

Memorandum 2019-40

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

In this study, the Commission¹ 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.² The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.³

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.**⁴

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

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

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

2. See 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. 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.

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.⁵

In proceeding with the recodification, the staff concluded that certain provisions of Section 25354⁶ 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 section⁷ 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

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.

CUMULATIVE PRELIMINARY DRAFT
FOR DIVISION 45

Staff Note. This is a work in progress. The material shown below may be changed. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

Comments. A draft of an official Commission “Comment” follows each proposed code section in the recodification. Such Comments will be included in any final recommendation. The Comments are drafted as if the existing code sections have been repealed and replaced with the proposed legislation. Thus, existing code sections are referred to as “former” sections.

The Comments indicate the source of each recodified code section and describe how the recodified code section compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

Tables. There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code that has been included in this draft.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this draft.

Notes. Some provisions in this draft are followed by a “Staff Note.” Staff Notes are typically intended to be temporary and will not be part of the Commission’s final recommendation. Staff Notes are drafted to reflect the state of the law today. Thus, the sections in the proposed legislation are referred to as “proposed” sections.

Staff Notes serve to flag issues requiring special attention or treatment. Where a Staff Note serves as a prompt for public comment, it will typically be continued in the Commission’s tentative recommendation as a “Note” calling for comment. However, where the Commission decides against a staff-proposed restatement and reverts to existing statutory language, the Staff Note would not be continued in future drafts.

Cross-references. In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.8. Where the cross-referenced provision has not yet been included in the recodification draft, the cross-reference is unchanged and is shown in bold text. Bracketed text designates cross-references that have been updated in form, but still need to be updated to reflect the recodified section number.

As new Division 45 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

Public comment. The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of this study. Comments should be directed to Kristin Burford (kburford@clrc.ca.gov).

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response**
2 SEC. _____. Division 45 (commencing with Section 68000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 PART 1. GENERAL PROVISIONS [RESERVED]

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

7 **Staff Note.** In drafting proposed legislation for Part 2, the staff assumed that the entirety of
8 Chapter 6.8 (commencing with Section 25300) of Division 20 would be recodified in this part.
9 The provisions contained in this draft, particularly those that cross-refer to the part, will require
10 reconsideration and possible adjustment if provisions of Chapter 6.8 of Division 20 are recodified
11 in a different location.

12 CHAPTER 1. GENERAL PROVISIONS

13 Article 1. Preliminary Provisions

14 § 68000. Short title

15 68000. (a) This part shall be known and may be cited as the Carpenter-Presley-
16 Tanner Hazardous Substance Account Act.

17 (b) This part recodifies the provisions of former Chapter 6.8 (commencing with
18 Section 25300) of Division 20. The act that added this part shall be known and
19 may be cited as the “Hazardous Substance Account Recodification Act of 2020.”

20 **Comment.** Subdivision (a) of Section 68000 continues former Section 25300 without
21 substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was
22 formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

23 Subdivision (b) is new. It provides a convenient means of referring to the recodification of
24 former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see
25 *Recodification of Hazardous Substance Account Provisions*, __ Cal. L. Revision Comm’n
26 Reports __ (2019).

27 **Staff Note.** In drafting proposed Section 68000(b), the staff assumed that the Commission will
28 approve a final recommendation in this study in 2019 and seek introduction of implementing
29 legislation in 2020. The dates in Section 68000(b) and the accompanying Comment will require
30 adjustment if those assumptions prove incorrect.

31 § 68005. Legislative intent

32 68005. It is the intent of the Legislature to do all of the following:

1 (a) Establish a program to provide for response authority for releases of
2 hazardous substances, including spills and hazardous waste disposal sites that pose
3 a threat to the public health or the environment.

4 (b) Compensate persons, under certain circumstances, for out-of-pocket medical
5 expenses and lost wages or business income resulting from injuries proximately
6 caused by exposure to releases of hazardous substances.

7 (c) Make available adequate funds in order to permit the State of California to
8 assure payment of its 10-percent share of the costs mandated pursuant to Section
9 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

10 **Comment.** Section 68005 continues former Section 25301 without substantive change.

11 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68085
12 (“person” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”
13 defined).

14 Article 2. Effect of Recodification

15 § 68010. Nonsubstantive reform

16 68010. Nothing in the Hazardous Substance Account Recodification Act of
17 2020 is intended to substantively change the law contained in former Chapter 6.8
18 (commencing with 25300) of Division 20. The act is intended to be entirely
19 nonsubstantive in effect. Every provision of this part and every other provision of
20 this act, including, without limitation, every cross-reference in every provision of
21 the act, shall be interpreted consistent with the nonsubstantive intent of the act.

22 **Comment.** Section 68010 is modeled on Penal Code Section 16005. It makes clear that the
23 Hazardous Substance Account Recodification Act of 2020 has no substantive effect. The act is
24 intended solely to make the Carpenter-Presley-Tanner Hazardous Substance Account Act more
25 user-friendly. For background, see *Recodification of Hazardous Substance Account Provisions*,
26 __ Cal. L. Revision Comm’n Reports __ (2019).

27 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
28 provision in this division, see Section 68020. For specific guidance on the impact of a judicial
29 decision assessing the constitutionality of a predecessor of a provision in this division, see
30 Section 68025.

31 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

32 § 68015. Continuation of existing law

33 68015. (a) A provision of this part insofar as it is substantially the same as a
34 previously existing provision relating to the same subject matter, shall be
35 considered as a restatement and continuation of the previously existing provision
36 and not as a new enactment.

37 (b) A reference in a statute or regulation to a previously existing provision that is
38 restated and continued in this part shall, unless a contrary intent appears, be
39 deemed a reference to the restatement and continuation.

40 (c) A reference in a statute or regulation to a provision of this part that is
41 substantially the same as a previously existing provision, shall, unless a contrary

1 intent appears, be deemed to include a reference to the previously existing
2 provision.

3 (d) A reference in a regulation to a provision of former Chapter 6.8
4 (commencing with Section 25300) of Division 20, rather than to the provision of
5 this part that continues the former provision, has no effect on the validity of the
6 regulation.

7 **Comment.** Subdivision (a) of Section 68015 is similar to Section 2, which is a standard
8 provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2;
9 Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

10 Subdivision (b) is drawn from Government Code Section 9604 and Penal Code Section
11 16010(b).

12 Subdivision (c) is drawn from Family Code Section 2 and Penal Code Section 16010(c).

13 Subdivision (d) is new. It is added to make clear that any delay in updating regulations to
14 reflect the enactment of this part does not have any effect on the validity of the regulation. A
15 regulation continues to be valid even if it refers to a provision of former Chapter 6.8 of Division
16 20.

17 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

18 **§ 68020. Judicial decision interpreting former law**

19 68020. (a) A judicial decision interpreting a previously existing provision is
20 relevant in interpreting any provision of this part that restates and continues that
21 previously existing provision.

22 (b) However, in enacting the Hazardous Substance Account Recodification Act
23 of 2020, the Legislature has not evaluated the correctness of any judicial decision
24 interpreting a provision affected by the act.

25 (c) The Hazardous Substance Account Recodification Act of 2020 is not
26 intended to, and does not, reflect any assessment of any judicial decision
27 interpreting any provision affected by the act.

28 **Comment.** Section 68020 is modeled on Penal Code Section 16020.

29 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
30 construing its successor in the Hazardous Substance Account Recodification Act of 2020.

31 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with
32 Section 25300) of Division 20, the Legislature has not taken any position on any case interpreting
33 any of those provisions.

34 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
35 predecessor of a provision in this division, see Section 68025. For general guidance on the
36 nonsubstantive impact of the Hazardous Substance Account Recodification Act of 2020, see
37 Section 68010.

38 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

39 **Staff Note.** In another ongoing recodification project, the Commission is proposing to include a
40 section similar to proposed Section 68020 that addresses Attorney General opinions, rather than
41 judicial decisions. The staff considered whether such a provision should be included in this
42 project, as well. The staff searched for, but did not find, Attorney General opinions related to
43 Chapter 6.8. For this reason, this draft does not include a provision about the effect of the
44 recodification on Attorney General opinions. **The staff welcomes comment on whether a
45 provision regarding the effect of the recodification on Attorney General opinions should be
46 included in this proposed legislation.**

1 **§ 68025. Constitutionality**

2 68025. (a) A judicial decision on the constitutionality of a previously existing
3 provision is relevant in determining the constitutionality of any provision of this
4 division that restates and continues that previously existing provision.

5 (b) However, in enacting the Hazardous Substance Account Recodification Act
6 of 2020, the Legislature has not evaluated the constitutionality of any provision
7 affected by the act, or the correctness of any judicial decision on the
8 constitutionality of any provision affected by the act.

