shall consider the regulatory costs
37 and responsibilities of the county related to that facility.

38 (c) The department shall expend funds from the Toxic Substances Control
39 Account, upon appropriation by the Legislature, to conduct studies and community
40 information programs in counties containing a hazardous substance release site
41 listed pursuant to ~~Section 25356~~. Article 5 (commencing with Section 78760) of
42 Chapter 4 of Part 2 of Division 45. The department shall expend funds from the
43 Hazardous Waste Control Account, upon appropriation by the Legislature, to

1 conduct all other studies and community information programs conducted pursuant
2 to this section, except as provided in subdivision (b).

3 **Comment.** Section 25416(a)(1)(B) and (c) are 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 § 25501 (amended). Definitions**

7 SEC. __. Section 25501 of the Health and Safety Code is amended to read:

8 25501. Unless the context indicates otherwise, the following definitions govern
9 the construction of this article:

10 (a) “Agricultural handler” means a business operating a farm that is subject to the
11 exemption specified in Section 25507.1.

12 (b) “Area plan” means a plan established pursuant to Section 25503 by a unified
13 program agency for emergency response to a release or threatened release of a
14 hazardous material within a city or county.

15 (c) “Business” means all of the following:

16 (1) An employer, self-employed individual, trust, firm, joint stock company,
17 corporation, partnership, limited liability partnership or company, or other business
18 entity.

19 (2) A business organized for profit and a nonprofit business.

20 (3) The federal government, to the extent authorized by law.

21 (4) An agency, department, office, board, commission, or bureau of state
22 government, including, but not limited to, the campuses of the California
23 Community Colleges, the California State University, and the University of
24 California.

25 (5) An agency, department, office, board, commission, or bureau of a city, county,
26 or district.

27 (6) A handler that operates or owns a unified program facility.

28 (d) “Business plan” means a separate plan for each unified program facility, site,
29 or branch of a business that meets the requirements of Section 25505.

30 (e)(1) “Certified unified program agency” or “CUPA” means the agency certified
31 by the secretary to implement the unified program specified in Chapter 6.11
32 (commencing with Section 25404) within a jurisdiction.

33 (2) “Participating agency” or “PA” means an agency that has a written agreement
34 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by
35 the secretary, to implement or enforce one or more of the unified program elements
36 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in
37 accordance with Sections 25404.1 and 25404.2.

38 (3) “Unified program agency” or “UPA” means the CUPA, or its participating
39 agencies to the extent each PA has been designated by the CUPA, pursuant to a
40 written agreement, to implement or enforce a particular unified program element
41 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes
42 of this article and Article 2 (commencing with Section 25531), the UPAs have the

1 responsibility and authority, to the extent provided by this article and Article 2
2 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement
3 and enforce only those requirements of this article and Article 2 (commencing with
4 Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.

5 (4) The UPAs also have the responsibility and authority, to the extent provided by
6 this article and Article 2 (commencing with Section 25531) and Sections 25404.1
7 and 25404.2, to implement and enforce the regulations adopted to implement the
8 requirements of this article and Article 2 (commencing with Section 25531) listed
9 in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has
10 been certified by the secretary, the unified program agencies shall be the only local
11 agencies authorized to enforce the requirements of this article and Article 2
12 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision
13 (c) of Section 25404 within the jurisdiction of the CUPA.

14 (f) “City” includes any city and county.

15 (g) “Chemical name” means the scientific designation of a substance in
16 accordance with the nomenclature system developed by the International Union of
17 Pure and Applied Chemistry or the system developed by the Chemical Abstracts
18 Service.

19 (h) “Common name” means any designation or identification, such as a code
20 name, code number, trade name, or brand name, used to identify a substance by
21 other than its chemical name.

22 (i) “Compressed gas” means a material, or mixture of materials, that meets either
23 of the following:

24 (1) The definition of compressed gas or cryogenic fluid found in the California
25 Fire Code.

26 (2) Compressed gas that is regulated pursuant to Part 1 (commencing with Section
27 6300) of Division 5 of the Labor Code.

28 (j) “Consumer product” means a commodity used for personal, family, or
29 household purposes, or is present in the same form, concentration, and quantity as
30 a product prepackaged for distribution to and use by the general public.

31 (k) “Emergency response personnel” means a public employee, including, but not
32 limited to, a firefighter or emergency rescue personnel, as defined in Section 245.1
33 of the Penal Code, or personnel of a local emergency medical services (EMS)
34 agency, as designated pursuant to Section 1797.200, who is responsible for
35 response, mitigation, or recovery activities in a medical, fire, or hazardous material
36 incident, or natural disaster where public health, public safety, or the environment
37 may be impacted.

38 (l) “Handle” means all of the following:

39 (1)(A) To use, generate, process, produce, package, treat, store, emit, discharge,
40 or dispose of a hazardous material in any fashion.

41 (B) For purposes of subparagraph (A), “store” does not include the storage of
42 hazardous materials incidental to transportation, as defined in Title 49 of the Code
43 of Federal Regulations, with regard to the inventory requirements of Section 25506.

1 (2)(A) The use or potential use of a quantity of hazardous material by the
2 connection of a marine vessel, tank vehicle, tank car, or container to a system or
3 process for any purpose.

4 (B) For purposes of subparagraph (A), the use or potential use does not include
5 the immediate transfer to or from an approved atmospheric tank or approved
6 portable tank that is regulated as loading or unloading incidental to transportation
7 by Title 49 of the Code of Federal Regulations.

8 (m) “Handler” means a business that handles a hazardous material.

9 (n)(1) “Hazardous material” means a material listed in paragraph (2) that, because
10 of its quantity, concentration, or physical or chemical characteristics, poses a
11 significant present or potential hazard to human health and safety or to the
12 environment if released into the workplace or the environment, or a material
13 specified in an ordinance adopted pursuant to paragraph (3).

14 (2) Hazardous materials include all of the following:

15 (A) A substance or product for which the manufacturer or producer is required to
16 prepare a material safety data sheet pursuant to the Hazardous Substances
17 Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part
18 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or
19 regulation.

20 (B) A substance listed as a radioactive material in Appendix B of Part 30
21 (commencing with Section 30.1) of Title 10 of the Code of Federal Regulations, as
22 maintained and updated by the United States Nuclear Regulatory Commission.

23 (C) A substance listed pursuant to Title 49 of the Code of Federal Regulations.

24 (D) A substance listed in Section 339 of Title 8 of the California Code of
25 Regulations.

26 (E) A material listed as a hazardous waste, as defined by Sections 25115, 25117,
27 and ~~25316~~. subdivision (a) of Section 78075.

28 (3) The governing body of a unified program agency may adopt an ordinance that
29 provides that, within the jurisdiction of the unified program agency, a material not
30 listed in paragraph (2) is a hazardous material for purposes of this article if a handler
31 has a reasonable basis for believing that the material would be injurious to the health
32 and safety of persons or harmful to the environment if released into the workplace
33 or the environment, and requests the governing body of the unified program agency
34 to adopt that ordinance, or if the governing body of the unified program agency has
35 a reasonable basis for believing that the material would be injurious to the health
36 and safety of persons or harmful to the environment if released into the workplace
37 or the environment. The handler or the unified program agency shall notify the
38 secretary no later than 30 days after the date an ordinance is adopted pursuant to this
39 paragraph.

40 (o) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,
41 discharging, injecting, escaping, leaching, dumping, or disposing into the
42 environment, unless permitted or authorized by a regulatory agency.

1 (p) “Retail establishment” means a business that sells consumer products
2 prepackaged for distribution to, and intended for use by, the general public. A retail
3 establishment may include storage areas or storerooms in establishments that are
4 separated from shelves for display areas but maintained within the physical confines
5 of the retail establishments. A retail establishment does not include a pest control
6 dealer, as defined in Section 11407 of the Food and Agricultural Code.

7 (q) “Secretary” means the Secretary for Environmental Protection.

8 (r) “Statewide information management system” means the statewide information
9 management system established pursuant to subdivision (e) of Section 25404 that
10 provides for the combination of state and local information management systems
11 for the purposes of managing unified program data.

12 (s) “Threatened release” means a condition, circumstance, or incident making it
13 necessary to take immediate action to prevent, reduce, or mitigate a release with the
14 potential to cause damage or harm to persons, property, or the environment.

15 (t) “Trade secret” means trade secrets as defined in either subdivision ~~(d)~~ (f) of
16 Section ~~6254.7~~ 7924.510 of the Government Code or Section 1061 of the Evidence
17 Code.

18 (u) “Unified program facility” means all contiguous land and structures, other
19 appurtenances, and improvements on the land that are subject to the requirements
20 of paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this
21 article, “facility” has the same meaning as unified program facility.

22 **Comment.** Section 25501(n)(2)(E) is amended to update a cross-reference 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 Subdivision (t) is amended to reflect nonsubstantive recodification of the California Public
26 Records Act. See 2021 Cal. Stat. ch. 614; *California Public Records Act Clean-Up*, 46 Cal. L.
27 Revision Comm’n Reports 207 (2019).

28 **Health & Safety Code § 25510 (amended). Reporting and access obligations related to**
29 **hazardous material, waste, or substance release or threatened release**

30 SEC. __. Section 25510 of the Health and Safety Code is amended to read:

31 25510. (a)(1) Except as provided in subdivision (b), a hazardous material,
32 hazardous waste, or hazardous substance release or threatened release shall be
33 reported by the handler, or an employee, authorized representative, agent, or
34 designee of the handler, to the UPA and to the Office of Emergency Services in
35 accordance with the regulations adopted pursuant to this section, as follows:

36 (A) For facilities subject to this chapter, the reporting shall be made immediately
37 upon the discovery of a release or threatened release.

38 (B)(i) For facilities not subject to this chapter, the reporting shall be made upon
39 the discovery of an actual release that results in an emergency response.

40 (ii) For purposes of this subparagraph, “emergency response” means the
41 activation of any public emergency response personnel, as defined in Section 25501,
42 who are responsible for response, mitigation, or recovery activities in a hazardous

1 material incident where public health, public safety, or the environment may be
2 affected.

3 (2) Except as provided in subdivision (b), the handler, or an employee, authorized
4 representative, agent, or designee of those entities, shall provide state, city, or
5 county fire or public health or safety personnel and emergency response personnel
6 with access to the handler's facility if there is a release or threatened release of a
7 hazardous material, hazardous waste, or hazardous substance.

8 (b) Subdivision (a) does not apply to a person engaged in the transportation of a
9 hazardous material on a highway that is subject to Sections 2453 and 23112.5 of the
10 Vehicle Code.

11 (c) On or before January 1, 2022, the Office of Emergency Services shall adopt
12 regulations to implement this section. In developing these regulations, the Office of
13 Emergency Services shall closely consult with representatives from regulated
14 entities, appropriate trade associations, fire service organizations, federal, state, and
15 local organizations, including UPAs, and other interested parties. The Office of
16 Emergency Services shall define what releases and threatened releases are required
17 to be reported pursuant to this section and consider the existing federal reporting
18 requirements in determining a definition of reporting releases.

19 (d) A UPA shall maintain one or more nonemergency contact numbers for release
20 reports that do not require immediate agency response. The UPA shall promptly
21 communicate changes to this information to regulated facilities, to the secretary, and
22 to the Office of Emergency Services.

23 (e)(1) Notwithstanding any other law, and except as provided in paragraph (2), if
24 a release, spill, escape, or entry, as described in paragraph (2) of subdivision (b) of
25 Section 101075, of a hazardous material, hazardous waste, as defined in Section
26 101075, or hazardous substance, as defined in ~~Section 25316~~, subdivision (a) of
27 Section 78075, occurs and a UPA, in consultation with the local health officer,
28 reasonably determines that the release, spill, escape, or entry poses an imminent and
29 substantial endangerment to public health due to factors, including, but not limited
30 to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or
31 persistence in the air or environment, the UPA may take either or both of the
32 following actions to protect the health and safety of the public:

33 (A) Issue an order to the responsible party to immediately suspend or discontinue
34 the activity causing or contributing to the release, spill, escape, or entry of the
35 hazardous material, hazardous waste, or hazardous substance. The order shall
36 remain in effect until the UPA determines that the imminent and substantial
37 endangerment to public health has been abated or the order is overturned pursuant
38 to the appeal procedures described in subdivision (g).

39 (B) Coordinate with other appropriate regulatory agencies that may take any other
40 action necessary to protect the public health, including, but not limited to,
41 environmental investigations and temporary relief to, or relocation of, affected
42 individuals.

1 (2)(A) The UPA shall not issue an order pursuant to paragraph (1) if the release,
2 spill, escape, or entry of the hazardous material, hazardous waste, or hazardous
3 substance falls below a reporting threshold established by the Office of Emergency
4 Services in any regulation.

5 (B) If the Office of Emergency Services has not established a reporting threshold
6 in any regulation, the UPA shall be guided by Section 5192, and the appendices to
7 that section, of Title 8 of the California Code of Regulations.

8 (f) An order issued by the UPA pursuant to subparagraph (A) of paragraph (1) of
9 subdivision (e) shall be supported by written findings, including evidence of local
10 health officer consultation, and be consistent with criteria developed by UPAs to
11 determine whether an imminent and substantial endangerment to public health has
12 occurred.

13 (g)(1) Any order issued by a UPA pursuant to subparagraph (A) of paragraph (1)
14 of subdivision (e) shall be served by personal service or certified mail and shall
15 inform the person served of the right to a hearing. The order shall state whether the
16 hearing procedure specified in subparagraph (B) of paragraph (3) may be requested
17 by the person receiving the order.

18 (2) A person served with an order issued by a UPA pursuant to subparagraph (A)
19 of paragraph (1) of subdivision (e) who has been unable to resolve any violation
20 with the UPA, may, within 15 days after service of the order, request a hearing
21 pursuant to this subdivision by filing with the UPA a notice of defense. The notice
22 shall be filed with the UPA office that issued the order. A notice of defense shall be
23 deemed filed within the 15-day period provided by this paragraph if it is postmarked
24 within that 15-day period. If no notice of defense is filed within the time limits
25 provided by this paragraph, the order shall become final.

26 (3) Except as provided in clause (ii) of subparagraph (B), a person requesting a
27 hearing on an order issued pursuant to subparagraph (A) of paragraph (1) of
28 subdivision (e) may select the hearing officer specified in either subparagraph (A)
29 or (B) in the notice of defense filed with the UPA pursuant to this subdivision. If a
30 notice of defense is filed, but no hearing officer is selected, the UPA may select the
31 hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the
32 hearing shall be scheduled using one of the following:

33 (A) An administrative law judge of the Office of Administrative Hearings of the
34 Department of General Services, who shall conduct the hearing in accordance with
35 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of
36 the Government Code, and the UPA shall have all the authority granted to an agency
37 by those provisions.

38 (B)(i) A hearing officer designated by the UPA, who shall conduct the hearing in
39 accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of
40 Division 3 of Title 2 of the Government Code, and the UPA shall have all the
41 authority granted to an agency by those provisions. When a hearing is conducted by
42 a UPA hearing officer pursuant to this clause, the UPA shall issue a decision within
43 60 days after the hearing is conducted. Each hearing officer designated by a UPA

1 shall meet the requirements of Section 11425.30 of the Government Code and any
2 other applicable restriction.

3 (ii) A UPA, or a person requesting a hearing on an order issued by a UPA, may
4 select the hearing process specified in this subparagraph in a notice of defense filed
5 pursuant to this subdivision only if the UPA has, as of the date the order is issued
6 pursuant to subparagraph (A) of paragraph (1) of subdivision (e), selected a
7 designated hearing officer and established a program for conducting a hearing in
8 accordance with this subparagraph.

9 (4) The hearing decision issued pursuant to subparagraph (B) of paragraph (3)
10 shall be effective and final upon issuance by the UPA. A copy of the decision shall
11 be served by personal service or by certified mail upon the party served with the
12 order, or their representative, if any.

13 (5) The order issued pursuant to subparagraph (A) of paragraph (1) of subdivision
14 (e), or a provision of the order, shall take effect upon issuance by the UPA if the
15 UPA finds that the violation or violations of law associated with the order, or a
16 provision of the order, may pose an imminent and substantial endangerment to the
17 public health or safety or the environment. A request for a hearing shall not stay the
18 effect of the order or that provision of the order pending a hearing decision.
19 However, if the UPA determines that any or all provisions of the order are so related
20 that the public health or safety or the environment can be protected only by
21 immediate compliance with the order as a whole, the order as a whole shall take
22 effect upon issuance by the UPA. A request for a hearing shall not stay the effect of
23 the order as a whole pending a hearing decision.

