

## Memorandum 2019-40

**Recodification of Toxic Substance Statutes  
(Cumulative Draft of Material Previously Reviewed)**

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In this study, the Commission<sup>1</sup> is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.<sup>2</sup> The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.<sup>3</sup>

Attached is a cumulative draft of the material that the Commission has previously considered for inclusion in a tentative recommendation for the recodification of Chapter 6.8. The attached draft contains Chapters 1 through 4 of Part 2 of proposed new Division 45 of the Health and Safety Code. This draft reflects all of the Commission's decisions to date. Boxed "Staff Notes" provide background information, highlight issues where public comment is sought, and draw attention to restated provisions.

Commissioners and other interested persons should review the attached draft and raise any concerns identified. **Comments on any aspect of the draft would be welcome.**<sup>4</sup>

## PROPOSED CHANGE FROM COMMISSIONER McALLISTER

At the Commission's May meeting, Commissioner McAllister proposed changes to two sections contained in the cumulative draft. On further discussion

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

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

2. See 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

3. Minutes (Feb. 2019), p. 3.

4. Written comments can be in any form. They should be directed to [kburford@clrc.ca.gov](mailto:kburford@clrc.ca.gov). Comments may also be made orally at the upcoming Commission meeting (scheduled for July 26, 2019), which will be open to the public. The agenda is available at [http://www.clrc.ca.gov/Menu1\\_meetings/agenda.html](http://www.clrc.ca.gov/Menu1_meetings/agenda.html).

with staff, she decided to withhold one of her suggestions for now. Her remaining proposed change is described below.

Proposed Section 68200 was presented in the draft attached to Memorandum 2019-33 and is reproduced here for ease of reference.

68200. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.

This provision would continue existing Health and Safety Code Section 25342 without change. It was followed by a note requesting comment on whether its meaning is sufficiently clear.

To improve how the provision reads, Commissioner McAllister suggested changing the order of the phrases in the provision as follows (with changes shown in strikeout and underscore):

68200. The Director of Finance shall schedule ~~in the annual Budget Act~~ the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites in the annual Budget Act.

Such a revision would not address the ambiguity that the staff sees in the provision (which is not explained in the note that accompanied the section in Memorandum 2019-33). If the Commission decides to revise the provision along the lines suggested by Commissioner McAllister, the staff would recommend that the accompanying note be retained, perhaps with more detail added to explain the potential ambiguity.

The ambiguity that prompted the staff note is the reference to “any fiscal year.” It is not clear whether that language refers only to projects planned for the pending fiscal year (i.e., the fiscal year that is the subject of the budget act at issue) or instead refers to all projects that are currently planned for any future fiscal year. The former seems more likely, but the staff is not familiar enough with complex budgeting practices to be certain.

If the Commission would like to address that ambiguity directly, it could propose restating the provision along these lines:

68200. The In each annual Budget Act, the Director of Finance shall schedule in the annual Budget Act the those projects proposed in any for the upcoming fiscal year, year that will incur direct costs for removal and remedial actions at hazardous substance release sites.

If the section is revised in that way, it would need to be accompanied by a note asking for comment on whether the revision would result in a substantive change.

**How would the Commission like to proceed?**

ADDITIONAL ISSUES

**Proposed Section 68240**

Proposed Section 68240, located in the chapter containing financial provisions, governs the reserve account for emergencies. As proposed for recodification originally, Section 68240 would contain nearly all of the material found in existing Section 25354, with the exception of a reporting requirement.<sup>5</sup>

In proceeding with the recodification, the staff concluded that certain provisions of Section 25354<sup>6</sup> should be recodified with the material related to cleanup of hazardous substances. This proposed change will be discussed in more detail in Memorandum 2019-41.

**Correction**

When incorporating the material from Chapters 3 and 4 into this cumulative draft, the staff found that cross-references to Section 25356 contained in one proposed section<sup>7</sup> had not been updated to refer to the location of the recodified material (Article 5 (commencing with Section 68760) of Chapter 4). The cross-references have since been updated to refer to this location.

Respectfully submitted,

Kristin Burford  
Staff Counsel

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5. The reporting requirement contained in Section 25354 has been proposed for recodification separately, as Section 68580.

6. The material to be moved from proposed Section 68240 includes the second sentence of subdivision (a) and all of subdivision (b).

7. Proposed Section 68540.