9 (c) The Hazardous Substance Account Recodification Act of 2020 is not
10 intended to, and does not, reflect any determination of the constitutionality of any
11 provision affected by the act.

12 **Comment.** Section 68025 is modeled on Penal Code Section 16025.

13 Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision are
14 relevant in determining the constitutionality of its successor in the Hazardous Substance Account
15 Recodification Act of 2020.

16 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with
17 Section 25300) of Division 20, the Legislature has not taken any position on the constitutionality
18 of any of those provisions.

19 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
20 provision in this division, see Section 68020. For general guidance on the nonsubstantive effect of
21 the Hazardous Substance Account Recodification Act of 2020, see Section 68010.

22 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

23 **§ 68030. Conforming rule change**

24 68030. (a) The department or another state agency may make a conforming rule
25 change without complying with the rulemaking procedure specified in Article 5
26 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2
27 of the Government Code, if the rule change meets all of the requirements of this
28 section.

29 (b) To proceed under this section, the department or agency shall submit all of
30 the following to the Office of Administrative Law:

31 (1) A completed and signed form STD 400.

32 (2) A statement declaring that each proposed rule change in the submission is a
33 conforming rule change.

34 (3) A copy of the text of each regulation to be changed, with strikeout and
35 underscore showing the changes.

36 (c) On receipt of a submission described in subdivision (b), the Office of
37 Administrative Law shall file the changed regulations with the Secretary of State
38 and have them published in the California Code of Regulations.

39 (d) For the purposes of this section, a “conforming rule change” means a rule
40 change that deletes a reference to a provision of former Chapter 6.8 (commencing
41 with Section 25300) of Division 20 and replaces it with a reference to the
42 provision of this part that continues or restates the former provision. A “rule
43 change” includes a change to the text of a regulation in the California Code of
44 Regulations, a regulation’s citation of authority, or a regulation’s reference.

1 **Comment.** Section 68030 is new.
2 See Section 68050 (“department” defined).

3 Article 3. Definitions

4 **§ 68035. Applicable definitions**

5 68035. The definitions set forth in this article shall govern the interpretation of
6 this part. Unless the context requires otherwise and except as provided in this
7 article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec.
8 9601) shall apply to the terms used in this part.

9 **Comment.** Section 68035 continues former Section 25310 without substantive change.
10 See Section 68065 (“federal act” defined).

11 **Staff Note.** The second sentence of Section 25310 provides for the application of definitions
12 contained in Section 101 of the federal act. Section 101 defines over 40 terms. The defined terms
13 in Section 101 include commonly understood words, including “claim,” “damages,”
14 “environment,” “disposal,” “liability,” and “transport.” Section 101 also defines several terms
15 that are also defined in this proposed article, including “hazardous substance,” “person,”
16 “release,” “remove,” “remedy,” and “respond.” Assessing the applicability of the federal act’s
17 definitions for each individual use of the defined terms in this law would be a significant
18 undertaking. And, the benefits of doing such work in this nonsubstantive study are limited. For
19 these reasons, the staff does not plan to exhaustively evaluate the application of federal
20 definitions in this study.

21 In general, the staff is unsure whether this provision provides sufficient clarity as to when the
22 federal definitions apply. **The staff welcomes comment on this issue.**

23 It seems possible that this would be a topic for which future study would be useful. Depending
24 on the comment received, the Commission may want to consider adding this topic to the list of
25 substantive issues for future study in the Commission’s recommendation.

26 **§ 68040. “Agency”**

27 68040. “Agency” means the California Environmental Protection Agency.

28 **Comment.** Section 68040 continues former Section 25310.5 without substantive change.

29 **§ 68045. “Contract competitor”**

30 68045. “Contract competitor” means any person competing for a state contract
31 pursuant to subdivision (a) of Section 68655.

32 **Comment.** Section 68045 continues former Section 25311 without substantive change.
33 See Section 68085 (“person” defined).

34 **§ 68050. “Department”**

35 68050. “Department” means the Department of Toxic Substances Control.

36 **Comment.** Section 68050 continues former Section 25312 without substantive change.

37 **§ 68055. “Director”**

38 68055. “Director” means the Director of Toxic Substances Control.

39 **Comment.** Section 68055 continues former Section 25313 without substantive change.
40 See Section 68050 (“department” defined).

1 § 68060. “Feasibility study”

2 68060. “Feasibility study” means the identification and evaluation of technically
3 feasible and effective remedial action alternatives to protect public health and the
4 environment, at a hazardous substance release site, or other activities deemed
5 necessary by the department for the development of a remedial action plan.

6 **Comment.** Section 68060 continues former Section 25314 without substantive change.

7 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
8 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

9 § 68065. “Federal act”

10 68065. “Federal act” means the federal Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
12 9601 et seq.).

13 **Comment.** Section 68065 continues former Section 25315 without substantive change.

14 § 68070. “Federally permitted release”

15 68070. “Federally permitted release” has the same meaning as defined in
16 Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

17 **Comment.** Section 68070 continues former Section 25325 without substantive change.

18 See Sections 68065 (“federal act” defined), 68105 (“release” defined).

19 § 68075. “Hazardous substance”

20 68075. (a) “Hazardous substance” means:

21 (1) Any substance designated pursuant to Section 1321(b)(2)(A) of Title 33 of
22 the United States Code.

23 (2) Any element, compound, mixture, solution, or substance designated pursuant
24 to Section 102 of the federal act (42 U.S.C. Sec. 9602).

25 (3) Any hazardous waste having the characteristics identified under or listed
26 pursuant to Section 6921 of Title 42 of the United States Code, but not including
27 any waste the regulation of which under the federal Solid Waste Disposal Act (42
28 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress.

29 (4) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United
30 States Code.

31 (5) Any hazardous air pollutant listed under Section 7412 of Title 42 of the
32 United States Code.

33 (6) Any imminently hazardous chemical substance or mixture with respect to
34 which the Administrator of the United States Environmental Protection Agency
35 has taken action pursuant to Section 2606 of Title 15 of the United States Code.

36 (7) Any hazardous waste or extremely hazardous waste as defined by Sections
37 25117 and 25115, respectively, unless expressly excluded.

38 (b) “Hazardous substance” does not include:

39 (1) Petroleum, including crude oil or any fraction of crude oil that is not
40 otherwise specifically listed or designated as a hazardous substance in paragraphs

1 (1) to (6), inclusive, of subdivision (a), and natural gas, natural gas liquids,
2 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas
3 and synthetic gas usable for fuel).

4 (2) Ash produced by a resource recovery facility utilizing a municipal solid
5 waste stream.

6 (3) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from
7 underground vaults, chambers, or manholes into gutters or storm sewers.

8 **Comment.** Subdivision (a) of Section 68075 continues former Section 25316 without
9 substantive change.

10 Subdivision (b) restates former Section 25317 without substantive change.

11 See Section 68065 (“federal act” defined).

12 **Staff Note.** Subdivision (a) of Section 25317 was restated for clarity and to conform to legislative
13 drafting practices. Subdivision (a) has been broken into paragraphs (1) and (2) of subdivision (b)
14 in proposed Section 68075.

15 Section 25317(a) currently reads as follows:

16 “(a) Petroleum, including crude oil or any fraction thereof which is not otherwise
17 specifically listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of
18 Section 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable
19 for fuel (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource
20 recovery facility utilizing a municipal solid waste stream.”

21 The changes reflected in proposed Section 68075 are intended to be nonsubstantive. **The staff**
22 **welcomes any comment on the proposed restatement of this subdivision.**

23 **§ 68080. “Operation and maintenance”**

24 68080. “Operation and maintenance” means those activities initiated or
25 continued at a hazardous substance release site following completion of a response
26 action that are deemed necessary by the department or regional board in order to
27 protect public health or safety or the environment, to maintain the effectiveness of
28 the response action at the site, or to achieve or maintain the response action
29 standards and objectives established by the final remedial action plan or final
30 removal action work plan applicable to the site.

31 **Comment.** Section 68080 continues former Section 25318.5 without substantive change.

32 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
33 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68130
34 (“removal action work plan” defined), 68140 (“response” defined), 68155 (“site” defined).

35 **§ 68085. “Person”**

36 68085. “Person” means an individual, trust, firm, joint stock company, business
37 concern, partnership, limited liability company, association, and corporation,
38 including, but not limited to, a government corporation. “Person” also includes
39 any city, county, city and county, district, commission, the state or any
40 department, agency, or political subdivision thereof, any interstate body, and the
41 United States and its agencies and instrumentalities, to the extent permitted by
42 law.