24 (6) A decision issued pursuant to subparagraph (B) of paragraph (3) may be
25 reviewed by a court pursuant to Section 11523 of the Government Code. In all
26 proceedings pursuant to this subdivision, the court shall uphold the decision of the
27 UPA if the decision is based upon substantial evidence in the record as a whole. The
28 filing of a petition for writ of mandate shall not stay any action required pursuant to
29 this section. This subdivision does not prohibit the court from granting any
30 appropriate relief within its jurisdiction.

31 **Comment.** Section 25510(e)(1) is amended to update a cross-reference 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 **Health & Safety Code § 25548 (amended). Findings and declarations**

35 SEC. __. Section 25548 of the Health and Safety Code is amended to read:

36 25548. (a) The Legislature hereby finds and declares all of the following:

37 (1) There is uncertainty in the law of this state with regard to the liability of lenders
38 for hazardous material contamination involving property that is owned or used by
39 borrowers, whether or not the property is collateral for the loan or obligation.

40 (2) There is also uncertainty in the law of this state with regard to the liability of
41 trustees, executors, and other fiduciaries for hazardous material contamination
42 involving property that is part of the fiduciary estate. Fiduciaries understand that the

1 fiduciary estate may have that liability, but are concerned that a fiduciary may have
2 independent personal liability, despite the absence of personal culpability for the
3 contamination.

4 (3) The uncertainty as to liability or potential liability is attributable to the failure
5 of existing law, except for the security interest exemption incorporated by reference
6 in Section ~~25323.5~~, 78145, to recognize that usually the credit or fiduciary
7 relationship is not sufficiently related to the hazardous material contamination to
8 warrant, as a policy matter, the imposition of liability on lenders and fiduciaries.

9 (b) It is the intent of the Legislature, in enacting this chapter, to specify the type
10 of lender and fiduciary conduct that will not incur liability for hazardous material
11 contamination. However, the liability exemption has appropriate boundaries. For
12 example, the exemption will not protect lenders or fiduciaries in transactions that
13 are structured for the purpose of evading liability for hazardous material
14 contamination if the lender or fiduciary is not acting within its respective capacity,
15 or if the contamination is caused by the lender or fiduciary.

16 (c) This chapter does not apply to judicial actions filed, or administrative orders
17 issued, before January 1, 1997, or to proceedings to enforce judicial or administrative
18 orders issued before January 1, 1997.

19 **Comment.** Section 25548 is amended to update a cross-reference 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 § 25548.1 (amended). Definitions**

23 SEC. __. Section 25548.1 of the Health and Safety Code is amended to read:

24 25548.1. As used in this chapter, the following terms have the following meaning:

25 (a) “Actual benefit” means the amount, if any, realized by the lender upon the
26 disposition of property acquired through foreclosure or its equivalent as a direct
27 result of a removal or remedial action undertaken by another person, not to exceed
28 the amount, if any, by which the disposition proceeds exceed the sum of the balance
29 of all of the following:

30 (1) The loan or obligation or the amount of the lien, evidenced by the loan or
31 obligation outstanding at foreclosure or its equivalent.

32 (2) The costs, including attorneys’ fees, incurred by the lender in connection with
33 the foreclosure or its equivalent, subsequent ownership, any removal or remedial
34 action, and disposition of the property.

35 (b) “Borrower, debtor or obligor” means a person who is obligated to a lender
36 under a loan or obligation, whether or not the lender maintains a security interest in
37 that person’s property.

38 (c) “Damages” includes compensatory damages, exemplary damages, punitive
39 damages, and costs of every kind and nature, including, but not limited to, costs of
40 a removal or remedial action.

41 (d) “Fiduciary” means a person who is acting in any of the following capacities:

1 (1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of
2 Section 82 of the Probate Code.

3 (2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive,
4 or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate
5 Code.

6 (3) A trustee appointed in proceedings under any state or federal bankruptcy law.

7 (4) An assignee or a trustee acting under an assignment made for the benefit of
8 creditors.

9 (5) A court-appointed receiver.

10 (e) “Finance lease” means a transaction with respect to which both of the
11 following apply:

12 (1) The lessor does not select or manufacture the goods or does not supply the
13 goods, except in the case of a re-lease, whether it is created by a new transaction or
14 substitution of the lessee.

15 (2) The lessor acquires the goods or right to possession and use of the goods in
16 connection with the lease or a prior lease transaction.

17 (f) “Foreclosure or its equivalent” means the acquisition of property by a lender
18 through any of the following:

19 (1) Judicial or nonjudicial foreclosure of the lender’s security interest in the
20 property or acceptance of a deed or other conveyance in satisfaction thereto.

21 (2) Acceptance of a deed in lieu or other conveyance in satisfaction of a loan or
22 obligation previously contracted.

23 (3) Termination of a finance lease by consent or default.

24 (4) Any other formal or informal manner, whether pursuant to law or under
25 warranties, covenants, conditions, representations or promises from the borrower,
26 by which the lender acquires, for subsequent disposition, actual possession of the
27 property subject to a security interest.

28 (g) “Hazardous material” has the same meaning as defined in subdivision (d) of
29 Section 25260.

30 (h)(1) “Indicia of ownership” means evidence of a security interest, evidence of
31 an interest in a security interest, or evidence of an interest in real or personal
32 property securing a loan or other obligation, including, but not limited to, any legal
33 or equitable title to real or personal property acquired incident to foreclosure or its
34 equivalent.

35 (2) “Evidence of an interest” includes, but is not limited to, all of the following:

36 (A) Mortgages.

37 (B) Deeds of trust.

38 (C) Liens.

39 (D) Surety bonds and guarantees of obligations.

40 (E) Title held pursuant to a finance lease in which the lessor does not select
41 initially the leased property.

42 (F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

1 (G) Assignments, pledges, or other rights to, or other forms of, encumbrance
2 against property that are held primarily to protect a security interest.

3 (3) A person is not required to hold title or a security interest to maintain indicia
4 of ownership.

5 (i) “Lender” means a person to the extent of the capacity in which that person
6 maintains indicia of ownership primarily to protect a security interest or makes,
7 acquires, renews, modifies, or holds a loan or obligation from a borrower. “Lender”
8 includes either of the following persons:

9 (1) Any person who acts as, or on behalf of, a lender in connection with any aspect
10 of the solicitation, negotiation, consummation, disbursement, administration,
11 servicing, collection, enforcement, or foreclosure or its equivalent of a loan or
12 obligation or security interest in property such as a surety, escrow, or title company.

13 (2) Any person who makes, secures, acquires, or holds a loan or obligation or
14 security interest by assignment, sale, pledge, subrogation, succession, or operation
15 of law, or becomes the receiver for the holder of a loan or obligation or security
16 interest.

17 (j) “Loan or obligation” means a loan, revolving or nonrevolving line of credit,
18 finance lease, sale-leaseback that provides for a purchase option in favor of the
19 lessee, installment sale contract, sale on account, or other credit sale, letter of credit,
20 forbearance or guaranty, collateral pledge, or other suretyship obligation, and any
21 extension, renewal, or modification thereof. A loan or obligation may or may not
22 involve a security interest in property.

23 (k)(1) Except as provided in paragraphs (3) and (4), “participate (or participation)
24 in the management of the property” means actual participation in the management
25 or operational affairs of the property by the lender while the borrower, under the
26 loan or obligation, is in possession of the property, and the lender exercises
27 decisionmaking control over the environmental compliance by the borrower, so that
28 the lender assumes responsibility for the hazardous material handling or disposal
29 practices of the borrower, or exercises control at a level comparable to that of a
30 manager of the enterprise of the borrower, so that the lender assumes or manifests
31 responsibility for the overall management of the enterprise encompassing the day-
32 to-day decisionmaking of the enterprise with respect to either of the following:

33 (A) Environmental compliance.

34 (B) All, or substantially all, of the operational, as opposed to financial or
35 administrative, aspects of the enterprise other than environmental compliance.

36 (2) For purposes of paragraph (1), the following terms have the following
37 meaning:

38 (A) “Operational aspects of the enterprise” includes, but is not limited to,
39 functions such as that of facility or plant manager, operations manager, chief
40 operating officer, or chief executive officer.

41 (B) “Financial or administrative aspects” includes, but is not limited to, functions
42 such as that of a credit manager, accounts payable/receivable manager, personnel
43 manager, controller, or chief financial officer.

1 (3) Notwithstanding paragraph (1), “participation in the management of the
2 property” does not include an act or omission by a prospective lender prior to
3 making, acquiring, or holding a loan or obligation. “Participation in the management
4 of the property” also does not include the actions taken by a prospective lender who
5 undertakes or requires an environmental inspection of property prior to making,
6 acquiring, or holding a loan or obligation. A lender or prospective lender does not
7 “participate in the management of the property” if the lender or prospective lender
8 requires the borrower to clean up the property or requires the borrower to comply
9 or come into compliance with any applicable law or regulation. This chapter does
10 not require a lender to conduct or require an inspection prior to foreclosure or its
11 equivalent to qualify for the exemption provided by this chapter, and the liability of
12 a lender shall not be based on or affected by whether the lender conducts or requires
13 an inspection prior to foreclosure or its equivalent.

14 (4) Loan policing and work out activities, as specified in paragraphs (5) and (6),
15 that are consistent with holding ownership indicia primarily to protect a security
16 interest and consistent with a loan or obligation made, acquired, or held primarily
17 for purposes other than investment purposes, do not constitute participation in the
18 management of the property. The authority for the lender to take those actions may,
19 but are not required to, be contained in contractual or other documents specifying
20 requirements for financial, environmental, and other warranties, covenants,
21 conditions, representations, or promises from the borrower. Loan policing and work
22 out activities include all activities up to foreclosure or its equivalent.

23 (5) A lender who engages in loan policing activities prior to foreclosure or its
24 equivalent is exempt from liability pursuant to this chapter if the lender does not, by
25 those actions, participate in the management of the property. Those actions include,
26 but are not limited to, all of the following:

27 (A) Requiring the borrower to conduct a removal or remedial action during the
28 term of the security interest or loan or obligation.

29 (B) Requiring the borrower to comply or come into compliance with applicable
30 federal, state, and local environmental and other laws during the term of the security
31 interest or loan or obligation.

32 (C) Securing or exercising authority to monitor or inspect the property, including
33 onsite inspections, or the business or financial condition of the borrower during the
34 term of the security interest or loan or obligation.

35 (D) Taking other actions to adequately police the loan, obligation, or security
36 interest, such as requiring the borrower to comply with any warranties, covenants,
37 conditions, representations, or promises in connection with the security interest or
38 loan or obligation.

39 (6)(A) A lender who engages in work out activities prior to foreclosure or its
40 equivalents is exempt from liability pursuant to this chapter if the lender does not,
41 by those actions, participate in the management of the property.

42 (B) “Work out” means those actions by which a lender, at any time prior to
43 foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the

1 borrower, or to preserve or prevent the diminution of the value of the property,
2 security interest, or loan or obligation.

3 (C) Work out activities include, but are not limited to, all of the following:

4 (i) Restructuring or renegotiating the terms of the loan, obligation, or security
5 interest.

6 (ii) Requiring payment of additional rent or interest.

7 (iii) Exercising rights pursuant to an assignment of accounts or other amounts
8 owing to a lender.

9 (iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to
10 amounts owing to a lender.

11 (v) Exercising forbearance.

12 (vi) Providing specific or general financial or other advice, suggestions,
13 counseling, or guidance.

14 (vii) Exercising any right or remedy the lender is entitled to by law or under any
15 warranties, covenants, conditions, representations, or promises from the borrower.

16 (7) A lender does not participate in the management of the property by taking any
17 response action under Section 107(d)(1) of the Comprehensive Environmental
18 Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).
19 However, the lender may be liable for damages, as defined by this chapter, that
20 occur as a result of the gross negligence or willful misconduct of the lender in ~~his~~
21 ~~or her~~ the lender's performance of a response action under Section 107 (d)(1) of the
22 Comprehensive Environmental Response, Compensation and Liability Act of 1980
23 (42 U.S.C. Sec. 9607(d)(1)).

24 (l) "Person" means any entity, including, but not limited to, an individual, estate,
25 trust, firm, business trust, joint stock company, corporation, partnership, joint
26 venture, limited liability company, association, or government. "Person" includes,
27 but is not limited to, any city, county, district, the state, or the federal government,
28 or any department, subdivision, or agency thereof.

29 (m)(1) "Primarily to protect a security interest" means that the indicia of
30 ownership of a lender are held primarily for the purpose of securing payment or
31 performance of an obligation.

32 (2) "Primarily to protect a security interest" does not include indicia of ownership
33 held primarily for investment purposes or indicia of ownership held primarily for
34 purposes other than as protection for a security interest. A lender may have other,
35 secondary reasons for maintaining indicia of ownership, but the primary reason that
36 any indicia of ownership are held shall be as protection for a security interest.

37 (n) "Property" means any real or personal property where hazardous materials are
38 or were generated, handled, managed, deposited, stored, disposed of, placed,
39 released, or otherwise have come to be located. In the context of a loan or obligation,
40 "property" includes any real or personal property in which the obligor has or had an
41 ownership, leasehold, or possessory interest, whether or not it was the subject of a
42 security interest for the loan or obligation.

1 (o) “Release” has the same meaning as defined in ~~Section 25320~~, subdivision (a)
2 of Section 78105.

3 (p) “Remedial action” has the same meaning as defined in subdivision (g) of
4 Section 25260.

5 (q) “Removal” means the cleanup or removal of released hazardous materials
6 from the environment or the taking of other actions that may be necessary to prevent,
7 minimize, or mitigate damages that may otherwise result from a release or
8 threatened release, as further defined in Section 101(23) of the Comprehensive
9 Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec.
10 9601(23)).

11 (r) “Security interest” means an interest in a property created or established for
12 the purpose of securing a loan or obligation. Security interests include, but are not
13 limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease.
14 Security interests may also arise from transactions such as sale and leasebacks,
15 conditional sales, installment sales, trust receipt transactions, certain assignments,
16 factoring agreements, and accounts receivable financing arrangements and
17 consignments if the transaction creates or establishes an interest in a property for
18 the purpose of securing a loan or other obligation.

19 **Comment.** Section 25548.1(o) is amended to update a cross-reference 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 This section is also amended to eliminate gendered pronouns.

23 **Health & Safety Code § 25548.4 (amended). Limitations of chapter**

24 SEC. __. Section 25548.4 of the Health and Safety Code is amended to read:

25 25548.4. This chapter does not do any of the following:

26 (a) Affect any rights, defenses, or immunities that are available to any lender or
27 fiduciary under any applicable law.

28 (b) Create any liability for any lender or fiduciary.

29 (c) Create any private right of action against any lender or fiduciary.

30 (d) Exempt or excuse a lender or fiduciary who operates or directs the operation,
31 or maintains the operation, of the property from compliance with the operational
32 requirements of applicable laws. Those operational requirements include, but are
33 not limited to, permitting, reporting, monitoring, emission limitation, corrective
34 action, financial responsibility and assurance requirements, requirements to take
35 removal or remedial action to respond to a release or threatened release of hazardous
36 materials caused by the lender or fiduciary and the requirements of Division 26
37 (commencing with Section 39000) of this code or of Division 7 (commencing with
38 Section 13000) of the Water Code. Operational requirements include the payment
39 of fees, fines, and penalties, and compliance with any other enforcement provisions
40 that are applicable as a result of the operation, or the direction of the operation, or
41 the maintenance of the operation, of the property by the lender or fiduciary.

1 (e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for
2 breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of
3 Division 9 of the Probate Code.

4 (f) Affect any liabilities of a fiduciary estate.

5 (g) Exempt a lender from liability imposed by ~~Chapter 6.8 (commencing with~~
6 ~~Section 25300) Part 2 (commencing with Section 78000) of Division 45~~ for a
7 removal or remedial action or the recovery of damages relating to a release or
8 threatened release of hazardous material, to the extent that the lender is a responsible
9 party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental
10 Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or
11 (4)).

12 (h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5
13 (commencing with Section 25100).

14 (i) Exempt or excuse a lender from liability under any state or local statute,
15 regulation, or ordinance for a known or suspected release or known or suspected
16 threatened release of hazardous materials caused by events or conditions occurring
17 prior to foreclosure or its equivalent, unless, after taking possession of the property,
18 the lender promptly takes each of the following actions in accordance with
19 applicable law:

20 (1) Suspends operations with respect to that portion of the property where the
21 known or suspected release or known or suspected threatened release occurred or
22 may occur.

23 (2) Removes from the suspended operations and affected areas on the property,
24 all hazardous material not released into the environment and secures the suspended
25 operations.

26 (3) Reports any known or suspected releases of hazardous material.

27 (j) Limit the application or enforcement of ~~Section 25359.4 or 25359.5~~ Article 2
28 (commencing with Section 78675) or Article 4 (commencing with Section 78720)
29 of Chapter 4 of Part 2 of Division 45 or other state or local fencing, posting,
30 securing, notification, or reporting laws with regard to property that is acquired by
31 a lender through foreclosure or its equivalent, to the extent that those requirements
32 are otherwise applicable to the property.

33 (k) Exempt a lender from compliance with an administrative order requiring
34 immediate and temporary measures to prevent, abate, or minimize an emergency
35 caused by a release or threatened release of hazardous material at, from, or in
36 connection with, any property that has been acquired by the lender through
37 foreclosure or its equivalent, when all of the following circumstances exist:

38 (1) The release or threatened release presents an imminent and substantial
39 endangerment to the public health or welfare or the environment.

40 (2) No other person who is viable and potentially responsible for the release or
41 threatened release has been identified and located by the agency issuing the order,
42 following a reasonable effort by the agency to identify and locate any ~~such person.~~
43 person who is viable and potentially responsible.

1 (3) The costs and expenses incurred by the lender to comply with the
2 administrative order do not exceed twenty-five thousand dollars (\$25,000).

3 (4) If the lender complies with the administrative order, the compliance would
4 not, in and of itself, subject the lender to liability for a removal or remedial action
5 or damages, fines, penalties, impositions, or assessments relating to the release or
6 threatened release under any federal law.

7 (l)(1) Exempt a lender who has acquired title to property through foreclosure or
8 its equivalent from operation and maintenance requirements that were established
9 on the property as a result of a removal or remedial action conducted on the property.

10 (2) “Operation and maintenance requirements” include, but are not limited to,
11 deed restrictions and requirements to maintain passive exposure controls and to
12 perform monitoring. If there are requirements other than operation and maintenance
13 requirements, which are applicable to the property to maintain the effectiveness of
14 the removal or remediation action, the lender shall comply with those requirements
15 unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency
16 that it does not intend to comply with the requirements and the agency concurs.

17 (m) Require a lender to conduct, or require a lender to direct the taking of, an
18 inspection of the property after foreclosure or its equivalent to qualify for the
19 exemption provided by this chapter, and the liability of a lender shall not be based
20 on, or affected by, the lender not conducting, or not requiring, an inspection of the
21 property after foreclosure or its equivalent.

22 (n) Require a fiduciary to conduct or require an inspection of the property in a
23 fiduciary estate to qualify for the exemption provided by this chapter and the
24 liability of the fiduciary shall not be based on, or affected by, the fiduciary not
25 conducting or not requiring an inspection prior to holding the property as part of the
26 fiduciary estate.

27 **Comment.** Subdivisions (g) and (j) of Section 25548.4 are amended to update cross-references
28 in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
29 25300) of Division 20 of the Health and Safety Code.

30 This section is also amended to make a technical change.

31 **Health & Safety Code § 33459 (amended). Definitions**

32 SEC. __. Section 33459 of the Health and Safety Code is amended to read:

33 33459. For purposes of this article, the following terms shall have the following
34 meanings:

35 (a) “Department” means the Department of Toxic Substances Control.

36 (b) “Director” means the Director of Toxic Substances Control.

37 (c) “Hazardous substance” means any hazardous substance as defined in
38 subdivision (h) of Section 25281, and any reference to hazardous substance in the
39 definitions referenced in this section shall be deemed to refer to hazardous
40 substance, as defined in this subdivision.

41 (d) “Local agency” means a single local agency that is one of the following:

1 (1) A local agency authorized pursuant to Section 25283 to implement Chapter
2 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with
3 Section 25299.10) of, Division 20.

4 (2) A local officer who is authorized pursuant to Section 101087 to supervise a
5 remedial action.

6 (3) An infrastructure and revitalization financing district created pursuant to
7 Chapter 2.6 (commencing with Section 53369) or Chapter 2.10 (commencing with
8 Section 53399) of Part 1 of Division 2 of Title 5 of the Government Code.

9 (e) “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 (f) “Release” means any release, as defined in ~~Section 25320~~, subdivision (a) of
18 Section 78105.

19 (g) “Remedy” or “remove” means any action to assess, evaluate, investigate,
20 monitor, remove, correct, clean up, or abate a release of a hazardous substance or to
21 develop plans for those actions. “Remedy” includes any action set forth in Section
22 ~~25322~~ 78125 and “remove” includes any action set forth in Section ~~25323~~, 78135.

23 (h) “Responsible party” means any person described in subdivision (a) of Section
24 ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

25 **Comment.** Section 33459 is amended to update cross-references in accordance with the
26 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
27 the Health and Safety Code.

28 **Health & Safety Code § 33459.3 (amended). Liability of agency for release addressed by**
29 **completed action on property within a redevelopment project**

30 SEC. __. Section 33459.3 of the Health and Safety Code is amended to read:

31 33459.3. (a) Notwithstanding any other provision of law, except as provided in
32 Section 33459.7, an agency that undertakes and completes an action, or causes
33 another person to undertake and complete an action pursuant to Section 33459.1, as
34 specified in subdivision (c), to remedy or remove a hazardous substance release on,
35 under, or from property within a redevelopment project, in accordance with a
36 cleanup or remedial action plan prepared by a qualified independent contractor and
37 approved by the department or a California regional water quality control board or
38 the local agency, as appropriate, pursuant to subdivision (b), is not liable, with
39 respect to that release only, under Division 7 (commencing with Section 13000) of
40 the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7
41 (commencing with Section 25280), or Chapter 6.75 (commencing with Section
42 25299.10), ~~or Chapter 6.8 (commencing with Section 25300)~~, of Division 20 of, or

1 Part 2 (commencing with Section 78000) of Division 45 of, this code, or any other
2 state or local law providing liability for remedial or removal actions for releases of
3 hazardous substances. If the remedial action was also performed pursuant to Chapter
4 6.65 (commencing with Section 25260) of Division 20, and a certificate of
5 completion is issued pursuant to subdivision (b) of Section 25264, the immunity
6 from agency action provided by the certificate of completion, as specified in
7 subdivision (c) of Section 25264, shall apply to the agency, in addition to the
8 immunity conferred by this section. In the case of a remedial action performed
9 pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for
10 which the administering agency is a local agency, the limitations on the certificate
11 of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of
12 Section 25264 are limits on any immunity provided for by this section and
13 subdivision (c) of Section 25264.

14 (b) Upon approval of any cleanup or remedial action plan, pursuant to applicable
15 statutes and regulations, the director or the California regional water quality control
16 board or the local agency, as appropriate, shall acknowledge, in writing, within 60
17 days of the date of approval, that upon proper completion of the remedial or removal
18 action in accordance with the plan, the immunity provided by this section shall apply
19 to the agency.

20 (c) Notwithstanding any provision of law or policy providing for certification by
21 a person conducting a remedial or removal action that the action has been properly
22 completed, a determination that a remedial or removal action has been properly
23 completed pursuant to this section shall be made only upon the affirmative approval
24 of the director or the California regional water quality control board or the local
25 agency, as appropriate. The department, California regional water quality control
26 board, or local agency, as appropriate, shall, within 60 days of the date it finds that
27 a remedial action has been completed, notify the agency in writing that the immunity
28 provided by this section is in effect.

29 (d) The approval of a cleanup or remedial action plan under this section by a local
30 agency shall also be subject to the concurrent approval of the department or a
31 California regional water quality control board when the agency receiving the
32 approval was formed by the same entity of which the local agency is a part.

33 (e) Upon proper completion of a remedial or removal action, as specified in
34 subdivision (c), the immunity from agency action provided by the certificate of
35 completion provided pursuant to subdivision (c) of Section 25264 and the immunity
36 provided by this section extends to all of the following, but only for the release or
37 releases specifically identified in the approved cleanup or remedial action plan and
38 not for any subsequent release or any release not specifically identified in the
39 approved cleanup or remedial action plan:

40 (1) Any employee or agent of the agency, including an instrumentality of the
41 agency authorized to exercise some, or all, of the powers of an agency within, or for
42 the benefit of, a redevelopment project and any employee or agent of the
43 instrumentality.

1 (2) Any person who enters into an agreement with an agency for the
2 redevelopment of property, if the agreement requires the person to acquire property
3 affected by a hazardous substance release or to remove or remedy a hazardous
4 substance release with respect to that property.

5 (3) Any person who acquires the property after a person has entered into an
6 agreement with an agency for redevelopment of the property as described in
7 paragraph (2).

8 (4) Any person who provided financing to a person specified in paragraph (2) or
9 (3).

10 (f) Notwithstanding any other provision of law, the immunity provided by this
11 section does not extend to any of the following:

12 (1) Any person who was a responsible party for the release before entering into
13 an agreement, acquiring property, or providing financing, as specified in subdivision
14 (e).

15 (2) Any person specified in subdivision (a) or (e) for any subsequent release of a
16 hazardous substance or any release of a hazardous substance not specifically
17 identified in the approved cleanup or remedial action plan.

18 (3) Any contractor who prepares the cleanup or remedial action plan, or conducts
19 the removal or remedial action.

20 (4) Any person who obtains an approval, as specified in subdivision (b), or a
21 determination, as specified in subdivision (c), by fraud, negligent or intentional
22 nondisclosure, or misrepresentation, and any person who knows before the approval
23 or determination is obtained or before the person enters into an agreement, acquires
24 the property or provides financing, as specified in subdivision (e), that the approval
25 or determination was obtained by these means.

26 (g) The immunity provided by this section is in addition to any other immunity of
27 an agency provided by law.

28 (h) This section does not impair any cause of action by an agency or any other
29 party against the person, firm, or entity responsible for the hazardous substance
30 release which is the subject of the removal or remedial action taken by the agency
31 or other person immune from liability pursuant to this section.

32 (i) This section does not apply to, or limit, alter, or restrict, any action for personal
33 injury, property damage, or wrongful death.

34 (j) This section does not limit liability of a person described in paragraph (3) or
35 (4) of subdivision (e) for damages under the Comprehensive Environmental
36 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
37 9601 et seq.).

38 (k) This section does not establish, limit, or affect the liability of an agency for
39 any release of a hazardous substance that is not investigated or remediated pursuant
40 to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.

41 (l) The immunity provided for by this section is only conferred if both of the
42 following apply:

1 (1) The action is in accordance with a cleanup or remedial action plan prepared
2 by a qualified independent contractor and approved by the department or a
3 California regional water quality control board or the local agency, as appropriate,
4 pursuant to subdivision (b).

5 (2) The remedial or removal action is undertaken and properly completed, as
6 specified in subdivision (c).

7 (m) The agency shall reimburse the department, the California regional water
8 quality control board, and the local agency for costs incurred in reviewing or
9 approving cleanup or remedial action plans pursuant to this section.

10 **Comment.** Section 33459.3(a) is amended to update a cross-reference 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 § 33459.4 (amended). Redevelopment agency cost recovery**

14 SEC. __. Section 33459.4 of the Health and Safety Code is amended to read:

15 33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency
16 undertakes action to remedy or remove, or to require others to remedy or remove,
17 including compelling a responsible party through a civil action, to remedy or remove
18 a release of hazardous substance, any responsible party or parties shall be liable to
19 the redevelopment agency for the costs incurred in the action. An agency may not
20 recover the costs of goods and services that were not procured in accordance with
21 applicable procurement procedures. The amount of the costs shall include the
22 interest on the costs accrued from the date of expenditure and reasonable attorney's
23 fees and shall be recoverable in a civil action. Interest shall be calculated based on
24 the average annual rate of return on an agency's investment of surplus funds for the
25 fiscal year in which costs were incurred.

26 (b) The only defenses available to a responsible party shall be the defenses
27 specified in subdivision (b) of Section ~~25323.5~~. 78145.

28 (c) An agency may recover any costs incurred to develop and to implement a
29 cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3,
30 to the same extent the department is authorized to recover those costs. The scope
31 and standard of liability for cost recovery pursuant to this section shall be the scope
32 and standard of liability under the Comprehensive Environmental Response,
33 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)
34 as that act would apply to the department; provided, however, that any reference to
35 hazardous substance therein shall be deemed to refer to hazardous substance as
36 defined in subdivision (c) of Section 33459.

37 (d) An action for recovery of costs of a remedy or removal undertaken by a
38 redevelopment agency under this section shall be commenced within three years
39 after completion of the remedy or removal.

40 (e) The action to recover costs provided by this section is in addition to, and is not
41 to be construed as restricting, any other cause of action available to a redevelopment
42 agency.

1 (f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any
2 other provision of state law or policy, an agency that undertakes and completes a
3 remedial action, or otherwise causes a remedial action to be undertaken and
4 completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on
5 its ownership of property after a release occurred, for any costs that any responsible
6 party for that release incurs to investigate or remediate the release or to compensate
7 others for the effects of that release.

8 **Comment.** Section 33459.4 is amended to update a cross-reference in accordance with the
9 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
10 the Health and Safety Code.

11 **Health & Safety Code § 57008 (amended). Screening numbers**

12 SEC. __. Section 57008 of the Health and Safety Code is amended to read:

13 57008. (a) For purposes of this section, the following definitions apply:

14 (1) “Agency” means the California Environmental Protection Agency.

15 (2) “Contaminant” means all of the following:

16 (A) A substance listed in Tables II and III of subparagraphs (A) and (B) of
17 paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California
18 Code of Regulations.

19 (B) The five halogenated hydrocarbon industrial solvents that, in the experience
20 of the State Water Resources Control Board and the Department of Toxic
21 Substances Control are most commonly found as contaminants at sites subject to
22 remediation under the Carpenter-Presley-Tanner Hazardous Substances Account
23 Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part 2
24 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water
25 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
26 Code).

27 (C) Ten hazardous substances not included under subparagraphs (A) and (B) that,
28 in the experience of the Department of Toxic Substances Control and the State
29 Water Resources Control Board, are most commonly found as contaminants at sites
30 subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances
31 Account Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part
32 2 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water
33 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
34 Code).

35 (3) “Screening number” means the concentration of a contaminant published by
36 the agency as an advisory number pursuant to the process established in
37 subdivisions (b) and (c). A screening number is solely an advisory number, and has
38 no regulatory effect, and is published solely as a reference value that may be used
39 by citizen groups, community organizations, property owners, developers, and local
40 government officials to estimate the degree of effort that may be necessary to
41 remediate a contaminated property. A screening number may not be construed as,
42 and may not serve as, a level that can be used to require an agency to determine that

1 no further action is required or a substitute for the cleanup level that is required to
2 be achieved for a contaminant on a contaminated property. The public agency with
3 jurisdiction over the remediation of a contaminated site shall establish the cleanup
4 level for a contaminant pursuant to the requirements and the procedures of the
5 applicable laws and regulations that govern the remediation of that contaminated
6 property and the cleanup level may be higher or lower than a published screening
7 number.

8 (b)(1) During the same period when the agency is carrying out the pilot study
9 required by Section 57009 and preparing the informational document required by
10 Section 57010, the agency shall initiate a scientific peer review of the screening
11 levels published in Appendix 1 of Volume 2 of the technical report published by the
12 San Francisco Regional Water Quality Control Board entitled “Application of Risk-
13 Based Screening Levels and Decision-Making to Sites with Impacted Soil and
14 Groundwater (Interim Final-August 2000).” The agency shall conduct the scientific
15 peer review process in accordance with Section 57004, and shall limit the review to
16 those substances specified in paragraph (2) of subdivision (a). The agency shall
17 complete the peer review process on or before December 31, 2004.

18 (2) The agency, in cooperation with the Department of Toxic Substances Control,
19 the State Water Resources Control Board, and the Office of Environmental Health
20 Hazard Assessment, shall publish a list of screening numbers for contaminants listed
21 in paragraph (2) of subdivision (a) for the protection of human health and safety,
22 and shall report on the feasibility of establishing screening numbers to protect water
23 quality and ecological resources. The agency shall determine the screening numbers
24 using the evaluation set forth in ~~Section 25356.1.5~~ Article 13 (commencing with
25 Section 79260) of Chapter 5 of Part 2 of Division 45 and the results of the peer
26 review, and shall use the most stringent hazard criterion established pursuant to
27 Subpart E of the National Oil and Hazardous Substances Pollution Contingency
28 Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate
29 screening levels for unrestricted land uses and a restricted, nonresidential use of
30 land. In determining each screening number, the agency shall consider all of the
31 following:

32 (A) The toxicology of the contaminant, its adverse effects on human health and
33 safety, biota, and its potential for causing environmental damage to natural
34 resources, including, but not limited to, beneficial uses of the water of the state,
35 including sources of drinking water.