43 **Comment.** Section 68085 restates former Section 25319 without substantive change.

1 **Staff Notes. (1)** In proposed Section 68085, the order of the phrases in the first sentence in the
2 definition of “person” from Section 25319 were changed to improve clarity. Minor changes to the
3 text were made to conform to legislative drafting practices. The text of Section 25319 is as
4 follows:

5 “25319. ‘Person’ means an individual, trust, firm, joint stock company, business concern,
6 corporation, including, but not limited to, a government corporation, partnership, limited liability
7 company, and association. “Person” also includes any city, county, city and county, district,
8 commission, the state or any department, agency, or political subdivision thereof, any interstate
9 body, and the United States and its agencies and instrumentalities, to the extent permitted by
10 law.”

11 The changes reflected in proposed Section 68085 are intended to be nonsubstantive. **The staff**
12 **welcomes any comment on the proposed restatement of this definition.**

13 **(2)** The staff had difficulty determining the intended application of the final phrase in the
14 second sentence of the definition of “person.” In particular, it was unclear whether “to the extent
15 permitted by law” was intended to serve as a limitation to all of the listed entities in the second
16 sentence or whether that phrase was only intended to modify the last set of listed entities (“the
17 United States and its agencies and instrumentalities”). If the former application is intended, the
18 staff would propose moving the phrase “to the extent permitted by law” to the front of the
19 sentence (to read “‘Person’ also includes, to the extent permitted by law, ...”). If the latter
20 application is intended, it would seem to be more clear to move “to the extent permitted by law”
21 to precede “the United States ...”. (to read “any interstate body, and, to the extent permitted by
22 law, the United States and its agencies and instrumentalities”) **The staff welcomes comment on**
23 **this issue.**

24 **§ 68090. “Phase I environmental assessment”**

25 68090. “Phase I environmental assessment” means a preliminary assessment of
26 a property to determine whether there has been, or may have been, a release of a
27 hazardous substance based on reasonably available information about the property
28 and general vicinity. A phase I environmental assessment may include, but is not
29 limited to, a review of public and private records, current and historical land uses,
30 prior releases of a hazardous material, database searches, reviews of relevant files
31 of federal, state, and local agencies, visual and other surveys of the property and
32 general vicinity, interviews with current and previous owners and operators, and
33 review of regulatory correspondence and environmental reports. Sampling or
34 testing is not required as part of a phase I environmental assessment.

35 **Comment.** Section 68090 continues former Section 25319.1 without substantive change.
36 See 68075 (“hazardous substance” defined), 68105 (“release” defined).

37 **§ 68095. “Preliminary endangerment assessment”**

38 68095. “Preliminary endangerment assessment” means an activity that is
39 performed to determine whether current or past hazardous substance management
40 practices have resulted in a release or threatened release of a hazardous substance
41 that poses a threat to the public health or the environment and is conducted in a
42 manner that complies with the guidelines published by the department entitled
43 “Preliminary Endangerment Assessment: Guidance Manual,” or as those

1 guidelines may be amended by the department. A preliminary endangerment
2 assessment includes all of the following activities:

3 (a) Sampling and analysis of a site.

4 (b) A preliminary determination of the type and extent of hazardous material
5 contamination of a site.

6 (c) A preliminary evaluation of the risks the hazardous materials contamination
7 of a site may pose to public health or the environment.

8 **Comment.** Section 68095 continues former Section 25319.5 without substantive change.

9 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
10 (“release” defined), 68155 (“site” defined).

11 **§ 68100. “Regional board”**

12 68100. “Regional board” means a California regional water quality control
13 board.

14 **Comment.** Section 68100 continues former Section 25319.6 without substantive change.

15 **§ 68105. “Release”**

16 68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
18 the environment.

19 (b) “Release” does not include any of the following:

20 (1) Any release that results in exposure to persons solely within a workplace,
21 with respect to a claim those exposed persons may assert against their employer.

22 (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft,
23 vessel, or pipeline pumping station engine.

24 (3) Release of source, byproduct, or special nuclear material from a nuclear
25 incident, as those terms are defined in the federal Atomic Energy Act of 1954 (42
26 U.S.C. Sec. 2011 et seq.), if the release is subject to requirements with respect to
27 financial protection established by the Nuclear Regulatory Commission under
28 Section 2210 of Title 42 of the United States Code.

29 (4) For the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or
30 any other response action, any release of source, byproduct, or special nuclear
31 material, as those terms are defined in the federal Atomic Energy Act of 1954 (42
32 U.S.C. Sec. 2011 et seq.), from any processing site designated under Section
33 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a
34 part of the federal Uranium Mill Tailings Radiation Control Act of 1978.

35 (5) The normal application of fertilizer, plant growth regulants, and pesticides.

36 **Comment.** Subdivision (a) of Section 68105 continues former Section 25320 without
37 substantive change.

38 Subdivision (b) restates former Section 25321 without substantive change.

39 See Sections 68065 (“federal act” defined), 68085 (“person” defined), 68140 (“response”
40 defined).

41 **Staff Note.** Proposed Section 68105(b) separates the text of Section 25321(c) into two paragraphs
42 ((3) and (4)) for clarity. The proposed language also includes changes to conform to legislative

1 drafting practices and to correct an apparent error (i.e., an omitted comma). Subdivision (c) of
2 Section 25321 reads as follows:

3 “(c) Release of source, byproduct, or special nuclear material from a nuclear incident, as
4 those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such
5 release is subject to requirements with respect to financial protection established by the Nuclear
6 Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the
7 purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any
8 release of source byproduct, or special nuclear material from any processing site designated under
9 Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of
10 the Uranium Mill Tailings Radiation Control Act of 1978.”

11 The changes reflected in proposed Section 68105 are intended to be nonsubstantive. **The staff**
12 **welcomes any comment on the proposed restatement of this subdivision.**

13 **§ 68110. “Release authorized or permitted pursuant to state law”**

14 68110. “A release authorized or permitted pursuant to state law” means any
15 release into the environment that is authorized by statute, ordinance, regulation, or
16 rule of any state, regional, or local agency or government or by any specific
17 permit, license, or similar authorization from such an agency, including one of the
18 foregoing, that recognizes a standard industry practice, including variances
19 obtained from the agency that allow operations for facilities during a period of
20 time when releases from the facilities do not conform with relevant statutes,
21 ordinances, regulations, or rules. The term includes a federally permitted release,
22 as defined by Section 68070, and releases that are in accordance with any court
23 order or consent decree.

24 **Comment.** Section 68110 continues former Section 25326 without substantive change.

25 See Sections 68040 (“agency” defined), 68070 (“federally permitted release” defined), 68105
26 (“release” defined).

27 **§ 68115. “Remedial design”**

28 68115. “Remedial design” means the detailed engineering plan to implement the
29 remedial action alternative or initial remedial measure approved by the
30 department.

31 **Comment.** Section 68115 continues former Section 25322.1 without substantive change.

32 See Sections 68050 (“department” defined), 68125 (“remedy” defined).

33 **§ 68120. “Remedial investigation”**

34 68120. “Remedial investigation” means those actions deemed necessary by the
35 department to determine the full extent of a hazardous substance release at a site,
36 identify the public health and environment threat posed by the release, collect data
37 on possible remedies, and otherwise evaluate the site for purposes of developing a
38 remedial action plan.

39 **Comment.** Section 68120 continues former Section 25322.2 without substantive change.

40 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
41 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

1 § 68125. “Remedy” or “remedial action”

2 68125. “Remedy” or “remedial action” includes all of the following:

3 (a) Those actions that are consistent with a permanent remedy, that are taken
4 instead of, or in addition to, removal actions in the event of a release or threatened
5 release of a hazardous substance into the environment, as further defined by
6 Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any
7 reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the
8 President, relating to determinations regarding the relocation of residents,
9 businesses, and community facilities shall, for the purposes of this part, be deemed
10 to be a reference to the Governor and any other reference in that section to the
11 President shall, for the purposes of this part, be deemed a reference to the
12 Governor, or the director, if designated by the Governor.

13 (b) Those actions that are necessary to monitor, assess, and evaluate a release or
14 a threatened release of a hazardous substance.

15 (c) Site operation and maintenance.

16 **Comment.** Section 68125 continues former Section 25322 without substantive change.

17 See Sections 68055 (“director” defined), 68065 (“federal act” defined), 68075 (“hazardous
18 substance” defined), 68080 (“operation and maintenance” defined), 68105 (“release” defined),
19 68135 (“remove” defined), 68155 (“site” defined).