36 (B) Risk assessments that have been prepared for the contaminant by federal or
37 state agencies pursuant to environmental or public health laws, evaluations of the
38 contaminant that have been prepared by epidemiological studies and occupational
39 health programs, and risk assessments or other evaluations of the contaminant that
40 have been prepared by governmental agencies or responsible parties as part of a
41 project to remediate a contaminated property.

42 (C) Cleanup levels that have been established for the contaminant at sites that
43 have been, or are being, investigated or remediated under ~~Chapter 6.8 (commencing~~

1 ~~with Section 25300) of Division 20, Part 2 (commencing with Section 78000) of~~
2 Division 45, or cleaned up or abated under Division 7 (commencing with Section
3 13000) of the Water Code or under any other remediation program administered by
4 a federal or local agency.

5 (D) Screening numbers that have been published by other agencies in the state, in
6 other states, and by federal agencies.

7 (E) The results of external scientific peer review of the screening numbers made
8 pursuant to Section 57004.

9 (c)(1) Before publishing the screening numbers pursuant to subdivision (b), the
10 agency shall conduct two public workshops, one in the northern part of the state and
11 the other in the southern part of the state, to brief interested parties on the scientific
12 and policy bases for the development of the proposed screening numbers and to
13 receive public comments.

14 (2) Following publication of the screening numbers pursuant to subdivision (b),
15 the agency shall conduct three public workshops in various regions of the state to
16 discuss the screening numbers and to receive public comments. The agency shall
17 select an agency representative who shall serve as the chairperson for the
18 workshops, and the agency shall ensure that ample opportunity is available for
19 public involvement in the workshops. The deputy secretary for external affairs shall
20 actively seek out participation in the workshops by citizen groups, environmental
21 organizations, community-based organizations that restore and redevelop
22 contaminated properties for park, school, residential, commercial, open-space or
23 other community purposes, property owners, developers, and local government
24 officials.

25 (d) Following the workshops required by subdivision (c), the agency shall revise
26 the screening numbers as appropriate. The agency shall, from time to time, revise
27 the screening numbers as necessary as experience is gained with their use and shall
28 add screening numbers for contaminants to the list as information concerning
29 remediation problems becomes available.

30 (e) The agency shall publish a guidance document for distribution to citizen
31 groups, community-based organizations, property owners, developers, and local
32 government officials that explains how screening numbers may be used to make
33 judgments about the degree of effort that may be necessary to remediate
34 contaminated properties, to facilitate the restoration and revitalization of
35 contaminated property, to protect the waters of the state, and to make more efficient
36 and effective decisions in local-level remediation programs.

37 (f) Nothing in this section affects the authority of the Department of Toxic
38 Substances Control, the State Water Resources Control Board, or a regional water
39 quality control board to take action under any applicable law or regulation regarding
40 a release or threatened release of hazardous materials.

41 **Comment.** Section 57008(a)(2)(B), (a)(2)(C), (b)(2), and (b)(2)(C) are amended to update cross-
42 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with
43 Section 25300) of Division 20 of the Health and Safety Code.

1 **Health & Safety Code § 57010 (amended). Informational document regarding site**
2 **investigation and remediation decisions**

3 SEC. __. Section 57010 of the Health and Safety Code is amended to read:

4 57010. (a) On or before January 1, 2003, the California Environmental Protection
5 Agency shall publish an informational document to assist citizen groups,
6 community-based organizations, interested laypersons, property owners, local
7 government officials, developers, environmental organizations, and environmental
8 consultants to understand the factors that are taken into account, and the procedures
9 that are followed, in making site investigation and remediation decisions under the
10 Carpenter-Presley-Tanner Hazardous Substances Account Act (~~Chapter 6.8~~
11 ~~(commencing with Section 25300) of Division 20~~) (Part 2 (commencing with
12 Section 78000) of Division 45) and under the Porter-Cologne Water Quality Control
13 Act (Division 7 (commencing with Section 13000) of the Water Code).

14 (b) The agency shall make the informational document required by this section
15 available to any person who requests it at no charge and shall also post the public
16 information manual on the agency's ~~Internet Web site.~~ internet website. The agency
17 shall update both the printed informational document and the ~~Web site~~ internet
18 website at appropriate intervals as new legislation or revised policies affect the
19 administration of the Carpenter-Presley-Tanner Hazardous Substances Account Act
20 (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part 2
21 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water
22 Quality Control Act (Division 7 (commencing with Section 13000) of the Water
23 Code).

24 **Comment.** Section 57010 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 This section is also amended to make a technical change.

28 **Health & Safety Code § 100885 (amended). Injunctive relief**

29 SEC. __. Section 100885 of the Health and Safety Code is amended to read:

30 100885. (a) Any person who operates a laboratory that performs work that
31 requires certification or TNI accreditation under Section 25198, 25298.5, ~~25358.4,~~
32 78510, 110490, or 116390 of this code, or Section 13176 of the Water Code, who
33 is not certified or TNI accredited to do so, may be enjoined from so doing by any
34 court of competent jurisdiction upon suit by the state board.

35 (b) When the state board determines that any person has engaged in, or is engaged
36 in, any act or practice that constitutes a violation of this article, or any regulation or
37 order issued or adopted thereunder, the state board may bring an action in the
38 superior court for an order enjoining these practices or for an order directing
39 compliance and affording any further relief that may be required to ensure
40 compliance with this article.

41 **Comment.** Section 100885 is amended to update a cross-reference 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 **Health & Safety Code § 100886 (amended). Report by laboratory operator**

2 SEC. __. Section 100886 of the Health and Safety Code is amended to read:

3 100886. Any person who operates a laboratory for the purposes specified in
4 Section 25198, 25298.5, ~~25358.4~~, 78510, or 116390 of this code, or Section 13176
5 of the Water Code, shall report the full and complete results of all detected
6 contamination and pollutants to the person or entity that submitted the material for
7 testing.

8 **Comment.** Section 100886 is amended to update a cross-reference in accordance with the
9 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
10 the Health and Safety Code.

11 **Health & Safety Code § 100890 (amended). Civil penalties**

12 SEC. __. Section 100890 of the Health and Safety Code is amended to read:

13 100890. (a) Any person who knowingly makes any false statement or
14 representation in any application, record, or other document submitted, maintained,
15 or used for purposes of compliance with this article, may be liable, as determined
16 by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each
17 separate violation or, for continuing violations, for each day that violation continues.

18 (b) Any person who operates a laboratory for purposes specified pursuant to
19 Section 25198, 25298.5, ~~25358.4~~, 78510, 110490, or 116390 of this code, or Section
20 13176 of the Water Code that requires certification, who is not certified by the
21 department pursuant to this article, may be liable, as determined by the court, for a
22 civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation
23 or, for continuing violations, for each day that violation continues.

24 (c) A laboratory that advertises or holds itself out to the public or its clients as
25 having been certified for any field of testing without having a valid and current
26 certificate in each field of testing identified by the advertisement or other
27 representation may be liable, as determined by the court, for a civil penalty not to
28 exceed one thousand dollars (\$1,000) or, for continuing violations, for each day that
29 violation continues.

30 (d) Each civil penalty imposed for any separate violation pursuant to this section
31 shall be separate and in addition to any other civil penalty imposed pursuant to this
32 section or any other provision of law.

33 **Comment.** Section 100890 is amended to update a cross-reference 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 § 101480 (amended). Supervision of remedial action by local officer**

37 SEC. __. Section 101480 of the Health and Safety Code is amended to read:

38 101480. (a) For purposes of this article, the following definitions apply:

39 (1) “Department” means the Department of Toxic Substances Control.

40 (2) “Local officer” means a county health officer, city health officer, or county
41 director of environmental health who has been granted authority by the city's or

1 county's governing body to enter into a remedial action agreement and oversee a
2 remedial investigation or remedial action, or both, at a waste release site.

3 (3) "Operation and maintenance" means those activities initiated or continued at
4 a waste release site following completion of a remedial action deemed necessary to
5 protect public health, safety, or the environment, to maintain the effectiveness of the
6 remedial action at the waste release site, or to achieve or maintain the cleanup goals
7 established in a remedial action agreement pursuant to paragraph (1) of subdivision
8 (c).

9 (4) "Person" has the same meaning as set forth in Section 25118.

10 (5) "Regional water quality control board" means an entity formed pursuant to
11 Section 13201 of the Water Code.

12 (6) "Release" has the same meaning as set forth in ~~Section 25320~~. subdivision (a)
13 of Section 78105.

14 (7) "Remedial action" or "remediation" means any action taken by a responsible
15 party to clean up a released waste, to abate the effects of a released waste, or to
16 prevent, minimize, or mitigate damages that may result from the release of a waste.
17 "Remedial action" includes the restoration, rehabilitation, or replacement of any
18 natural resource damaged or lost as a result of the release of a waste.

19 (8) "Remedial action agreement" means an agreement between a local officer and
20 a responsible party pursuant to which the local officer oversees the investigation,
21 remediation, or operation and maintenance of a waste release site that includes the
22 information set forth in paragraph (1) of subdivision (c).

23 (9) "Remedial investigation" or "investigation" means those actions deemed
24 necessary to determine the full extent of a waste release at a site, identify the public
25 health and environmental threat posed by the waste release, collect data on possible
26 remedies, and otherwise evaluate the waste release site for purposes of developing
27 a remedial action.

28 (10) "Responsible party" means a person who, pursuant to this section, requests a
29 local officer to oversee a remedial investigation or remedial action, or both, with
30 respect to a released waste.

31 (11) "State board" means the State Water Resources Control Board.

32 (12) "Waste" has the same meaning as set forth in subdivision (b) of Section
33 101075.

34 (b) Whenever a release of waste occurs and remedial action is required, and that
35 waste release site is not being overseen by the department or the regional water
36 quality control board, a responsible party may request the local officer to oversee
37 the remedial investigation or remedial action, or both. A local officer may agree to
38 oversee the remedial investigation or remedial action, or both, if the local officer
39 determines, based on available information, that staff resources and the requisite
40 technical expertise and capabilities are available to the local officer to adequately
41 oversee the remedial investigation or remedial action, or both, and if the local officer
42 has met both of the following requirements:

1 (1) The local officer has complied with the notification requirements in Section
2 101487.

3 (2) The local officer has, within the past 12 months, submitted to the department
4 and the regional water quality control board all of the following information:

5 (A) A description of the technical expertise and staff resources available to the
6 local officer to oversee the investigation or remediation, or both, of waste release
7 sites, including the résumés of appropriately licensed professionals, licensed
8 pursuant to Chapter 7 (commencing with Section 6700) of, or Chapter 12.5
9 (commencing with Section 7800) of, Division 3 of the Business and Professions
10 Code. The local officer shall submit to the department and the regional water quality
11 control board information on any substantial changes to staff resources described in
12 this subparagraph within 30 days of those changes.

13 (B) Certification that all applicable requirements of this code and Division 7
14 (commencing with Section 13000) of the Water Code will be adhered to and that, if
15 enforcement action is necessary, the appropriate enforcement action will be
16 conducted. If the local officer lacks the necessary enforcement authority, the local
17 officer shall notify the department and the regional water quality control board
18 regarding the status of the case and the need for enforcement assistance.

19 (C) Attestation that accurate records will be maintained and kept up to date,
20 including through the use of the state board's GeoTracker electronic data
21 management system, and kept in compliance with the electronic reporting
22 requirements in Chapter 30 (commencing with Section 3890) of Division 3 of Title
23 23 of, and Subdivision 2 of Division 3 of Title 27 of, the California Code of
24 Regulations, or any successor regulations.

25 (c)(1) Oversight of a remedial investigation or remedial action, or operation and
26 maintenance of a waste release site, carried out under this section shall be conducted
27 only pursuant to a remedial action agreement entered into by a local officer and a
28 responsible party. The remedial action agreement shall specify all of the following
29 information:

30 (A) The scope of the proposed remedial investigation the responsible party will
31 carry out to determine the type and extent of contamination caused by the released
32 waste that is the subject of the remedial investigation or remedial action.

33 (B) Proposed remedial actions.

34 (C) Reporting and public notification requirements.

35 (D) Actions that may be taken in the event of the responsible party's
36 noncompliance with state or local agency directives.

37 (E) The cleanup goals that the local officer determines are necessary to comply
38 with applicable provisions of this code and the Water Code, and all associated
39 regulations, in order to protect human health, safety, or the environment, and that,
40 if met, constitute a permanent remedy to the release of the waste.

41 (2) The local officer and the responsible party may amend the remedial action
42 agreement to update the information outlined in paragraph (1) as additional
43 information about the waste release site becomes available.

1 (d) A local officer who enters into a remedial action agreement, as described in
2 paragraph (1) of subdivision (c), may, after giving a responsible party at least 30
3 days' notice, withdraw from the agreement at any time for one or more of the
4 following reasons:

5 (1) The responsible party is not in compliance with the remedial action agreement.

6 (2) Staff resources, technical expertise, or technical capabilities are not available
7 to the local officer to adequately oversee the remedial investigation or remedial
8 action, or both.

9 (3) The release of the waste that is the subject of the remedial investigation or
10 remedial action, or both, is of a sufficiently complex nature or may present such a
11 significant potential hazard to human health, safety, or the environment that it
12 should be referred to the department or the regional water quality control board.

13 (e)(1) Within 30 days of receiving a notification from a local officer pursuant to
14 Section 101487, the department or the regional water quality control board shall
15 inform the local officer in writing if the department or the regional water quality
16 control board will retain oversight authority for the waste release site.

17 (2) If the department or the regional water quality control board informs a local
18 officer that they will retain oversight authority for the waste release site, the
19 response described in paragraph (1) shall include all of the following:

20 (A) A brief description of the department's or the regional water quality control
21 board's reasons for retaining oversight authority.

22 (B) The name, phone number, and email address of the technical staff at the
23 department or the regional water quality control board who made the determination.

24 (C) The internet website address of the electronic data management system where
25 public records will be posted regarding the waste release site.

26 (f)(1) If the department or the regional water quality control board informs a local
27 officer that they will retain oversight authority for the waste release site pursuant to
28 this section, the local officer shall not enter into a remedial action agreement for that
29 site.

30 (2) If the department and the regional water quality control board notify a local
31 officer that they will not retain oversight authority for the waste release site pursuant
32 to this section, through either a written statement or by not responding within 30
33 days from the date of the notification from a local officer pursuant to Section
34 101487, the local officer may enter a remedial action agreement for the site and,
35 upon doing so, shall establish a global identification number and public record for
36 the site in the state board's GeoTracker electronic data management system and shall
37 upload a copy of the agreement under that global identification number.

38 (g) The department or a regional water quality control board shall not assume
39 regulatory oversight authority over a waste release site for which they have received
40 a notification from a local officer pursuant to Section 101487 or after a remedial
41 action agreement has been entered into unless the department or the regional water
42 quality control board makes one or more of the following determinations:

1 (1) The remedial action being proposed for the waste release site will be
2 insufficient to address the contamination caused by the released waste that is the
3 subject of the remedial action.

4 (2) The staff resources, technical expertise, or technical capabilities described in
5 subparagraph (A) of paragraph (2) of subdivision (b) are no longer available to the
6 local officer.

7 (3) The responsible party is not in compliance with the remedial action agreement
8 and the local officer lacks the necessary enforcement authority to ensure compliance
9 with the remedial action agreement.

10 (4) The release of the waste that is the subject of the remedial investigation or
11 remedial action, or both, is of a sufficiently complex nature or may present such a
12 significant potential hazard to human health, safety, or the environment that it
13 should be handled by the department or the regional water quality control board.

14 (h)(1) After a remedial action agreement has been entered into by a local officer,
15 the department or a regional water quality control board shall notify the local officer
16 in writing if the department or the regional water quality control board will assume
17 oversight authority over the waste release site pursuant to the authority referenced
18 in Section 101485.

19 (2) The notification described in paragraph (1) shall occur with a minimum 30
20 days' notice, after which the remedial action agreement shall no longer be valid.

21 (3) Nothing in the notification described in paragraph (1) shall preclude a local
22 officer from recovering any costs from the responsible party that the local officer
23 incurred under the terms of the remedial action agreement before its termination.

24 (i) A local officer shall ensure compliance with the electronic reporting
25 requirements of Chapter 30 (commencing with Section 3890) of Division 3 of Title
26 23 of, and Subdivision 2 of Division 3 of Title 27 of, the California Code of
27 Regulations, or any successor regulations. The electronic reporting requirements
28 shall be included as a provision of a remedial action agreement.

29 (j)(1) At least 30 days before certifying that the cleanup goals identified in the
30 remedial action agreement were accomplished pursuant to paragraph (2), a local
31 officer shall conduct a public notification process that shall include, at a minimum,
32 both of the following:

33 (A) Notifying the department, the regional water quality control board, agencies
34 with authority to issue building permits for land affected by the waste release,
35 owners and occupants of the property impacted by the waste release, and the owners
36 and occupants of all parcels adjacent to the waste release site.

37 (B) Posting the public notice on the state board's GeoTracker electronic data
38 management system under the global identification number established for the
39 waste release site.

40 (2) After determining that a responsible party has completed the actions required
41 by the remedial action agreement and that a permanent remedy for the release of
42 waste has been achieved, the local officer shall provide the responsible party with a
43 document that describes the release of waste that occurred and the remedial action

1 taken, and certifies that the cleanup goals embodied in the remedial action
2 agreement were accomplished. The local officer shall post the document on the state
3 board's GeoTracker electronic data management system under the global
4 identification number established for the waste release site.

5 (3)(A) Paragraphs (1) and (2) apply to a remedial action agreement entered into
6 on or after January 1, 2022, and an open remedial action agreement entered into
7 before January 1, 2022.

8 (B) A local officer shall ensure that a global identification number and public
9 record is established in the state board's GeoTracker electronic data management
10 system for a waste release site for which the local agency is overseeing a remedial
11 action or remedial investigation, or both, pursuant to an open remedial action
12 agreement entered into before January 1, 2022. Commencing on January 1, 2022,
13 the local agency shall maintain all documents related to that waste release site in
14 compliance with the electronic reporting requirements in Chapter 30 (commencing
15 with Section 3890) of Division 3 of Title 23 of, and Subdivision 2 of Division 3 of
16 Title 27 of, the California Code of Regulations, or any successor regulations.

17 (C) For purposes of this paragraph, “open remedial action agreement” means a
18 remedial action agreement entered into by a local agency and a responsible party
19 before January 1, 2022, for a waste release site for which the local agency, as of
20 January 1, 2022, has not certified that the cleanup goals embodied in the remedial
21 action agreement were accomplished pursuant to paragraph (2).

22 (k) Except as provided in paragraph (3) of subdivision (j), the amendments made
23 to this section by Assembly Bill 304 of the 2021–22 Regular Session apply to a
24 remedial action agreement entered into on or after January 1, 2022, and this section
25 applies as it read on December 31, 2021, with regard to a remedial action agreement
26 entered into before January 1, 2022.

27 **Comment.** Section 101480(a)(6) is amended to update a cross-reference 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 § 101483 (amended). Sites not subject to article**

31 SEC. __. Section 101483 of the Health and Safety Code is amended to read:

32 101483. This article shall not apply to any of the following:

33 (a) A hazardous substance release site listed pursuant to ~~Section 25356~~, Article 5
34 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45, a site
35 subject to an order or enforceable agreement issued pursuant to Article 1
36 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section
37 25355.5 or 25358.3, 78870 or 79055, or a site where the department has initiated
38 action pursuant to ~~Section 25355~~. Article 10 (commencing with Section 79130) of
39 Chapter 5 of Part 2 of Division 45.

40 (b) A site subject to a corrective action order or agreement issued pursuant to
41 Section 25187.

1 (c) A site subject to a cleanup and abatement order issued pursuant to Section
2 13304 of the Water Code.

3 (d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

4 **Comment.** Section 101483 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 & Safety Code § 101485 (amended). Construction of article**

8 SEC. __. Section 101485 of the Health and Safety Code is amended to read:

9 101485. This article does not prohibit the department from assuming jurisdiction
10 over a waste release site pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~
11 ~~of Division 20, Part 2 (commencing with Section 78000) of Division 45~~, or the
12 regional water quality control board or the state board from assuming jurisdiction
13 over a waste release site or from taking enforcement action against a waste release
14 site pursuant to Division 7 (commencing with Section 13000) of the Water Code.

15 **Comment.** Section 101485 is amended to update a cross-reference 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 LABOR CODE

19 **Lab. Code § 142.7 (amended). Occupational standard concerning hazardous substance**
20 **removal work**

21 SEC. __. Section 142.7 of the Labor Code is amended to read:

22 142.7. (a) On or before October 1, 1987, the board shall adopt an occupational
23 safety and health standard concerning hazardous substance removal work, so as to
24 protect most effectively the health and safety of employees. The standard shall
25 include, but not be limited to, requirements for all of the following:

26 (1) Specific work practices.

27 (2) Certification of all employees engaged in hazardous substance removal-related
28 work, except that no certification shall be required for an employee whose only
29 activity is the transportation of hazardous substances which are subject to the
30 requirement for a certificate under Section 12804.1 of the Vehicle Code.

31 (3) Certification of supervisors with sufficient experience and authority to be
32 responsible for hazardous substance removal work.

33 (4) Designation of a qualified person who shall be responsible for scheduling any
34 air sampling, laboratory calibration of sampling equipment, evaluation of soil or
35 other contaminated materials sampling results, and for conducting any equipment
36 testing and evaluating the results of the tests.

37 (5) Requiring that a safety and health conference be held for all hazardous
38 substance removal jobs before the start of actual work. The conference shall include
39 representatives of the owner or contracting agency, the contractor, the employer,
40 employees, and employee representatives, and shall include a discussion of the
41 employer's safety and health program and the means, methods, devices, processes,

1 practices, conditions, or operations which the employer intends to use in providing
2 a safe and healthy place of employment.

3 (b) For purposes of this section, “hazardous substance removal work” means
4 cleanup work at any of the following:

5 (1) A site where removal or remedial action is taken pursuant to either of the
6 following:

7 (A) ~~Chapter 6.8 (commencing with Section 25300) of Division 20 Part 2~~
8 (commencing with Section 78000) of Division 45 of the Health and Safety Code,
9 regardless of whether the site is listed pursuant to ~~Section 25356 Article 5~~
10 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
11 Health and Safety Code.

12 (B) The federal Comprehensive Environmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

14 (2) A site where corrective action is taken pursuant to Section 25187 or 25200.10
15 of the Health and Safety Code or the federal Resource Conservation and Recovery
16 Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

17 (3) A site where cleanup of a discharge of a hazardous substance is required
18 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

19 (4) A site where removal or remedial action is taken because a hazardous
20 substance has been discharged or released in an amount that is reportable pursuant
21 to Section 13271 of the Water Code or the federal Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).
23 “Hazardous substance removal work” does not include work related to a hazardous
24 substance spill on a highway.

25 (c) Until the occupational safety and health standard required by subdivision (a)
26 is adopted by the board and becomes effective, the occupational safety and health
27 standard concerning hazardous substance removal work shall be the standard
28 adopted by the federal government and codified in Section 1910.120 of Title 29 of
29 the Code of Federal Regulations. In addition, before actual work is started on a
30 hazardous substance removal job, a safety and health conference shall be held that
31 shall include the participants and involve a discussion of the subjects described in
32 paragraph (5) of subdivision (a).

33 **Comment.** Section 142.7(b)(1)(A) 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 PENAL CODE

37 **Penal Code § 803 (amended). Tolling or extension of limitation of time**

38 SEC. __. Section 803 of the Penal Code is amended to read:

39 803. (a) Except as provided in this section, a limitation of time prescribed in this
40 chapter is not tolled or extended for any reason.

1 (b) The time during which prosecution of the same person for the same conduct
2 is pending in a court of this state is not a part of a limitation of time prescribed in
3 this chapter.

4 (c) A limitation of time prescribed in this chapter does not commence to run until
5 the discovery of an offense described in this subdivision. This subdivision applies
6 to an offense punishable by imprisonment in the state prison or imprisonment
7 pursuant to subdivision (h) of Section 1170, a material element of which is fraud or
8 breach of a fiduciary obligation, the commission of the crimes of theft or
9 embezzlement upon an elder or dependent adult, or the basis of which is misconduct
10 in office by a public officer, employee, or appointee, including, but not limited to,
11 the following offenses:

12 (1) Grand theft of any type, forgery, falsification of public records, or acceptance
13 of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a
14 public employee, including, but not limited to, a violation of Section 68, 86, or 93.

15 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

16 (3) A violation of Section 25540, of any type, or Section 25541 of the
17 Corporations Code.

18 (4) A violation of Section 1090 or 27443 of the Government Code.

19 (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107
20 of the Welfare and Institutions Code.

21 (6) Felony insurance fraud in violation of Section 548 or 550 of this code or
22 former Section 1871.1, or Section 1871.4, of the Insurance Code.

23 (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and
24 Professions Code.

25 (8) A violation of Section 22430 of the Business and Professions Code.

26 (9) A violation of Section 103800 of the Health and Safety Code.

27 (10) A violation of Section 529a.

28 (11) A violation of subdivision (d) or (e) of Section 368.

29 (d) If the defendant is out of the state when or after the offense is committed, the
30 prosecution may be commenced as provided in Section 804 within the limitations
31 of time prescribed by this chapter, and no time up to a maximum of three years
32 during which the defendant is not within the state shall be a part of those limitations.

33 (e) A limitation of time prescribed in this chapter does not commence to run until
34 the offense has been discovered, or could have reasonably been discovered, with
35 regard to offenses under Division 7 (commencing with Section 13000) of the Water
36 Code, under Chapter 6.5 (commencing with Section 25100) ~~of~~, or Chapter 6.7
37 (commencing with Section 25280) ~~of~~, ~~or~~ ~~Chapter 6.8 (commencing with Section~~
38 ~~25300)~~ ~~of~~, Division 20 of, or Part 4 (commencing with Section 41500) of Division
39 26 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and
40 Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with
41 Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of
42 Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of

1 Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of,
2 the Business and Professions Code.

3 (f)(1) Notwithstanding any other limitation of time described in this chapter, if
4 subdivision (b) of Section 799 does not apply, a criminal complaint may be filed
5 within one year of the date of a report to a California law enforcement agency by a
6 person of any age alleging that the person, while under 18 years of age, was the
7 victim of a crime described in Section 261, 286, 287, 288, 288.5, or 289, former
8 Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991
9 relating to penetration by an unknown object.

10 (2) This subdivision applies only if all of the following occur:

11 (A) The limitation period specified in Section 800, 801, or 801.1, whichever is
12 later, has expired.

13 (B) The crime involved substantial sexual conduct, as described in subdivision (b)
14 of Section 1203.066, excluding masturbation that is not mutual.

15 (C) There is independent evidence that corroborates the victim's allegation. If the
16 victim was 21 years of age or older at the time of the report, the independent
17 evidence shall clearly and convincingly corroborate the victim's allegation.

18 (3) Evidence shall not be used to corroborate the victim's allegation if that
19 evidence would otherwise be inadmissible during trial. Independent evidence
20 excludes the opinions of mental health professionals.

21 (4)(A) In a criminal investigation involving any of the crimes listed in paragraph
22 (1) committed against a child, if the applicable limitations period has not expired,
23 that period shall be tolled from the time a party initiates litigation challenging a
24 grand jury subpoena until the end of the litigation, including any associated writ or
25 appellate proceeding, or until the final disclosure of evidence to the investigating or
26 prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the
27 litigation.

28 (B) This subdivision does not affect the definition or applicability of any
29 evidentiary privilege.

30 (C) This subdivision shall not apply if a court finds that the grand jury subpoena
31 was issued or caused to be issued in bad faith.

32 (g)(1) Notwithstanding any other limitation of time described in this chapter, a
33 criminal complaint may be filed within one year of the date on which the identity of
34 the suspect is conclusively established by DNA testing, if both of the following
35 conditions are met:

36 (A) The crime is one that is described in subdivision (c) of Section 290.

37 (B) The offense was committed before January 1, 2001, and biological evidence
38 collected in connection with the offense is analyzed for DNA type no later than
39 January 1, 2004, or the offense was committed on or after January 1, 2001, and
40 biological evidence collected in connection with the offense is analyzed for DNA
41 type no later than two years from the date of the offense.

42 (2) For purposes of this section, "DNA" means deoxyribonucleic acid.

1 (h) For any crime, the proof of which depends substantially upon evidence that
2 was seized under a warrant, but which is unavailable to the prosecuting authority
3 under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
4 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or
5 subdivision (c) of Section 1524, relating to claims of evidentiary privilege or
6 attorney work product, the limitation of time prescribed in this chapter shall be
7 tolled from the time of the seizure until final disclosure of the evidence to the
8 prosecuting authority. This section does not otherwise affect the definition or
9 applicability of any evidentiary privilege or attorney work product.

10 (i)(1) Notwithstanding any other limitation of time described in this chapter, a
11 criminal complaint may be filed within one year of the date on which a hidden
12 recording is discovered related to a violation of paragraph (2) or (3) of subdivision
13 (j) of Section 647.

14 (2) Notwithstanding any other limitation of time described in this chapter, a
15 criminal complaint may be filed within one year of the date on which it is discovered
16 that, but not more than four years after, an image was intentionally distributed in
17 violation of paragraph (4) of subdivision (j) of Section 647.

18 (j) Notwithstanding any other limitation of time described in this chapter, if a
19 person flees the scene of an accident that caused death or permanent, serious injury,
20 as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal
21 complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of
22 the Vehicle Code may be filed within the applicable time period described in Section
23 801 or 802 or one year after the person is initially identified by law enforcement as
24 a suspect in the commission of the offense, whichever is later, but in no case later
25 than six years after the commission of the offense.

26 (k) Notwithstanding any other limitation of time described in this chapter, if a
27 person flees the scene of an accident, a criminal complaint brought pursuant to
28 paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the
29 applicable time period described in Section 801 or 802, or one year after the person
30 is initially identified by law enforcement as a suspect in the commission of that
31 offense, whichever is later, but in no case later than six years after the commission
32 of the offense.

33 (l) A limitation of time prescribed in this chapter does not commence to run until
34 the discovery of an offense involving the offering or giving of a bribe to a public
35 official or public employee, including, but not limited to, a violation of Section 67,
36 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

37 (m) Notwithstanding any other limitation of time prescribed in this chapter, if a
38 person actively conceals or attempts to conceal an accidental death in violation of
39 Section 152, a criminal complaint may be filed within one year after the person is
40 initially identified by law enforcement as a suspect in the commission of that
41 offense, provided, however, that in any case a complaint may not be filed more than
42 four years after the commission of the offense.

1 (n)(1) Notwithstanding any other limitation of time described in this chapter, a
2 criminal complaint brought pursuant to a violation of Section 367g may be filed
3 within one year of the discovery of the offense or within one year after the offense
4 could have reasonably been discovered.

5 (2) This subdivision applies to crimes that were committed on or after January 1,
6 2021, and to crimes for which the statute of limitations that was in effect before
7 January 1, 2021, has not run as of January 1, 2021.

8 **Comment.** Section 803(e) is amended to update a cross-reference in accordance with the
9 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
10 the Health and Safety Code.

11 PUBLIC RESOURCES CODE

12 **Pub. Res. Code § 21083.8.1 (amended). Environmental review of reuse plan for military**
13 **base**

14 SEC. __. Section 21083.8.1 of the Public Resources Code is amended to read:

15 21083.8.1. (a)(1) For purposes of this section, “reuse plan” for a military base
16 means an initial plan for the reuse of a military base adopted by a local government
17 or a redevelopment agency in the form of a general plan, general plan amendment,
18 specific plan, redevelopment plan, or other planning document, except that the reuse
19 plan shall also consist of a statement of development policies, include a diagram or
20 diagrams illustrating its provisions, and make the designation required in paragraph
21 (2). “Military base” or “base” means a military base or reservation either closed or
22 realigned by, or scheduled for closure or realignment by, the federal government.

23 (2) The reuse plan shall designate the proposed general distribution and general
24 location of development intensity for housing, business, industry, open space,
25 recreation, natural resources, public buildings and grounds, roads and other
26 transportation facilities, infrastructure, and other categories of public and private
27 uses of land.