20 § 68130. “Removal action work plan”

21 68130. “Removal action work plan” means a work plan prepared or approved by
22 the department or a regional board that is developed to carry out a removal action,
23 in an effective manner, that is protective of the public health and safety and the
24 environment. The removal action work plan shall include a detailed engineering
25 plan for conducting the removal action, a description of the onsite contamination,
26 the goals to be achieved by the removal action, and any alternative removal
27 options that were considered and rejected and the basis for that rejection.

28 **Comment.** Section 68130 continues former Section 25323.1 without substantive change.

29 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68135
30 (“remove” defined).

31 **Staff Note.** Proposed Section 68130 replaces the phrase “a California regional water quality
32 control board” used in Section 25323.1 with “a regional board.” The term “regional board” is
33 defined in proposed Section 68100, which continues Section 25319.6.

34 § 68135. “Remove” or “removal”

35 68135. “Remove” or “removal” includes the cleanup or removal of released
36 hazardous substances from the environment or the taking of other actions as may
37 be necessary to prevent, minimize, or mitigate damage that may otherwise result
38 from a release or threatened release, as further defined by Section 101(23) of the
39 federal act (42 U.S.C. Sec. 9601(23)).

40 **Comment.** Section 68135 continues former Section 25323 without substantive change.

41 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105
42 (“release” defined).

1 § 68140. “Response,” “respond,” or “response action”

2 68140. “Response,” “respond,” or “response action” have the same meanings as
 3 defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The
 4 enforcement and oversight activities of the department and regional board are
 5 included within the meaning of “response,” “respond,” or “response action.”

6 **Comment.** Section 68140 continues former Section 25323.3 without substantive change. An
 7 erroneous cross-reference to “Section 9601(25) of the federal act” has been corrected to refer to
 8 “Section 101(25) of the federal act.”

9 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68100 (“regional
 10 board” defined).

11 **Staff Note.** Proposed Section 68140 replaces the reference to “Section 9601(25) of the federal
 12 act” used in Section 25323.3 with “Section 101(25) of the federal act.” Section 9601 *of the U.S.*
 13 *Code* corresponds to Section 101 *of the federal act*. See, e.g., proposed Section 68135. The
 14 original reference to Section 9601 of the federal act appears to have been an error.

15 § 68145. “Responsible party” or “liable person”

16 68145. (a)(1) “Responsible party” or “liable person,” for the purposes of this
 17 part, means those persons described in Section 107(a) of the federal act (42 U.S.C.
 18 Sec. 9607(a)).

19 (2)(A) Notwithstanding paragraph (1), but except as provided in subparagraph
 20 (B), a person is not a responsible party or liable person, for purposes of this part,
 21 for the reason that the person has developed or implemented innovative
 22 investigative or innovative remedial technology with regard to a release site, if the
 23 use of the technology has been approved by the department for the release site and
 24 the person would not otherwise be a responsible party or liable person. Upon
 25 approval of the use of the technology, the director shall acknowledge, in writing,
 26 that, upon proper completion of the innovative investigative or innovative
 27 remedial action at the release site, the immunity provided by this subparagraph
 28 shall apply to the person.

29 (B) Subparagraph (A) does not apply in any of the following cases:

30 (i) Conditions at the release site have deteriorated as a result of the negligence of
 31 the person who developed or implemented the innovative investigative or
 32 innovative remedial technology.

33 (ii) The person who developed or implemented the innovative investigative or
 34 innovative remedial technology withheld or misrepresented information that was
 35 relevant to the potential risks or harms of the technology.

36 (iii) The person who implemented the innovative investigative or innovative
 37 remedial technology did not follow the implementation process approved by the
 38 department.

39 (b) For the purposes of this part, the defenses available to a responsible party or
 40 liable person shall be those defenses specified in Sections 101(35) and 107(b) of
 41 the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

42 (c) Any person who unknowingly transports hazardous waste to a solid waste
 43 facility pursuant to the exemption provided in subdivision (e) of Section 25163

1 shall not be considered a responsible party for purposes of this part solely because
2 of the act of transporting the waste. Nothing in this subdivision shall affect the
3 liability of this person for the person’s negligent acts.

4 **Comment.** Section 68145 continues former Section 25323.5 without substantive change.

5 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
6 defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68155
7 (“site” defined).

8 **§ 68150. “Secretary”**

9 68150. “Secretary” means the Secretary for Environmental Protection.

10 **Comment.** Section 68150 continues former Section 25326.3 without substantive change.

11 **§ 68155. “Site”**

12 68155. “Site” has the same meaning as the term “facility” is defined by Section
13 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

14 **Comment.** Section 68155 continues former Section 25323.9 without substantive change.

15 See Section 68065 (“federal act” defined).

16 **§ 68160. “Site cleanup evaluation”**

17 68160. “Site cleanup evaluation” means an evaluation by the department of the
18 effectiveness of a removal or remedial action conducted by a responsible party, to
19 reduce or eliminate actual or potential public health and environmental threats
20 posed by a hazardous substance release site if the action itself is not the subject of
21 oversight by the department.

22 **Comment.** Section 68160 continues former Section 25326.5 without substantive change.

23 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
24 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
25 party” defined), 68155 (“site” defined).

26 **§ 68165. “State account”**

27 68165. “State account” means the Toxic Substances Control Account
28 established pursuant to Section 25173.6.

29 **Comment.** Section 68165 continues subdivision (a) of former Section 25324 without
30 substantive change.

31 **Staff Note.** Subdivision (b) of Section 25324 states a substantive rule, rather than a definition:

32 “(b) Notwithstanding any other provision of this section, any costs incurred and payable
33 from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site
34 Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from
35 the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable
36 from the state account.”

37 This subdivision will be recodified with other related provisions in a future draft.

1 § 68170. “Tier”

2 68170. “Tier” means a grouping of hazardous substance release sites that require
3 removal and remedial actions, that are listed alphabetically, and that are of a
4 roughly equivalent priority for removal and remedial action.

5 **Comment.** Section 68170 continues former Section 25327 without substantive change.

6 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125
7 (“remedy” defined), 68135 (“remove” defined), 68155 (“site” defined).

8 Article 4. Construction of Part

9 § 68185. Construction as to liability

10 68185. (a) This part shall not be construed as imposing any new liability
11 associated with acts that occurred on or before January 1, 1982, if the acts were
12 not in violation of existing state or federal laws at the time they occurred.

13 (b) Nothing in this part shall be construed as authorizing recovery for response
14 costs or damages resulting from any release authorized or permitted pursuant to
15 state law.

16 (c) Except as provided in Sections **25360, 25361, 25362, and 25363**, nothing in
17 this part shall affect or modify in any way the obligations or liability of any person
18 under any other provision of state or federal law, including common law, for
19 damages, injury, or loss resulting from a release of any hazardous substance or for
20 removal or remedial action or the costs of removal or remedial action of the
21 hazardous substance.

22 **Comment.** Section 68185 restates former Section 25366 without substantive change.

23 See Sections 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105
24 (“release” defined), 68110 (“release authorized or permitted pursuant to state law” defined),
25 68125 (“remedy” defined), 68135 (“remove” defined), 68140 (“response” defined).

26 **Staff Note.** Section 25366(b) specifies that this part does not authorize recovery for costs or
27 damages resulting from “any release authorized or permitted pursuant to state law or a federally
28 permitted release.” In proposed Section 68110, “release authorized or permitted pursuant to state
29 law” is defined to include “a federally permitted release,” which term is separately defined in
30 proposed Section 68070. The use of both of these terms in subdivision (b) appears to be
31 redundant. For this reason, the staff proposes to delete the phrase “or a federally permitted
32 release.”

33 This change to subdivision (b) is intended to be nonsubstantive. **The staff welcomes any**
34 **comment on the proposed restatement of this subdivision.**

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CHAPTER 2. FINANCIAL PROVISIONS

Article 1. Budget

§ 68200. Items to be scheduled in Budget Act

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.

Comment. Section 68200 continues former Section 25342 without substantive change. See Section 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68155 (“site” defined).

Staff Note. The staff believes that Section 25342 could benefit from restatement for clarity, but is unsure how to restate this provision without raising the possibility of substantive change. **The staff welcomes comment on whether this provision is sufficiently clear and, if so, the intended meaning of the provision.**

Article 2. Externally-Funded Positions

§ 68210. Protection of positions funded by federal grant or responsible party

68210. (a)(1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any externally-funded position.

(2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any externally-funded position.

(b) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any externally-funded position.

(c) The Controller and Department of Finance shall exclude, from the department’s base for purposes of calculating any budget or position reductions required by any state agency or any state law, any externally-funded position and the specific amounts attributable to any externally-funded position.

(d) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the department to reduce authorized positions or other appropriations for other department programs, including personal services, to replace the reductions precluded by subdivisions (a), (b), and (c).

(e) Notwithstanding any other provision of law, upon the request of the department, and upon review and approval by the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(f)(1) This section does not apply to any department appropriation or expenditure of General Fund moneys.

1 (2) This section does not limit the authority of the Department of Finance to
2 eliminate a position when funding for the position, through an agreement with a
3 party or by a federal grant, is no longer available.

4 (g) For the purposes of this section, “externally-funded position” includes both
5 of the following:

6 (1) A direct or indirect position that provides oversight and related support of
7 remediation and hazardous substance management at a military base, including a
8 closed military base, that is funded through an agreement with a party responsible
9 for paying the department’s costs.

10 (2) A direct or indirect position that is funded by a federal grant that does not
11 require a state match funded from the General Fund.

12 **Comment.** Section 68210 restates former Section 25353.5 without substantive change.
13 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined).

14 **Staff Notes. (1)** Paragraph (a)(2) refers to a section of the Budget Act from 2003 and specifies
15 certain fiscal years (2003-04 and 2004-05). It is unclear whether any aspect of this provision is
16 obsolete. **The staff welcomes comment on this issue.**

17 **(2)** Proposed Section 68210 includes a new subdivision (g), defining the term “externally-funded
18 position” and restates subdivisions (a)-(c) to use the defined term. The term “externally-funded
19 position” is defined to avoid the repetition of text describing such positions in subdivisions (a)-(c)
20 of Section 25353.5. This change is intended to improve clarity.

21 Currently, subdivisions (a)-(c) of Section 25353.5 read as follows:

22 “25353.5. (a)(1) Notwithstanding Section 12439 of the Government Code, the Controller
23 may not eliminate any direct or indirect position that provides oversight and related support of
24 remediation and hazardous substance management at a military base, including a closed military
25 base, that is funded through an agreement with a party responsible for paying the department’s
26 costs, and may not eliminate any direct or indirect position that is funded by a federal grant that
27 does not require a state match funded from the General Fund.

28 (2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act
29 of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any
30 direct or indirect position that provides oversight and related support of remediation and
31 hazardous substance management at a military base, including a closed military base, that is
32 funded through an agreement with a party responsible for paying the department’s costs, and may
33 not eliminate any direct or indirect position that is funded by a federal grant that does not require
34 a state match funded from the General Fund.

35 (b) Neither the Controller nor the Department of Finance may impose any hiring freeze or
36 personal services limitations, including any position reductions, upon any direct or indirect
37 position of the department that provides oversight and related support of remediation and
38 hazardous substance management at a military base, including a closed military base, that is
39 funded through an agreement with a party responsible for paying the department’s costs, or on
40 any direct or indirect position that is funded by a federal grant that does not require a state match
41 funded from the General Fund.

42 (c) The Controller and Department of Finance shall exclude, from the department’s base
43 for purposes of calculating any budget or position reductions required by any state agency or any
44 state law, the specific amounts and direct or indirect positions that provide oversight and related
45 support of remediation and hazardous substance management at a military base, including a
46 closed military base, that are funded through an agreement with a party responsible for paying the
47 department’s costs, and shall exclude the specific amounts and any direct or indirect positions
48 that are funded by a federal grant that does not require a state match funded from the General
49 Fund.”

1 The changes reflected in proposed Section 68210 are intended to be nonsubstantive. **The staff**
2 **welcomes any comment on the proposed restatement of these subdivisions, as well as the**
3 **definition in proposed subdivision (g).**

4 Article 3. State Account

5 § 68220. Actions involving state account

6 68220. The state account may sue and be sued in its own name.

7 **Comment.** Section 68220 continues former Section 25331 without substantive change.

8 See Section 68165 (“state account” defined).

9 § 68225. Excess expenditures

10 68225. Expenditures from the state account shall not be made in excess of the
11 total amount of money in the state account at any one time. Expenditures in excess
12 of that amount may be made only when additional money is collected or otherwise
13 added to the state account.

14 **Comment.** Section 68225 continues former Section 25357 without substantive change.

15 See Section 68165 (“state account” defined).

16 § 68230. Subaccount for funds for response action at specific site

17 68230. (a) Notwithstanding any other provision of law, the Controller shall
18 establish a separate subaccount in the state account, for any funds received from a
19 settlement agreement or the General Fund for a removal or remedial action to be
20 performed at a specific site.

21 (b) Notwithstanding Section 13340 of the Government Code, funds deposited in
22 the subaccount for those removal or remedial actions are hereby continuously
23 appropriated to the department, without regard to fiscal years, for removal or
24 remedial action at the specific site, and for administrative costs associated with the
25 removal or remedial action at the specific site.

26 (c) Notwithstanding any other provision of law, money in the subaccount for
27 those removal or remedial actions shall not revert to the General Fund or be
28 transferred to any other fund or account in the State Treasury, except for purposes
29 of investment as provided in Article 4 (commencing with Section 16470) of
30 Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

31 (d) Notwithstanding Section 16305.7 of the Government Code, all interest or
32 other increment resulting from investment of the funds specified in subdivision (a)
33 pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of
34 Division 4 of Title 2 of the Government Code shall be deposited in the subaccount
35 for removal or remedial action at the specific sites.

36 (e) At the conclusion of all removal or remedial actions at the specific site, any
37 unexpended funds in any subaccounts established pursuant to this section shall be
38 transferred to the subaccount for site operation and maintenance established

1 pursuant to Section 68235, if necessary, for those activities at the site, or, if not
2 needed for site operation and maintenance at the site, to the state account.

3 (f) There is hereby created a subaccount in the state account as the successor
4 fund to the Stringfellow Insurance Proceeds Account created pursuant to former
5 Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets,
6 liabilities, and surplus in the Stringfellow Insurance Proceeds Account shall be
7 transferred to, and become a part of, this subaccount for the Stringfellow
8 Superfund Site in Riverside County, as provided in Section 16346 of the
9 Government Code. All appropriations from the Stringfellow Insurance Proceeds
10 Account, to the extent encumbered, shall continue to be available from the
11 subaccount for expenditure for the same purposes and periods.

12 **Comment.** Section 68230 continues former Section 25330.4(a)-(e) and (f)(1) without
13 substantive change. For ease of reference, former paragraph (f)(1)'s reference to "former Section
14 25330.6, as that section read on January 1, 2013" has been replaced with a reference to the last
15 statute to amend the section prior to that date.

16 Former Section 68230(f)(2) is obsolete and has not been continued.

17 See Sections 68050 ("department" defined), 68080 ("operation and maintenance" defined),
18 68125 ("remedy" defined), 68135 ("remove" defined), 68155 ("site" defined), 68165 ("state
19 account" defined).

20 **Staff Notes. (1)** Subdivision (e) of Section 25330.4 refers to the "Toxic Substances Control
21 Account." Proposed Section 68230 replaces that reference with the "state account." In proposed
22 Section 68165, "state account" is defined as "the Toxic Substances Control Account established
23 pursuant to Section 25173.6."

24 **(2)** The staff was unable to find any information about the subaccount created by subdivision (f)
25 (i.e., the successor fund to the Stringfellow Insurance Proceeds Account). **The staff welcomes**
26 **comment on the status of this subaccount.**

27 **(3)** Subdivision (f) of proposed Section 68230 is currently paragraph (1) of subdivision (f) of
28 Section 25330.4. Section 25330.4 contains a paragraph (f)(2) that provides:

29 "(2) This subdivision shall become operative on July 1, 2013."

30 This provision appears to no longer be needed, as subdivision (f) is now operative. Proposed
31 Section 68230 would not continue this paragraph. This change is intended to be nonsubstantive.
32 **The staff welcomes comment on whether this proposed change is problematic for any**
33 **reason.**

34 **§ 68235. Subaccount for site operation and maintenance**

35 68235. (a) The Controller shall establish a separate subaccount for site operation
36 and maintenance in the state account. All of the following amounts shall be
37 deposited in the subaccount:

38 (1) Funds received from responsible parties for site operation and maintenance.

39 (2) Funds received from the federal government pursuant to the federal act for
40 site operation and maintenance.

41 (3) Funds received from cities, counties, or any other state or local agency for
42 site operation and maintenance.

43 (4) Funds appropriated from the state account by the Legislature for site
44 operation and maintenance.

1 (b) Notwithstanding Section 13340 of the Government Code, funds deposited in
2 the subaccount for site operation and maintenance are hereby continuously
3 appropriated to the department, without regard to fiscal years, for site operation
4 and maintenance, and for administrative costs associated with site operation and
5 maintenance.