28 (b)(1) When preparing and certifying an environmental impact report for a reuse
29 plan, including when utilizing an environmental impact statement pursuant to
30 Section 21083.5, the determination of whether the reuse plan may have a significant
31 effect on the environment may be made in the context of the physical conditions
32 that were present at the time that the federal decision became final for the closure
33 or realignment of the base. The no project alternative analyzed in the environmental
34 impact report shall discuss the existing conditions on the base, as they exist at the
35 time that the environmental impact report is prepared, as well as what could be
36 reasonably expected to occur in the foreseeable future if the reuse plan were not
37 approved, based on current plans and consistent with available infrastructure and
38 services.

39 (2) For purposes of this division, all public and private activities taken pursuant
40 to, or in furtherance of, a reuse plan shall be deemed to be a single project. However,
41 further environmental review of any ~~such~~ public or private activity taken pursuant

1 to, or in furtherance of, a reuse plan shall be conducted if any of the events specified
2 in Section 21166 have occurred.

3 (c) Prior to preparing an environmental impact report for which a lead agency
4 chooses to utilize the provisions of this section, the lead agency shall do all of the
5 following:

6 (A) Hold a public hearing at which is discussed the federal environmental impact
7 statement prepared for, or in the process of being prepared for, the closure of the
8 military base. The discussion shall include the significant effects on the environment
9 examined in the environmental impact statement, potential methods of mitigating
10 those effects, including feasible alternatives, and the mitigative effects of federal,
11 state, and local laws applicable to future nonmilitary activities. Prior to the close of
12 the hearing, the lead agency may specify the baseline conditions for the reuse plan
13 environmental impact report prepared, or in the process of being prepared, for the
14 closure of the base. The lead agency may specify particular physical conditions that
15 it will examine in greater detail than were examined in the environmental impact
16 statement. Notice of the hearing shall be given as provided in Section 21092. The
17 hearing may be continued from time to time.

18 (B) Identify pertinent responsible agencies and trustee agencies and consult with
19 those agencies prior to the public hearing as to the application of their regulatory
20 policies and permitting standards to the proposed baseline for environmental
21 analysis, as well as to the reuse plan and planned future nonmilitary land uses of the
22 base. The affected agencies shall have not less than 30 days prior to the public
23 hearing to review the proposed reuse plan and to submit their comments to the lead
24 agency.

25 (C) At the close of the hearing, the lead agency shall state in writing how the lead
26 agency intends to integrate the baseline for analysis with the reuse planning and
27 environmental review process, taking into account the adopted environmental
28 standards of the community, including, but not limited to, the applicable general
29 plan, specific plan, and redevelopment plan, and including other applicable
30 provisions of adopted congestion management plans, habitat conservation or natural
31 communities conservation plans, integrated waste management plans, and county
32 hazardous waste management plans.

33 (D) At the close of the hearing, the lead agency shall state, in writing, the specific
34 economic or social reasons, including, but not limited to, new job creation,
35 opportunities for employment of skilled workers, availability of low- and moderate-
36 income housing, and economic continuity, which support the selection of the
37 baseline.

38 (d)(1) Nothing in this section shall in any way limit the scope of a review or
39 determination of significance of the presence of hazardous or toxic wastes,
40 substances, or materials including, but not limited to, contaminated soils and
41 groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or
42 materials be constrained by prior levels of activity that existed at the time that the
43 federal agency decision to close the military base became final.

1 (2) This section does not apply to any project undertaken pursuant to Chapter 6.5
2 (commencing with Section 25100) of, ~~or Chapter 6.8 (commencing with Section~~
3 ~~25300) of~~, Division 20 of, or Part 2 (commencing with Section 78000) of Division
4 45 of, the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality
5 Control Act (Division 7 (commencing with Section 13000) of the Water Code).

6 (3) This section may apply to any reuse plan environmental impact report for
7 which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued
8 within one year from the date that the federal record of decision was rendered for
9 the military base closure or realignment and reuse, or prior to January 1, 1997,
10 whichever is later, if the environmental impact report is completed and certified
11 within five years from the date that the federal record of decision was rendered.

12 (e) All subsequent development at the military base shall be subject to all
13 applicable federal, state, or local laws, including, but not limited to, those relating
14 to air quality, water quality, traffic, threatened and endangered species, noise, and
15 hazardous or toxic wastes, substances, or materials.

16 **Comment.** Section 21083.8.1(d)(2) is amended to update a cross-reference in accordance with
17 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
18 of the Health and Safety Code.

19 This section is also amended to make a technical change.

20 **Pub. Res. Code § 21098 (amended). Notices to military service**

21 SEC. __. Section 21098 of the Public Resources Code is amended to read:

22 21098. (a) For the purposes of this section, the following terms have the following
23 meanings:

24 (1) “Low-level flight path” includes any flight path for any aircraft owned,
25 maintained, or that is under the jurisdiction of the United States Department of
26 Defense that flies lower than 1,500 feet above ground level, as indicated in the
27 United States Department of Defense Flight Information Publication, “Area
28 Planning Military Training Routes: North and South America (AP/1B)” published
29 by the United States National Imagery and Mapping Agency.

30 (2) “Military impact zone” includes any area, including airspace, that meets both
31 of the following criteria:

32 (A) Is within two miles of a military installation, including, but not limited to, any
33 base, military airport, camp, post, station, yard, center, homeport facility for a ship,
34 or any other military activity center that is under the jurisdiction of the United States
35 Department of Defense.

36 (B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres
37 of city incorporated land.

38 (3) “Military service” means any branch of the United States Armed Forces.

39 (4) “Special use airspace” means the area underlying the airspace that is
40 designated for training, research, development, or evaluation for a military service,
41 as that area is established by the United States Department of Defense Flight
42 Information Publication, “Area Planning: Special Use Airspace: North and South

1 America (AP/1A)” published by the United States National Imagery and Mapping
2 Agency.

3 (b) If the United States Department of Defense or a military service notifies a lead
4 agency of the contact office and address for the military service and the specific
5 boundaries of a low-level flight path, military impact zone, or special use airspace,
6 the lead agency shall submit notices, as required pursuant to Sections 21080.4 and
7 21092, to the military service if the project is within those boundaries and any of
8 the following apply:

9 (1) The project includes a general plan amendment.

10 (2) The project is of statewide, regional, or areawide significance.

11 (3) The project is required to be referred to the airport land use commission, or
12 appropriately designated body, pursuant to Article 3.5 (commencing with Section
13 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

14 (c) The requirement to submit notices imposed by this section does not apply to
15 any of the following:

16 (1) Response actions taken pursuant to ~~Chapter 6.8 (commencing with Section~~
17 ~~25300) of Division 20 Part 2 (commencing with Section 78000) of Division 45~~
18 of the Health and Safety Code.

19 (2) Response actions taken pursuant to Chapter 6.85 (commencing with Section
20 25396) of Division 20 of the Health and Safety Code.

21 (3) Sites subject to corrective action orders issued pursuant to Section 25187 of
22 the Health and Safety Code.

23 (d)(1) The effect or potential effect that a project may have on military activities
24 does not itself constitute an adverse effect on the environment for the purposes of
25 this division.

26 (2) Notwithstanding paragraph (1), a project’s impact on military activities may
27 cause, or be associated with, adverse effects on the environment that are subject to
28 the requirements of this division, including, but not limited to, Section 21081.

29 **Comment.** Section 21098(c)(1) is amended to update a cross-reference 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 **Pub. Res. Code § 21151.8 (amended). Environmental review for schoolsite purchase or**
33 **school construction**

34 SEC. __. Section 21151.8 of the Public Resources Code is amended to read:

35 21151.8. (a) An environmental impact report shall not be certified or a negative
36 declaration shall not be approved for a project involving the purchase of a schoolsite
37 or the construction of a new elementary or secondary school by a school district
38 unless all of the following occur:

39 (1) The environmental impact report or negative declaration includes information
40 that is needed to determine if the property proposed to be purchased, or to be
41 constructed upon, is any of the following:

1 (A) The site of a current or former hazardous waste disposal site or solid waste
2 disposal site and, if so, whether the wastes have been removed.

3 (B) A hazardous substance release site identified by the Department of Toxic
4 Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5
5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
6 Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8~~
7 (commencing with Section 25300) of Division 20 Part 2 (commencing with Section
8 78000) of Division 45 of the Health and Safety Code.

9 (C) A site that contains one or more pipelines, situated underground or
10 aboveground, that carries hazardous substances, extremely hazardous substances,
11 or hazardous wastes, unless the pipeline is a natural gas line that is used only to
12 supply natural gas to that school or neighborhood, or other nearby schools.

13 (D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway
14 or other busy traffic corridor.

15 (2)(A) The school district, as the lead agency, in preparing the environmental
16 impact report or negative declaration has notified in writing and consulted with the
17 administering agency in which the proposed schoolsite is located, pursuant to
18 Section 2735.3 of Title 19 of the California Code of Regulations, and with any air
19 pollution control district or air quality management district having jurisdiction in
20 the area, to identify both permitted and nonpermitted facilities within that district's
21 authority, including, but not limited to, freeways and busy traffic corridors, large
22 agricultural operations, and railyards, within one-fourth of a mile of the proposed
23 schoolsite, that might reasonably be anticipated to emit hazardous emissions or
24 handle hazardous or extremely hazardous substances or waste. The notification by
25 the school district, as the lead agency, shall include a list of the locations for which
26 information is sought.

27 (B) Each administering agency, air pollution control district, or air quality
28 management district receiving written notification from a lead agency to identify
29 facilities pursuant to subparagraph (A) shall provide the requested information and
30 provide a written response to the lead agency within 30 days of receiving the
31 notification. The environmental impact report or negative declaration shall be
32 conclusively presumed to comply with subparagraph (A) as to the area of
33 responsibility of an agency that does not respond within 30 days.

34 (C) If the school district, as a lead agency, has carried out the consultation required
35 by subparagraph (A), the environmental impact report or the negative declaration
36 shall be conclusively presumed to comply with subparagraph (A), notwithstanding
37 any failure of the consultation to identify an existing facility or other pollution
38 source specified in subparagraph (A).

39 (3) The governing board of the school district makes one of the following written
40 findings:

41 (A) Consultation identified no facilities of this type or other significant pollution
42 sources specified in paragraph (2).

1 (B) The facilities or other pollution sources specified in paragraph (2) exist, but
2 one of the following conditions applies:

3 (i) The health risks from the facilities or other pollution sources do not and will
4 not constitute an actual or potential endangerment of public health to persons who
5 would attend or be employed at the proposed school.

6 (ii) Corrective measures required under an existing order by another agency
7 having jurisdiction over the facilities or other pollution sources will, before the
8 school is occupied, result in the mitigation of all chronic or accidental hazardous air
9 emissions to levels that do not constitute an actual or potential endangerment of
10 public health to persons who would attend or be employed at the proposed school.
11 If the governing board makes a finding pursuant to this clause, it shall also make a
12 subsequent finding, prior to occupancy of the school, that the emissions have been
13 so mitigated.

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

21 (C) The facilities or other pollution sources specified in paragraph (2) exist, but
22 conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the
23 school district is unable to locate an alternative site that is suitable due to a severe
24 shortage of sites that meet the requirements in subdivision (a) of Section 17213 of
25 the Education Code. If the governing board makes this finding, the governing board
26 shall adopt a statement of overriding considerations pursuant to Section 15093 of
27 Title 14 of the California Code of Regulations.

28 (b) As used in this section, the following definitions shall apply:

29 (1) “Hazardous substance” means any substance defined in ~~Section 25316~~
30 subdivision (a) of Section 78075 of the Health and Safety Code.

31 (2) “Extremely hazardous substances” means an extremely hazardous substance
32 as defined pursuant to paragraph (2) of subdivision (i) of Section 25532 of the
33 Health and Safety Code.

34 (3) “Hazardous waste” means any waste defined in Section 25117 of the Health
35 and Safety Code.

36 (4) “Hazardous waste disposal site” means any site defined in Section 25114 of
37 the Health and Safety Code.

38 (5) “Hazardous air emissions” means emissions into the ambient air of air
39 contaminants that have been identified as a toxic air contaminant by the State Air
40 Resources Board or by the air pollution control officer for the jurisdiction in which
41 the project is located. As determined by the air pollution control officer, hazardous
42 air emissions also means emissions into the ambient air from any substances

1 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and
2 Safety Code.

3 (6) “Administering agency” means an agency authorized pursuant to Section
4 25502 of the Health and Safety Code to implement and enforce Chapter 6.95
5 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

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

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

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

17 **Comment.** Section 21151.8(a)(1)(B) and (b)(1) are amended to update cross-references in
18 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section
19 25300) of Division 20 of the Health and Safety Code.

20 **Pub. Res. Code § 37016 (amended). Approval of proposed property contribution**

21 SEC. ___. Section 37016 of the Public Resources Code is amended to read:

22 37016. (a) The board shall grant approval of a proposed contribution of property
23 under the program only upon a determination that:

24 (1)(A) The donation of property satisfies the requirements for a qualified
25 contribution pursuant to Section 170 of Title 26 of the United States Code. If only
26 a portion (either an undivided fractional interest in the entire property or one or more
27 discrete parcels) of a proposed conveyance of property satisfies the requirements of
28 Section 170 of Title 26 of the United States Code, or if the property is sold for less
29 than fair market value, only that portion, or the amount representing the difference
30 between the amount paid by the donee and the fair market value, shall be eligible
31 for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United
32 States Code. The board may segregate eligible and ineligible interests in property
33 proposed to be contributed pursuant to this division. The donor shall receive no
34 other valuable consideration for the donation of property subject to the tax credit.

35 (B) For purposes of this division, if the property is proposed to be donated to
36 satisfy a condition imposed upon the donor by any lease, permit, license, certificate,
37 or other entitlement for use issued by one or more public agencies, including, but
38 not limited to, the mitigation of significant effects on the environment of a project
39 pursuant to an approved environmental impact report or mitigated negative
40 declaration required pursuant to the California Environmental Quality Act (Division
41 13 (commencing with Section 21000)), that property shall not qualify for the credit
42 provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

1 (2) There has been no release or threatened release of a hazardous material on the
2 property, unless all of the following occur:

3 (i) (A) A final remedy in response to the release has been approved by the
4 Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with
5 Section 25100) of, ~~Chapter 6.8 (commencing with Section 25300) of~~, or Chapter
6 6.85 (commencing with Section 25396) of, Division 20 of, or Part 2 (commencing
7 with Section 78000) of Division 45 of, the Health and Safety Code, or the
8 appropriate California regional water quality control board pursuant to Chapter 6.7
9 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

10 (ii) (B) The donor or donee have agreed to implement the final remedy approved
11 pursuant to ~~clause (i)~~: subparagraph (A).

12 (iii) (C) The donor or donee have agreed to fund and have made adequate funding
13 available to pay for the response action, as defined by Section ~~25323.3~~ 78140 of the
14 Health and Safety Code.

15 (b) Notwithstanding paragraph (2) of subdivision (a), a donation of property
16 containing hazardous materials may be accepted under the program without
17 satisfying the requirements of paragraph (2) of subdivision (a) if the donee
18 determines, based on written findings from the Department of Toxic Substances
19 Control and the California regional water quality control board with jurisdiction
20 over the property, that the hazardous materials present will pose no substantial risk
21 to human health or the environment and no substantial risk of liability on the donee
22 under the conditions under which the property will be used. The Department of
23 Toxic Substances Control and the California regional water quality control board
24 with jurisdiction over the property shall carry out their normal due diligence when
25 developing the written findings that will be the basis for the written determination
26 regarding the presence and risk of toxic materials on the property by the Department
27 of Toxic Substances Control or the regional board, whichever is applicable. As used
28 in this subdivision, “hazardous materials” has the same meaning as contained in
29 subdivision (d) of Section 25260 of the Health and Safety Code.

30 **Comment.** Section 37016(a)(2) 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 This section is also amended to make a technical change.

34 **Pub. Res. Code § 47004 (amended). “Hazardous waste”**

35 SEC. __. Section 47004 of the Public Resources Code is amended to read:

36 47004. For purposes of this chapter, “hazardous waste” has the same meaning as
37 defined in Section 25117 of the Health and Safety Code, and “hazardous substance”
38 has the same meaning as defined in ~~Section 25316~~ subdivision (a) of Section 78075
39 of the Health and Safety Code.

40 **Comment.** Section 47004 is amended to update a cross-reference 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 **Pub. Res. Code § 48020 (amended). General provisions regarding codisposal site cleanup**

2 SEC. __. Section 48020 of the Public Resources Code is amended to read:

3 48020. (a) For purposes of this article, the following terms have the following
4 meaning:

5 (1) “Codisposal site” means a hazardous substance release site listed pursuant to
6 ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2
7 of Division 45 of the Health and Safety Code, where the disposal of hazardous
8 substances, hazardous waste, and solid waste has occurred.