6 (c) Notwithstanding any other provision of law, money in the subaccount for site
7 operation and maintenance shall not revert to the General Fund or be transferred to
8 any other fund or account in the State Treasury, except for purposes of investment
9 as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2
10 of Division 4 of Title 2 of the Government Code.

11 (d) Notwithstanding Section 16305.7 of the Government Code, all interest or
12 other increment resulting from investment of the funds specified in subdivision (a)
13 pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of
14 Division 4 of Title 2 of the Government Code shall be deposited in the subaccount
15 for site operation and maintenance.

16 **Comment.** Section 68235 continues former Section 25330.5 without substantive change.

17 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68080 (“operation
18 and maintenance” defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68165
19 (“state account” defined).

20 **§ 68240. Reserve account for emergencies**

21 68240. (a) There is hereby continuously appropriated from the state account to
22 the department the sum of one million dollars (\$1,000,000) for each fiscal year as
23 a reserve account for emergencies, notwithstanding Section 13340 of the
24 Government Code. The department shall expend moneys available in the reserve
25 account only for the purpose of taking immediate corrective action necessary to
26 remedy or prevent an emergency resulting from a fire or an explosion of, or
27 human exposure to, hazardous substances caused by the release or threatened
28 release of a hazardous substance.

29 (b)(1) Notwithstanding any other provision of law, the department may enter
30 into written contracts for corrective action taken or to be taken pursuant to
31 subdivision (a).

32 (2) Notwithstanding any other provision of law, the department may enter into
33 oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in
34 the judgment of the department, immediate corrective action is necessary to
35 remedy or prevent an emergency specified in subdivision (a).

36 (3) The contracts made pursuant to this subdivision, whether written or oral,
37 may include provisions for the rental of tools or equipment, either with or without
38 operators furnished, and for the furnishing of labor and materials necessary to
39 accomplish the work.

40 (4) If the department finds that the corrective action includes the relocation of
41 individuals, the department may contract with those individuals for out-of-pocket

1 expenses incurred in moving for an amount of not more than one thousand dollars
2 (\$1,000).

3 (c) Once the appropriation made pursuant to subdivision (a) is fully expended,
4 the director may file a report with the Legislature if it is in session or, if it is not in
5 session, with the Committee on Rules of the Assembly and the Senate as to the
6 moneys expended pursuant to this section. The Legislature may appropriate
7 moneys from the state account, in addition to those moneys appropriated pursuant
8 to subdivision (a), to the department for the purpose of taking corrective action
9 pursuant to subdivision (a).

10 (d) Except as provided in subdivision (c), the amount deposited in the reserve
11 account and appropriated pursuant to this section shall not exceed one million
12 dollars (\$1,000,000) in any fiscal year. On June 30 of each year, the
13 unencumbered balance of the reserve account shall revert to and be deposited in
14 the state account.

15 **Comment.** Section 68240 continues former Section 25354, with the exception of the first
16 sentence of subdivision (c), without substantive change. The first sentence of subdivision (c) of
17 former Section 25354 is continued without substantive change in Section 68580.

18 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
19 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68165 (“state
20 account” defined).

21 Article 4. Site Remediation Account

22 § 68260. Site Remediation Account

23 68260. (a) There is in the General Fund the Site Remediation Account, which
24 shall be administered by the director. The account shall be funded by money
25 transferred from the state account, upon appropriation by the Legislature.
26 Consistent with the requirements of Section 114(c) of the federal act (42 U.S.C.
27 Sec. 9614(c)), the moneys in the account may be expended by the department,
28 upon appropriation by the Legislature, for direct site remediation costs.

29 (b)(1) For purposes of this section, “direct site remediation costs” means
30 payments to contractors for investigations, characterizations, removal,
31 remediation, or long-term operation and maintenance at sites contaminated or
32 suspected of contamination by hazardous materials, where those actions are
33 authorized pursuant to this part.

34 (2) “Direct site remediation costs” also means the state-mandated share pursuant
35 to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

36 (3) “Direct site remediation costs” does not include the department’s
37 administrative expenses or the department’s expenses for staff to perform
38 oversight of investigations, characterizations, removals, remediations, or long-
39 term operation and maintenance.

40 **Comment.** Section 68260 continues former Section 25337 without substantive change.

1 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
2 defined), 68080 (“operation and maintenance” defined), 68135 (“remove” defined), 68155 (“site”
3 defined), 68165 (“state account” defined).

4 **Staff Note.** Subdivision (a) of Section 25337 requires that the expenditure of moneys in the Site
5 Remediation Account for direct site remediation costs be “[c]onsistent with the requirements of
6 Section 114(c) of the federal act.”

7 It is unclear which requirements in Section 114(c) of the federal act would govern the state’s
8 expenditure of funds for direct site remediation costs. The provision seems to apply to the
9 recovery of expended funds from a service station dealer. **The staff welcomes comment on
10 whether this cross-reference needs to be revised.**

11 **§ 68265. Encumbrance and disbursement of funds**

12 68265. Funds in the Site Remediation Account appropriated for removal or
13 remedial action pursuant to this part are available for encumbrance for three fiscal
14 years subsequent to the fiscal year in which the funds are appropriated and are
15 available for disbursement in liquidation of encumbrances pursuant to Section
16 16304.1 of the Government Code.

17 **Comment.** Section 68265 continues former Section 25330.2 without substantive change.
18 See Section 68125 (“remedy” defined), 68135 (“remove” defined).

19 **Article 5. Hazardous Substance Cleanup Bond Act of 1984**

20 **§ 68280. Short title**

21 68280. This article shall be known and may be cited as the Johnston-Filante
22 Hazardous Substance Cleanup Bond Act of 1984.

23 **Comment.** Section 68280 continues former Section 25385 without substantive change.

24 **§ 68285. Definitions**

25 68285. For purposes of this article, and for purposes of Section 16722 of the
26 Government Code as applied to this article, the following definitions apply:

27 (a) “Board” means the department.

28 (b) “Committee” means the Hazardous Substance Cleanup Committee created
29 pursuant to Section 68295.

30 (c) “Director” means the director.

31 (d) “Fund” means the state account.

32 (e) “Orphan site” means a site with a release or threatened release of a hazardous
33 substance with no reasonably identifiable responsible parties.

34 (f) “Orphan share” means those costs of removal or remedial action at sites with
35 a release or threatened release of hazardous substances, which costs are in excess
36 of amounts included in a cleanup agreement.

37 (g) “Responsible party” means a person who is, or may be, responsible or liable
38 for carrying out, or paying for the costs of, a removal or remedial action.

39 **Comment.** Section 68285 continues former Section 25385.1 without substantive change.

1 See Sections 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105
2 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
3 party” defined), 68155 (“site” defined), 68165 (“state account” defined).

4 **Staff Notes. (1)** Proposed Section 68285 would revise Section 25385.1 to use the defined terms,
5 “department” and “director,” in subdivisions (a) and (c). The relevant subdivisions of Section
6 25385.1 are reproduced below:

7 “25385.1 For purposes of this article, and for purposes of Section 16722 of the
8 Government Code as applied to this article, the following definitions apply:

9 (a) ‘Board’ means the Department of Toxic Substances Control.

10 ...

11 (c) ‘Director’ means the Director of Toxic Substances Control.

12 ...”

13 Although the definition for “director” in proposed subdivision (c) may appear to be redundant,
14 the definition in this section applies for the purposes of Government Code Section 16722, as well
15 as this article. Given the broader application of the definitions in this section, the staff concluded
16 that definition for “director” in subdivision (c) should be continued.

17 The changes reflected in proposed Section 68285 are intended to be nonsubstantive. **The staff
18 welcomes any comment on these changes.**

19 **(2)** This section defines two terms that are not used in this article: “orphan site” and “orphan
20 share.” These terms are also not used in Government Code Section 16722, nor the State General
21 Obligation Bond Law that contains that section. It is unclear whether these definitions have any
22 ongoing utility. Would it be appropriate to exclude these definitions from the recodified law? **The
23 staff welcomes comment on this issue.**

24 **(3)** Subdivision (g) of proposed Section 68285 defines “responsible party.” In proposed Section
25 68145, this term is already defined for the part as a whole. These definitions of “responsible
26 party” are drafted significantly differently. **The staff requests comment on whether this issue
27 has caused problems in practice.**

28 § 68290. Application of State General Obligation Bond Law

29 68290. The State General Obligation Bond Law (Chapter 4 (commencing with
30 Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is
31 adopted for the purpose of the issuance, sale, and repayment of, and otherwise
32 providing with respect to, the bonds authorized to be issued pursuant to this
33 article, and the provisions of that law are included in this article as though set out
34 in full in this article, except that, notwithstanding anything in the State General
35 Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years
36 from the date of the bonds, or from the date of each respective series. The maturity
37 of each respective series shall be calculated from the date of the series.

38 **Comment.** Section 68290 continues former Section 25385.2 without substantive change.

39 **Staff Note.** The staff is unsure of the intended effect of this provision. In particular, the staff is
40 unsure of the effect of statements that the State General Obligation Bond Law is “adopted” for
41 this article and the “provisions of that law are included in this article as though set out in full in
42 this article.” In its research, the staff found that these statements are very similar to language
43 included in other bond legislation from the same year. Thus, this may be standard language for
44 incorporating the State General Obligation Bond Law. **The staff welcomes comment on
45 whether the language of this provision causes any problems in practice and should be
46 restated.**

1 **§ 68295. Creation of Hazardous Substance Cleanup Committee**

2 68295. The Hazardous Substance Cleanup Committee, which is hereby created,
3 shall consist of the Governor, the Director of Finance, the Treasurer, the
4 Controller, and the secretary.

5 **Comment.** Section 68295 continues former Section 25385.4 without substantive change.
6 See Section 68150 (“secretary” defined).

7 **Staff Note.** Section 25384.4 refers to the “Secretary for Environmental Protection.” Proposed
8 Section 68295 replaces that reference with the defined term, “secretary.” See proposed Section
9 68150.

10 **§ 68300. Authority of committee to create debt for specified purposes**

11 68300. The committee may create debts or liabilities of the State of California,
12 in the aggregate of one hundred million dollars (\$100,000,000), in the manner
13 provided in this article. The debts or liabilities shall be created for the purpose of
14 providing moneys, for deposit in the fund, for the purposes specified in Section
15 68305.

16 **Comment.** Section 68300 restates former Section 25385.5 without substantive change.
17 See Section 68285 (“committee” and “fund” defined).

18 **Staff Note.** Proposed Section 68300 restates Section 25385.5 to eliminate uses of the singular and
19 plural form of the same word and to make necessary revisions to implement this change. Section
20 25385.5 reads as follows (with emphasis added):

21 “25385.5. The committee may create a **debt or debts, liability or liabilities**, of the State
22 of California, in the aggregate of one hundred million dollars (\$100,000,000), in the manner
23 provided in this article. The **debt or debts, liability or liabilities**, shall be created for the purpose
24 of providing moneys, for deposit in the fund, for the purposes specified in Section 25385.6.”

25 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For
26 this reason, it does not appear to be necessary to use both the singular and plural forms of the
27 words. While the singular form is typically preferred for legislative drafting, proposed Section
28 68300 was simplified to use only the plural form to minimize the need for additional, conforming
29 changes.

30 The changes reflected in proposed Section 68300 are intended to be nonsubstantive. **The staff**
31 **welcomes any comment on the proposed restatement.**

32 **§ 68305. Authorized uses of funds from bond proceeds**

33 68305. (a) The moneys in the state account that are the proceeds of bonds issued
34 and sold pursuant to this article may be used, upon appropriation by the
35 Legislature, for the purposes specified in this section.

36 (b) The board may expend moneys in the fund, that are the proceeds of bonds
37 issued and sold pursuant to this article upon the authorization of the committee, for
38 all of the following purposes:

39 (1) To provide the state share of a removal or remedial action pursuant to
40 Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the
41 subject of a final remedial action plan issued pursuant to **Section 25356.1**.

42 (2) To pay all costs of a removal or remedial action incurred by the state, or by
43 any local agency with the approval of the director, in response to a release or

1 threatened release of a hazardous substance at a site that is listed in the priority
2 ranking of sites pursuant to Article 5 (commencing with Section 68760) of
3 Chapter 4 and is the subject of a final remedial action plan issued pursuant to
4 **Section 25356.1**, to the extent that the costs are not paid by responsible parties or
5 are reimbursed by the federal act.

6 (3) To pay for site characterization of a release of hazardous substances, even if
7 a remedial action plan has not been prepared, approved, adopted, or made final for
8 that site.

9 **Comment.** Section 68305 continues former Section 25385.6 without substantive change.

10 See Sections 68055 (“director” defined), 68065 (“federal act” defined), 68075 (“hazardous
11 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
12 defined), 68140 (“response” defined), 68155 (“site” defined), 68165 (“state account” defined),
13 68285 (“board”, “committee,” “director,” “fund,” and “responsible party” defined).

14 **Staff Note.** Paragraph (b)(2) of proposed Section 68305 describes costs for which expenditure of
15 bond proceeds funds is authorized. The provision appears to permit expenditures of bond funds in
16 two different situations, i.e., when either “costs *are not* paid by responsible parties or *are*
17 reimbursed by the federal act” (emphasis added). Given that, the staff considered whether to
18 separate this provision into two subparagraphs. **The staff welcomes comment on whether such**
19 **a change would be helpful or problematic.**

20 § 68310. Bonds as general obligations of state

21 68310. (a) All bonds authorized by this article, which are sold and delivered as
22 provided in this article, constitute valid and legally binding general obligations of
23 the State of California, and the full faith and credit of the State of California are
24 hereby pledged for the punctual payment of both the principal of and the interest
25 on the bonds.

26 (b) There shall be collected annually, in the same manner and at the same time
27 as other state revenue is collected, that sum, in addition to the ordinary revenues of
28 the state, which is required to pay the principal of, and interest on, the bonds as
29 provided in this article, and all officers charged by law with any duty in regard to
30 the collection of the revenue shall perform each and every act that is necessary to
31 collect this additional sum.

32 **Comment.** Section 68310 restates former Section 25385.7 without substantive change.

33 **Staff Note.** Section 25385.7(a) ends with the phrase “both the principal and interest thereon.”
34 Proposed Section 68310 replaces that phrase with “both the principal of and the interest on the
35 bonds.” This stylistic change and a replacement of “which” with “that” in subdivision (b) are the
36 only changes made to the existing language of Section 25385.7.

37 § 68315. Transfers to General Fund

38 68315. Notwithstanding Section 68345, the money deposited in the fund is
39 available for transfer to the General Fund if money was deposited in the fund
40 pursuant to any provision of law requiring repayments to the state for assistance
41 financed by the proceeds of the bonds issued pursuant to this article. When
42 transferred to the General Fund, that money shall be applied as a reimbursement to

1 the General Fund for the principal and interest payments on the bonds that have
2 been paid from the General Fund.

3 **Comment.** Section 68315 continues former Section 25386 without substantive change.
4 See Section 68285 (“fund” defined).

5 **§ 68320. Appropriation from General Fund**

6 68320. There is hereby appropriated from the General Fund in the State
7 Treasury, for the purpose of this article, an amount equal to the sum of all of the
8 following:

9 (a) The sum, annually, that will be necessary to pay the principal of, and the
10 interest on, the bonds issued and sold pursuant to this article, as the principal and
11 interest become due and payable.

12 (b) The sum that is necessary to carry out Section 68325, which sum is
13 appropriated without regard to fiscal years, notwithstanding Section 13340 of the
14 Government Code.

15 **Comment.** Section 68320 continues former Section 25386.1 without substantive change.

16 **§ 68325. Withdrawals from General Fund**

17 68325. (a) For the purpose of carrying out this article, the Director of Finance
18 may, by executive order, authorize the withdrawal from the General Fund of
19 amounts not to exceed the amount of the unsold bonds that the committee has, by
20 resolution, authorized to be sold for the purpose of carrying out this article.

21 (b) Any amounts withdrawn shall be deposited in the fund and shall be
22 disbursed by the board in accordance with this article.

23 (c) Any moneys made available pursuant to this section shall be returned to the
24 General Fund from moneys received from the sale of bonds sold for the purpose of
25 carrying out this article.

26 **Comment.** Section 68325 continues former Section 25386.2 without substantive change.
27 Subdivision designators have been added.

28 See Section 68285 (“board,” “committee,” and “fund” defined).

29 **§ 68330. Tax-exempt funds**

30 68330. Notwithstanding any other provision of this bond act, or of the State
31 General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of
32 Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells
33 bonds pursuant to this bond act that include a bond counsel opinion to the effect
34 that the interest on the bonds is excluded from gross income for federal tax
35 purposes under designated conditions, the Treasurer may maintain separate
36 accounts for the bond proceeds invested and the investment earnings on those
37 proceeds, and may use or direct the use of those proceeds or earnings to pay any
38 rebate, penalty, or other payment required under federal law, or take any other
39 action with respect to the investment and use of those bond proceeds, as may be
40 required or desirable under federal law in order to maintain the tax-exempt status

1 of those bonds and to obtain any other advantage under federal law on behalf of
2 the funds of this state.