9 (2) “Trust fund” means the Solid Waste Disposal Site Cleanup Trust Fund created
10 pursuant to Section 48027.

11 (b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid
12 waste disposal sites and for the cleanup of solid waste at codisposal sites where the
13 responsible party either cannot be identified or is unable or unwilling to pay for
14 timely remediation, and where cleanup is needed to protect public health and safety
15 or the environment.

16 (c) The board shall not expend more than 5 percent of the funds appropriated for
17 the purpose of the program by a statute other than the Budget Act to administer that
18 program, unless a different amount is otherwise appropriated to administer the
19 program in the annual Budget Act. If a different amount is appropriated to
20 administer the program in the annual Budget Act, it shall be set forth in a separate
21 line item. All remaining funds appropriated for the purposes of the program shall be
22 expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid
23 waste facilities, disposal sites, sites involving solid waste handling, and for solid
24 waste at codisposal sites.

25 **Comment.** Section 48020 is amended to update a cross-reference in accordance with the
26 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of
27 the Health and Safety Code.

28 REVENUE AND TAXATION CODE

29 **Rev. & Tax Code § 402.3 (amended). Reassessment of land subject to land use restrictions**

30 SEC. __. Section 402.3 of the Revenue and Taxation Code is amended to read:

31 402.3. An assessor shall consider any restrictive covenant, easement, restriction,
32 or servitude adopted pursuant to Section 25202.5, 25222.1, or ~~25355.5~~ 79055 of the
33 Health and Safety Code or any restriction, easement, covenant, or servitude imposed
34 pursuant to Section 25230 of the Health and Safety Code as an enforceable
35 restriction, easement, covenant, or servitude subject to Section 402.1 and shall
36 appropriately reassess any land, the use of which has been so restricted, at the lien
37 date following the adoption or imposition of the covenant, easement, servitude, or
38 restriction.

39 **Comment.** Section 402.3 is amended to update a cross-reference 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 **Rev. & Tax Code § 43002 (amended). Governing definitions for fees and taxes imposed by**
2 **Health and Safety Code provisions**

3 SEC. __. Section 43002 of the Revenue and Taxation Code is amended to read:
4 43002. The collection and administration of the fees and taxes imposed by
5 Chapter 6.5 (commencing with Section 25100) ~~and Chapter 6.8 (commencing with~~
6 ~~Section 25300), respectively,~~ of Division 20 of, and Part 2 (commencing with
7 Section 78000) of Division 45 of, the Health and Safety Code, respectively, shall be
8 governed by the definitions in those provisions, unless expressly superseded by the
9 definitions contained in this part.

10 **Comment.** Section 43002 is amended to update a cross-reference 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 WATER CODE

14 **Water Code § 13263.2 (amended). Exemption from hazardous waste facility permit for**
15 **groundwater treatment**

16 SEC. __. Section 13263.2 of the Water Code is amended to read:
17 13263.2. The owner or operator of a facility that treats groundwater which
18 qualifies as a hazardous waste pursuant to Chapter 6.5 (commencing with Section
19 25100) of Division 20 of the Health and Safety Code is exempt from the requirement
20 to obtain a hazardous waste facility permit pursuant to Section 25201 of the Health
21 and Safety Code for the treatment of groundwater if all of the following conditions
22 are met:

23 (a) The facility treats groundwater which is extracted for the purposes of
24 complying with one or more of the following:

- 25 (1) Waste discharge requirements prescribed pursuant to Section 13263.
26 (2) A cleanup or abatement order issued pursuant to Section 13304.
27 (3) A written authorization issued by a regional board or local agency designated
28 pursuant to Section 25283 of the Health and Safety Code.
29 (4) An order or approved remedial action plan issued pursuant to ~~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.

32 (b) The facility meets, at a minimum, all of the following operating standards:

- 33 (1) The treatment does not require a hazardous waste facilities permit pursuant to
34 the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901 et
35 seq.).
36 (2) The facility operator prepares and maintains written operating instructions and
37 a record of the dates, amounts, and types of waste treated.
38 (3) The facility operator prepares and maintains a written inspection schedule and
39 log of inspections conducted.
40 (4) The records specified in paragraphs (2) and (3) are maintained by the owner
41 or operator of the facility for a period of three years.

1 (5) The owner or operator maintains adequate records to demonstrate that it is in
2 compliance with all of the pretreatment standards and with all of the applicable
3 industrial waste discharge requirements issued by the agency operating the publicly
4 owned treatment works into which the wastes are discharged.

5 (6)(A) Upon terminating the operation of any treatment process or unit exempted
6 pursuant to this section, the owner or operator that conducted the treatment removes
7 or decontaminates all waste residues, containment system components, soils, and
8 other structures or equipment contaminated with hazardous waste from the unit. The
9 removal of the unit from service shall be conducted in a manner that does both of
10 the following:

11 (i) Minimizes the need for further maintenance.

12 (ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate,
13 contaminated runoff, or waste decomposition products to the environment after the
14 treatment process ceases operation.

15 (B) Any owner or operator who permanently ceases operation of a treatment
16 process or unit that is exempted pursuant to this section shall provide written
17 notification to the regional board or local agency upon completion of all activities
18 required by this subdivision.

19 (7) The waste is managed in accordance with all applicable requirements for
20 generators of hazardous waste under Chapter 6.5 (commencing with Section 25100)
21 of Division 20 of the Health and Safety Code and the regulations adopted by the
22 Department of Toxic Substances Control pursuant to that chapter.

23 (c) The groundwater is treated at the site where it is extracted in compliance with
24 one or more of paragraphs (1), (2), (3), and (4) of subdivision (a).

25 (d) All other regulatory requirements applicable to the facility pursuant to Chapter
26 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code
27 are met by the owner or operator.

28 (e) The treatment of the contaminated groundwater is not performed under
29 corrective action required by Section 25200.10 of the Health and Safety Code.

30 **Comment.** Section 13263.2(a)(4) is amended to update a cross-reference 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 **Water Code § 13275 (amended). Rights and remedies against responsible party**

34 SEC. __. Section 13275 of the Water Code is amended to read:

35 13275. (a) Notwithstanding any other law, a public water system regulated by the
36 state board pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of
37 Division 104 of the Health and Safety Code shall have the same legal rights and
38 remedies against a responsible party, when the water supply used by that public
39 water system is contaminated, as those of a private land owner whose groundwater
40 has been contaminated.

41 (b) For purposes of this section, “responsible party” has the same meaning as
42 defined in Section ~~25323.5~~ 78140 of the Health and Safety Code.

1 **Comment.** Section 13275 is amended to update a cross-reference 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 **Water Code § 13307 (amended). Policies and procedures for hazardous substance discharge**
5 **investigation and cleanup or abatement**

6 SEC. __. Section 13307 of the Water Code is amended to read:

7 13307. (a) The state board and the Department of Toxic Substances Control shall
8 concurrently establish policies and procedures consistent with this division that the
9 state board's representatives and the representatives of regional boards shall follow
10 in overseeing and supervising the activities of persons who are carrying out the
11 investigation of, and cleaning up or abating the effects of, a discharge of a hazardous
12 substance which creates, or threatens to create, a condition of contamination,
13 pollution, or nuisance. The policies and procedures shall be consistent with the
14 policies and procedures established pursuant to Section ~~25355.7~~ 79000 of the Health
15 and Safety Code and shall include, but are not limited to, all of the following:

16 (1) The procedures the state board and the regional boards will follow in making
17 decisions as to when a person may be required to undertake an investigation to
18 determine if an unauthorized hazardous substance discharge has occurred.

19 (2) Policies for carrying out a phased, step-by-step investigation to determine the
20 nature and extent of possible soil and groundwater contamination or pollution at a
21 site.

22 (3) Procedures for identifying and utilizing the most cost-effective methods for
23 detecting contamination or pollution and cleaning up or abating the effects of
24 contamination or pollution.

25 (4) Policies for determining reasonable schedules for investigation and cleanup,
26 abatement, or other remedial action at a site. The policies shall recognize the dangers
27 to public health and the waters of the state posed by an unauthorized discharge and
28 the need to mitigate those dangers while at the same time taking into account, to the
29 extent possible, the resources, both financial and technical, available to the person
30 responsible for the discharge.

31 (b) The state board and the Department of Toxic Substances Control shall jointly
32 review the policies and procedures that were established pursuant to this section and
33 Section ~~25355.7~~ 79000 of the Health and Safety Code prior to the enactment of this
34 subdivision and shall concurrently revise those policies and procedures as necessary
35 to make them as consistent as possible. Where they cannot be made consistent
36 because of the differing requirements of this chapter and ~~Chapter 6.8 (commencing~~
37 ~~with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of
38 Division 45 of the Health and Safety Code, the state board and the Department of
39 Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the
40 Legislature, recommendations for revising this chapter and ~~Chapter 6.8~~
41 ~~(commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section
42 78000) of Division 45 of the Health and Safety Code in order to make consistent the

1 hazardous substance release cleanup policies and procedures followed by the state
2 board, the Department of Toxic Substances Control, and the regional boards.

3 **Comment.** Section 13307 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 **Water Code § 13365 (amended). Billing system and charges for cost recovery**

7 SEC. __. Section 13365 of the Water Code is amended to read:

8 13365. (a)(1) For purposes of this article, unless the context otherwise requires,
9 “agency” means the state board or a regional board.

10 (2) The terms used in this article shall have the same meaning as the definitions
11 specified in the statutory authority under which the agency takes any action subject
12 to this article, except that, notwithstanding ~~Section 25317~~ subdivision (b) of Section
13 78075 of the Health and Safety Code, for purposes of this article, “hazardous
14 substance” includes a hazardous substance specified in subdivision (h) of Section
15 25281 of the Health and Safety Code.

16 (b) On or before July 1, 1997, the agency shall adopt a billing system for the
17 agency’s cost recovery of investigation, analysis, planning, implementation,
18 oversight, or other activity related to the removal or remedial or corrective action of
19 a release of a hazardous substance that includes both of the following:

20 (1) Billing rates and overhead rates by employee job classification.

21 (2) Standardized description of work tasks.

22 (c) Notwithstanding any other provision of law, after July 1, 1997, any charge
23 imposed upon a responsible party by the agency, to compensate the agency for
24 some, or all, of its costs incurred in connection with the agency’s investigation,
25 analysis, planning, implementation, oversight, or other activity related to a removal
26 or remedial action or a corrective action to a release of a hazardous substance, shall
27 not be assessed or collected unless all of the following requirements are met:

28 (1) Except as provided in subdivision (f), prior to commencing the work or service
29 for which the charge is assessed, and at least annually thereafter if the work or
30 service is continuing, the agency shall provide all of the following information to
31 the responsible party:

32 (A) A detailed estimate of the work to be performed or services to be provided,
33 including a statement of the expected outcome of that work, based upon data
34 available to the agency at the time.

35 (B) The billing rates for all individuals and classes of employees expected to
36 engage in the work or service.

37 (C) An estimate of all expected charges to be billed to the responsible party by the
38 agency, including, but not limited to, any overhead assessments that the agency may
39 be authorized to levy.

40 (2)(A) Invoices shall be issued not less than semiannually with appropriate
41 incentives for prompt payment.

1 (B) Invoices shall be mailed to the correct person or persons for the responsible
2 party or parties.

3 (C) Invoices shall provide a daily detail of work performed and time spent by each
4 employee and contractor employee using the billing and overhead rates and the
5 standardized description of work tasks adopted pursuant to subdivision (b).

6 (D) Invoices shall include the source and amount of all other charges.

7 (E) Invoices shall be supplemented with statements of any changes in rates and a
8 justification for any changes.

9 (F) Invoices shall be reviewed for accuracy and appropriateness.

10 (3) Upon request and within a reasonable time, not to exceed 30 working days
11 from the date of receipt of a request, the agency shall provide the responsible party
12 with copies of time records and other materials supporting the invoice described in
13 paragraph (2). No fees or charges may be assessed for the preparation and delivery
14 of those copies pursuant to this section.

15 (4) The agency shall identify a party who is responsible for resolving disputes
16 regarding the charges subject to this section and who is not responsible for, or
17 performing, the work or service for which the charges are assessed.

18 (d) The agency may adjust the scope of the work or service, type of studies, or
19 other tasks to be performed, based upon analyses necessary to accommodate new
20 information regarding the extent of contamination of the site, and only after
21 providing written notice of the change to the responsible party containing the
22 information specified in paragraph (1) of subdivision (c).

23 (e) The agency may increase billing rates not more than once each calendar year,
24 to the extent authorized by law. Any increase in billing rates or other charges,
25 including, but not limited to, overhead charges, shall operate prospectively only,
26 and shall take effect not sooner than 10 days from the date that written notice has
27 been provided to the responsible party.

28 (f)(1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that
29 requires prompt action to protect human health or safety or the environment.

30 (2) Paragraph (1) of subdivision (c) does not apply with respect to those
31 responsible parties who are not identified until after the beginning of a removal or
32 remedial action or corrective action to a release of a hazardous substance.

33 **Comment.** Section 13365(a)(2) is amended to update a cross-reference 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 **Water Code § 13611.5 (amended). Information required from facilities that store**
37 **perchlorate**

38 SEC. __. Section 13611.5 of the Water Code is amended to read:

39 13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the
40 owner or operator has met the alternative compliance requirements of subdivision
41 (b), an owner or operator of a storage facility that has stored in any calendar year

1 since January 1, 1950, over 500 pounds of perchlorate shall submit to the state
2 board, to the extent feasible, all of the following information:

3 (1) The volume of perchlorate stored each year.

4 (2) The method of storage.

5 (3) The location of storage. To the extent authorized by federal law, in the case of
6 a perchlorate storage facility under the control of the Armed Forces of the United
7 States, “location” means the name and address of the property within which the
8 perchlorate storage facility is located.

9 (4) Copies of documents relating to any monitoring undertaken for potential leaks
10 into the water bodies of the state.

11 (b) The owner or operator of a storage facility that has stored in any calendar year
12 since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this
13 section if both of the following conditions are met:

14 (1) The owner or operator has provided substantially similar information as
15 required pursuant to subdivision (a) to a state, local, or federal agency pursuant to
16 any of the following:

17 (A) An order issued by a regional board pursuant to Chapter 5 (commencing with
18 Section 13300) of Division 7.

19 (B) An order, consent order, or consent decree issued or entered into by the
20 Department of Toxic Substances Control pursuant to ~~Chapter 6.8 (commencing with~~
21 ~~Section 25300) of Division 20 Part 2 (commencing with Section 78000) of Division~~
22 45 of the Health and Safety Code.

23 (C) An order, consent order, or consent decree issued or entered into by the United
24 States Environmental Protection Agency pursuant to the Comprehensive
25 Environmental Response, Compensation, and Liability Act of 1980, as amended (42
26 U.S.C. Sec. 9601 et seq.).

27 (D) The requirement under Section 25504.1 of the Health and Safety Code, as
28 added by Assembly Bill 826 of the 2003–04 Regular Session.

29 (2) The owner or operator, on or before January 1, 2005, and annually thereafter,
30 notifies the state board of the governmental entity to which the information is
31 provided and the state board determines the information supplied is substantially
32 similar as the information required to be reported pursuant to subdivision (a). In the
33 case of any information submitted to a federal or local agency, the state board may
34 require the owner or operator, in addition, to submit that information to the state
35 board if the state board determines that the information is not otherwise reasonably
36 available to the state board.

37 (c) This section shall not be administered or implemented if the state board
38 receives notification from the Secretary for Environmental Protection pursuant to
39 Section 13613 that the Secretary for Environmental Protection has established a
40 database that is able to receive perchlorate inventory information.

41 (d) Information on perchlorate storage need only be submitted pursuant to this
42 section one time, unless information originally submitted pursuant to this section
43 has changed.

1 **Comment.** Section 13611.5(b)(1)(B) is amended to update a cross-reference 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 **Water Code § 83002 (amended). Schedule of appropriation**

5 SEC. __. Section 83002 of the Water Code is amended to read:

6 83002. The sum of eight hundred twenty million nine hundred seventy-three
7 thousand dollars (\$820,973,000) is hereby appropriated in accordance with the
8 following schedule:

9 (a) Of the funds made available pursuant to Chapter 1.699 (commencing with
10 Section 5096.800) of Division 5 of the Public Resources Code, the sum of two
11 hundred eighty-five million dollars (\$285,000,000) is hereby appropriated as
12 follows:

13 (1) Pursuant to subdivision (c) of Section 5096.821 of the Public Resources Code,
14 the sum of one hundred thirty-five million dollars (\$135,000,000) to the department
15 for the acquisition, design, and construction of essential emergency preparedness
16 supplies and projects. Prior to the design or construction of any project funded
17 pursuant to this paragraph, the California Bay-Delta Authority, or its successor,
18 shall approve the specific project or program. Preference shall be given to projects
19 that protect and improve Delta water quality and drinking water supplies. Of the
20 amount made available pursuant to this paragraph, not less than thirty-five million
21 dollars (\$35,000,000) shall be expended by the department for projects to reinforce
22 those sections of the levees that have the highest potential to suffer breaches or
23 failure and cause harm to municipal and industrial water supply aqueducts that cross
24 the Delta and which are vulnerable to flood damage, including the installation of
25 scour protection on the supports of the aqueducts in those areas located adjacent to
26 the sections of the levees that have been identified as having the highest risk for
27 breaches or failure.

28 (2) Pursuant to Section 5096.827 of the Public Resources Code, the sum of one
29 hundred fifty million dollars (\$150,000,000) to the department for grants for
30 stormwater flood management projects that reduce flood damage and provide other
31 benefits, including groundwater recharge, water quality improvement, and
32 ecosystem restoration. Not less than one hundred million dollars (\$100,000,000) of
33 this amount shall be available for projects that address immediate public health and
34 safety needs or strengthen existing flood control facilities to address seismic safety
35 issues. Twenty million dollars (\$20,000,000) shall be available for local agencies to
36 meet immediate water quality needs related to combined municipal sewer and
37 stormwater systems to prevent sewage discharges into state waters. Twenty million
38 dollars (\$20,000,000) shall be available for urban stream stormwater flood
39 management projects to reduce the frequency and impacts of flooding in watersheds
40 that drain to the San Francisco Bay.

41 (b) Of the funds made available pursuant to Division 43 (commencing with
42 Section 75001) of the Public Resources Code, the sum of five hundred twenty-six

1 million four hundred ninety-one thousand dollars (\$526,491,000) is hereby
2 appropriated as follows:

3 (1) Pursuant to Section 75022 of the Public Resources Code, the sum of fifty
4 million dollars (\$50,000,000) to the State Department of Public Health for grants
5 for small community drinking water system infrastructure improvements and
6 related action to meet safe drinking water standards. First priority for these funds
7 shall be given to disadvantaged or severely disadvantaged communities lacking
8 resources to provide safe drinking water to residents. Small community drinking
9 water systems that are dependent on surface water and are under orders from the
10 State Department of Public Health to boil water from existing treatment systems for
11 parasites, viruses, or giardia shall be eligible for grants for drinking water system
12 infrastructure improvements.

13 (2) Pursuant to Section 75025 of the Public Resources Code, the sum of fifty
14 million four hundred thousand dollars (\$50,400,000) to the State Department of
15 Public Health for grants for projects to prevent or reduce the contamination of
16 groundwater that serves as a source of drinking water. Funds appropriated by this
17 paragraph shall be available for immediate projects needed to protect public health
18 by preventing or reducing the contamination of groundwater that serves as a major
19 source of drinking water for a community.

20 (A) The State Department of Public Health shall prioritize project funding based
21 on the following criteria:

22 (i) The threat posed by groundwater contamination to the affected community's
23 overall drinking water supplies, including the need for the treatment or construction
24 of alternative supplies if groundwater is not available due to contamination.

25 (ii) The potential for groundwater contamination to spread and reduce drinking
26 water supply and water storage capacity for major population areas.

27 (iii) The potential of the project, if fully implemented, to enhance local water
28 supply reliability.

29 (iv) The potential of the project to increase opportunities for groundwater recharge
30 and optimization of groundwater supplies.

31 (B) The State Department of Public Health shall give additional consideration to
32 projects that meet any of the following criteria:

33 (i) The project is implemented pursuant to a comprehensive basinwide
34 groundwater quality management and remediation plan or is necessary to develop a
35 comprehensive groundwater plan.

36 (ii) Affected groundwater provides a local supply that, if contaminated, will
37 require the importation of additional water from the Sacramento-San Joaquin Delta
38 or the Colorado River.

39 (iii) The project will serve an economically disadvantaged community.

40 (iv) Multiple contaminants affect more than one-third of the well capacity of a
41 local water system.

1 (C) Of the amount made available by this paragraph, up to ten million dollars
2 (\$10,000,000) shall be allocated for projects that meet the criteria of this paragraph
3 and both of the following criteria:

4 (i) The project has the potential to leverage funds.

5 (ii) The project addresses contamination at a site on the list maintained by the
6 Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5
7 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
8 Health and Safety Code or a site listed on the National Priorities List pursuant to the
9 federal Comprehensive Environmental Response, Compensation, and Liability Act
10 of 1980 (42 U.S.C. Sec. 9601 et seq.).

11 (D) Of the funds made available by this paragraph, two million dollars
12 (\$2,000,000) shall be allocated to the State Department of Public Health to contract
13 with the State Water Resources Control Board for the purposes of Section 83002.5.

14 (3)(A) Pursuant to Section 75026 of the Public Resources Code, the sum of one
15 hundred eighty-one million seven hundred ninety-one thousand dollars
16 (\$181,791,000) to the department for integrated regional water management
17 activities as follows:

18 (i) One hundred million dollars (\$100,000,000) for implementation grants.

19 (ii) Thirty-nine million dollars (\$39,000,000) for planning grants, local
20 groundwater assistance grants, and CALFED scientific research grants.

21 (iii)(I) Twenty-two million ninety-one thousand dollars (\$22,091,000) for projects
22 with interregional or statewide benefits.

23 (II) Of the amount made available pursuant to this paragraph, not less than ten
24 million dollars (\$10,000,000) shall be made available for expenditure to
25 interconnect municipal and industrial water supply aqueducts that cross the Delta
26 and that are vulnerable to flood damage, including the design and construction of
27 interties among aqueducts that provide at least 90 percent of a regional water supply
28 that would be threatened in the event of levee failure or other disaster, and that
29 support an integrated regional emergency water supply system.

30 (iv) Twenty million seven hundred thousand dollars (\$20,700,000) for program
31 delivery costs.

32 (B) An implementation grant pursuant to clause (i) of subparagraph (A) shall be
33 available only for projects included in an integrated regional water management
34 plan that meets one of the following conditions:

35 (i) The plan complies with Part 2.2 (commencing with Section 10530) of Division
36 6.

37 (ii) For a plan adopted before the date on which this section is enacted, both of the
38 following apply:

39 (I) The regional water management group that prepared the plan enters into a
40 binding agreement with the department to update the plan to comply with Part 2.2
41 (commencing with Section 10530) of Division 6 within two years of the date on
42 which the agreement was entered into.

1 (II) The regional water management group undertakes all reasonable and feasible
2 efforts to take into account water-related needs of disadvantaged communities in the
3 area within the boundaries of the plan.

4 (C)(i) Of the funds described in clauses (i) and (ii) of subparagraph (A), the
5 department shall allocate not less than 10 percent to facilitate and support the
6 participation of disadvantaged communities in integrated regional water
7 management planning and for projects that address critical water supply or water
8 quality needs for disadvantaged communities.

9 (ii) Except as otherwise specified in clause (iii), the department shall achieve the
10 allocation described in clause (i) by awarding grants for those purposes to
11 disadvantaged communities within a hydrologic region in a total dollar amount that
12 is not less than 10 percent of the total dollar amount of grants awarded within the
13 region.

14 (iii) The department shall implement this subparagraph with due diligence, but
15 shall implement clause (ii) only to the extent that the implementation does not affect
16 the expeditious allocation of funds for integrated regional water management grants.

17 (iv) The department shall submit a report to the Legislature with regard to the
18 implementation of this subparagraph on or before July 1, 2010.

19 (D) Of the funds described in clause (iii) of subparagraph (A), the department
20 shall allocate two million dollars (\$2,000,000) to Tulare County for development of
21 an integrated water quality and wastewater treatment program plan to address the
22 drinking water and wastewater needs of disadvantaged communities in the Tulare
23 Lake Basin. Funds allocated pursuant to this paragraph shall be available for
24 assessment and feasibility studies necessary to develop the plan, and the plan shall
25 include recommendations for planning, infrastructure, and other water management
26 actions, and shall include specific recommendations for regional drinking water
27 treatment facilities, regional wastewater treatment facilities, conjunctive use sites
28 and groundwater recharge, groundwater for surface water exchanges, related
29 infrastructure, and cost-sharing mechanisms. Tulare County shall consult with
30 appropriate stakeholders, including representatives of disadvantaged communities,
31 when preparing the plan. The department, in consultation with the State Department
32 of Public Health, shall submit the plan to the Legislature by January 1, 2011.

33 (E) Of the funds described in clause (i) of subparagraph (A), the department shall
34 allocate not less than twenty million dollars (\$20,000,000) to support urban and
35 agricultural water conservation projects necessary to meet a 20-percent reduction in
36 per capita water use by the year 2020.

37 (4) Pursuant to Section 75029 of the Public Resources Code, the sum of ninety
38 million dollars (90,000,000) to the department for the implementation of Delta water
39 quality improvement projects that protect drinking water supplies as follows:

40 (A) Pursuant to subdivision (d) of Section 75029 of the Public Resources Code,
41 the sum of fifty million dollars (\$50,000,000) for drinking water intake facility
42 projects to improve the quality of drinking water supply from the Sacramento-San
43 Joaquin Delta that are identified in the June 2005 Delta Region Drinking Water

1 Quality Management Plan. Funding shall be made available for environmental
2 review, design, and construction. Project proponents seeking funding for
3 construction shall meet all of the following criteria:

4 (i) Have completed documentation required under the California Environmental
5 Quality Act (Division 13 (commencing with Section 21000) of the Public Resources
6 Code) and a notice of determination has been filed prior to June 30, 2008.

7 (ii) Have demonstrated multiple benefits in conveyance and Delta operation to
8 achieve protection or improvement to Delta pelagic fisheries, as well as drinking
9 water quality improvement and public health protection.

10 (iii) Are able to complete design and commence construction before June 30,
11 2009.

12 (iv) Have local or federal cost-sharing funds immediately available.

13 (B) The sum of forty million dollars (\$40,000,000) for projects consistent with
14 subdivision (c) of Section 75029 of the Public Resources Code.

15 (5) Pursuant to Section 75033 of the Public Resources Code, the sum of one
16 hundred million dollars (\$100,000,000) to the department for the acquisition,
17 preservation, protection, and restoration of Sacramento-San Joaquin Delta resources
18 in accordance with Section 75033 of the Public Resources Code. The department
19 shall expend these funds pursuant to priorities that reflect the value of the resources
20 and land uses protected by the levees to the state as a whole, consistent with the
21 Delta Vision Strategic Plan. Projects shall be selected to improve the stability of the
22 Delta levee system, reduce subsidence, and assist in restoring the ecosystem of the
23 Delta. Priority shall be given to projects that improve conditions for Delta smelt and
24 other native fish. Up to five million dollars (\$5,000,000) made available pursuant to
25 this paragraph shall be available as grants and direct expenditures for emergency
26 communications equipment to improve emergency response preparedness.

27 (6) Pursuant to Chapter 4 (commencing with Section 75041) of Division 43 of the
28 Public Resources Code, the sum of thirty-seven million dollars (\$37,000,000) to the
29 department as follows:

30 (A)(i) Twelve million dollars (\$12,000,000) to complete the planning and
31 feasibility studies associated with new surface storage under the California Bay-
32 Delta Program.

33 (ii) The planning and feasibility studies shall include the following information:

34 (I) The identification of specific construction and operation conditions proposed
35 for each surface storage facility, including consideration of climate change, an
36 estimated schedule for the construction and completion of each project funded under
37 Section 75041, and the total costs of constructing each project.

38 (II) A description of the estimated total costs to construct each project and an
39 allocation of the costs to public and private beneficiaries.

40 (iii) Any feasibility study conducted by or funded by the state for new surface
41 storage under the California Bay-Delta Program shall evaluate funded projects
42 consistent with all statutory and other legally established requirements for

1 protection of environmental and natural resources, including protections for the
2 McCloud River pursuant to Section 5093.542 of the Public Resources Code.

3 (iv) The feasibility studies shall be prepared and submitted to the Governor and
4 the Legislature no later than December 31, 2009.

5 (B)(i) Fifteen million dollars (\$15,000,000) for planning and feasibility studies to
6 identify potential options for the reoperation of the state's flood protection and water
7 supply systems that will optimize the use of existing facilities and groundwater
8 storage capacity.

9 (ii) The studies shall incorporate appropriate climate change scenarios and be
10 designed to determine the potential to achieve the following objectives:

11 (I) Integration of flood protection and water supply systems to increase water
12 supply reliability and flood protection, improve water quality, and provide for
13 ecosystem protection and restoration.

14 (II) Reoperation of existing reservoirs, flood facilities, and other water facilities
15 in conjunction with groundwater storage to improve water supply reliability, flood
16 control, and ecosystem protection and to reduce groundwater overdraft.

17 (III) Promotion of more effective groundwater management and protection and
18 greater integration of groundwater and surface water resource uses.

19 (IV) Improvement of existing water conveyance systems to increase water supply
20 reliability, improve water quality, expand flood protection, and protect and restore
21 ecosystems.

22 (C) Ten million dollars (\$10,000,000) to update the California Water Plan,
23 including evaluation of climate change impacts, the development of strategies to
24 adapt to climate change impacts, technical assistance to local agencies that
25 incorporate climate change into their studies, reports, and plans, and the
26 identification of strategies to reduce greenhouse gas emissions related to the storage,
27 conveyance, and distribution of water.

28 (D) Of the money made available pursuant to subparagraphs (A), (B), and (C), up
29 to two million dollars (\$2,000,000) may be expended for planning and feasibility
30 studies necessary to implement the Delta Vision Strategic Plan, developed pursuant
31 to Executive Order No. S-17-06, dated September 28, 2006, establishing the Delta
32 Vision process.

33 (7) Pursuant to Section 75050 of the Public Resources Code, the sum of seventeen
34 million three hundred thousand dollars (\$17,300,000) for the protection and
35 restoration of rivers and streams as follows:

36 (A) Ten million dollars (\$10,000,000) to the State Coastal Conservancy for the
37 purposes of subdivision (i) of Section 75050 of the Public Resources Code.

38 (B) Seven million three hundred thousand dollars (\$7,300,000) to the department
39 for the purposes of subdivision (e) of Section 75050 of the Public Resources Code.

40 (c) Of the funds made available pursuant to subdivision (a) of Section 79550, the
41 sum of three million seven hundred sixty thousand dollars (\$3,760,000) is hereby
42 appropriated to the department for planning and feasibility studies associated with
43 surface storage under the California Bay-Delta Program.

1 (d)(1) Of the funds available pursuant to Section 79101, the sum of two million
2 two hundred seventy-two thousand dollars (\$2,272,000) is appropriated to the
3 department for the Sacramento River Hamilton City Area Flood Damage Reduction
4 Project.

5 (2) Of the funds available pursuant to subdivision (c) of Section 79196.5, the sum
6 of three million four hundred fifty thousand dollars (\$3,450,000) is appropriated to
7 the department for the Franks Tract Pilot Project under the CALFED Drinking
8 Water Quality Program.

9 **Comment.** Section 83002(b)(2)(C)(ii) is amended to update a cross-reference in accordance with
10 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20
11 of the Health and Safety Code.

12 This section was also amended to insert subclause labels.

13 UNCODIFIED

14 **Contingent and deferred operation**

15 SEC. _____. This act shall only become operative if [**the Hazardous Substance**
16 **Account recodification bill**] is enacted and becomes operative on January 1, 2024,
17 and that bill would reorganize and make other nonsubstantive changes to the
18 Carpenter-Presley-Tanner Hazardous Substance Account Act, in which case this act
19 shall also become operative on January 1, 2024.

20 **Subordination clause**

21 SEC. _____. Any section of any act enacted by the Legislature during the 2022
22 calendar year, other than a section of the annual maintenance of the codes bill or
23 another bill with a subordination clause, that takes effect on or before January 1,
24 2023 and that amends, amends and renumbers, amends and repeals, adds, repeals
25 and adds, or repeals a section that is amended, amended and renumbered, amended
26 and repealed, added, repealed and added, or repealed by this act, shall prevail over
27 this act, whether that act is chaptered before or after this act.