3 **Comment.** Section 68330 continues former Section 25386.25 without substantive change.

4 **§ 68335. Determination on issuance of bonds**

5 68335. Upon the request of the board, and supported by a statement of the
6 proposed actions to be taken pursuant to Section 68305, the committee shall
7 determine whether it is necessary or desirable to issue any bonds authorized
8 pursuant to this article in order to take these actions, and if so, the amount of
9 bonds that should be issued and sold. Successive issues of bonds may be
10 authorized and sold to take these actions progressively, and it is not necessary that
11 all of the bonds authorized by this article to be issued are sold at any one time.

12 **Comment.** Section 68335 continues former Section 25386.3 without substantive change.
13 See Section 68285 (“board” and “committee” defined).

14 **§ 68340. Authority to sell bonds**

15 68340. The committee may authorize the Treasurer to sell all, or any part of, the
16 bonds authorized under this article at the time or times as may be fixed by the
17 Treasurer.

18 **Comment.** Section 68340 continues former Section 25386.4 without substantive change.
19 See Section 68285 (“committee” defined).

20 **§ 68345. Uses of bond proceeds**

21 68345. Except as provided in Section 68315, all proceeds from the sale of
22 bonds, except those derived from premiums and accrued interest, are available for
23 the purposes specified in Section 68305, but are not available for transfer to the
24 General Fund to pay the principal of, and interest on, the bonds.

25 **Comment.** Section 68345 continues former Section 25386.5 without substantive change. A
26 cross-reference to “subdivision (c) of Section 25385.3” has been deleted as obsolete because that
27 section was repealed by its own terms on January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39.

28 **Staff Note.** Proposed Section 68345 deletes a seemingly obsolete cross-reference contained in
29 Section 25386.5. The language of Section 25386.5, with the relevant cross-reference in bold, is
30 set out below:

31 “25386.5. Except as provided in **subdivision (c) of Section 25385.3** and Section 25386,
32 all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are
33 available for the purposes specified in Section 25385.6, but are not available for transfer to the
34 General Fund to pay the principal of, and interest on, the bonds.”

35 This cross-reference appears to be obsolete. Section 25385.3 was repealed by its own terms on
36 January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39. Prior to its repeal, subdivision (c) required that
37 the principal and interest of bonds be paid from funds according to Section 25385.9, which was
38 also repealed in the same legislation. See 2006 Cal. Stat. ch. 77, § 42. Former Section 25385.9
39 required that the bond principal and interest be paid from the “Hazardous Substance Clearing
40 Account” according to a specified priority scheme pertaining to the source of the funds.

41 According to the legislative digest for the bill resulting in the repeal of both of these
42 provisions, the legislation repealed certain accounts, including the Hazardous Substance Clearing

1 Account, and provided that the state account (i.e., the Toxic Substance Control Account) was the
2 successor fund for those accounts, taking on all the assets, liability and surplus of the repealed
3 accounts. The staff searched for, but did not find a provision that, similar to subdivision (c) of
4 former Section 25385.3, permits the use of bond proceeds in the successor state account in a
5 manner inconsistent with proposed Section 68345. Thus, the reference to “subdivision (c) of
6 Section 25385.3” appears to be obsolete.

7 **The staff welcomes comment on whether the cross-reference to “subdivision (c) of Section**
8 **25385.3” is indeed obsolete and, if so, whether the proposed deletion of the cross-reference**
9 **raises any concerns.**

10 Article 6. Revolving Loans Fund

11 § 68360. Definitions

12 68360. Unless the context otherwise requires, the following definitions govern
13 the construction of this article:

14 (a) “Brownfield site” has the same meaning as defined in Section 101 of the
15 federal act (42 U.S.C. Sec. 9601).

16 (b) “Brownfield law” means the federal Small Business Liability Relief and
17 Brownfields Revitalization Act (Public Law 107-118) as amending the federal act.

18 (c) “Federal Trust Fund” means the Federal Trust Fund established pursuant to
19 Section 16360 of the Government Code.

20 (d) “Fund” means the Revolving Loans Fund established pursuant to this article.

21 **Comment.** Section 68360 continues former Section 25395.35 without substantive change.
22 Technical changes were made to correct the federal law citations and conform to the standard
23 federal act citation format used in this part.

24 See Section 68065 (“federal act” defined).

25 **Staff Notes. (1)** Subdivision (a) of Section 25395.35 was amended to conform the federal act
26 citation to the citation form predominately used in this law. Section 25395.35(a) provides:

27 “(a) ‘Brownfield site’ has the same meaning as defined in Section 9601 of Title 42 of the
28 United States Code.”

29 **(2)** Subdivision (b) of Section 25395.35 was restated to conform the federal law citation to the
30 citation practice used in California statutory drafting and to correct the name of the federal act.
31 Subdivision (b) of Section 25395.35 provides:

32 “(b) ‘Brownfield law’ means the Small Business Liability Relief and Brownfields
33 Revitalization Act of 2002 (Public Law 107-117) as amending the federal act.”

34 § 68365. Revolving Loans Fund

35 68365. (a) The Revolving Loans Fund is hereby created in the State Treasury.
36 Notwithstanding Section 13340 of the Government Code, all moneys in the fund
37 shall be continuously appropriated, without regard to fiscal year, to the department
38 for expenditure in accordance with this part. The department is the state agency
39 responsible for administering the fund.

40 (b) All of the following moneys shall be deposited in the fund:

41 (1) Notwithstanding Section 25173.6, moneys received pursuant to the
42 brownfield law and transferred to the fund from the Federal Trust Fund.

- 1 (2) The amounts collected for loan services.
- 2 (3) Interest payments.
- 3 (4) Principal repayments.
- 4 (5) Notwithstanding Section 16475 of the Government Code, any interest earned
- 5 upon the moneys deposited in the fund.

6 (c) The department may expend the moneys in the fund only for the purposes
7 authorized by the brownfield law, as specified in subsection (k) of Section 104 of
8 the federal act (42 U.S.C. Sec. 9604(k)), including providing financial assistance
9 for both of the following:

- 10 (1) Issuing loans for response actions to eligible brownfield sites.
- 11 (2) Making subgrants for response actions to eligible brownfield sites.

12 (d) Any repayment of fund moneys, including interest payments, and all interest
13 earned on, or accruing to, any moneys in the fund, that are deposited in the fund,
14 as provided in subdivision (b), shall be available, in perpetuity, for expenditure for
15 the purposes and uses authorized by the brownfield law.

16 **Comment.** Section 68365 continues former Section 25395.36 without substantive change.
17 Technical changes were made to conform to the standard federal act citation format used in this
18 part.

19 See Sections 68050 (“department” defined), 68140 (“response” defined), 68360 (“brownfield
20 site,” “brownfield law,” “Federal Trust Fund,” and “fund” defined).

21 **Staff Note.** Subdivision (c) of Section 25395.36 was amended to conform the federal act citation
22 to the citation form predominately used in this law. Section 25395.35(c) provides, in relevant
23 part:

24 “(c) The department may expend the moneys in the fund only for the purposes authorized
25 by the brownfield law, as specified in subsection (k) of Section 9604 of Title 42 of the United
26 States Code, including providing financial assistance for both of the following:”

27

28 Article 7. Illegal Drug Lab Cleanup Account

29 § 68370. Illegal Drug Lab Cleanup Account

30 68370. The Illegal Drug Lab Cleanup Account is hereby created in the General
31 Fund and the department may expend any money in the account, upon
32 appropriation by the Legislature, to carry out the removal actions required by
33 **[Section 25354.5]** and to implement **subdivision (e) [of Section 25354.5]**,
34 including, but not limited to, funding an interagency agreement entered into with
35 the Office of Environmental Health Hazard Assessment to provide guidance
36 services. The account shall be funded by moneys appropriated directly from the
37 General Fund.

38 **Comment.** Section 68370 continues subdivision (f) of former Section 25354.5 without
39 substantive change.

40 See Section 68050 (“department” defined), 68135 (“remove” defined).

1

CHAPTER 3. GENERAL POWERS AND DUTIES

2

Article 1. Regulatory Authority

3

§ 68400. Authority to adopt regulations

4

68400. The department shall adopt any regulations necessary to carry out its responsibilities pursuant to this part, including, but not limited to, regulations governing the expenditure of, and accounting procedures for, moneys allocated to state, regional, and local agencies pursuant to this part.

5

Comment. Section 68400 continues former Section 25351.5 without substantive change.

6

See Section 68050 (“department” defined).

7

Article 2. Federal Assistance

8

§ 68410. Obligation to seek federal funds and agreements

9

68410. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

10

Comment. Section 68410 continues former Section 25358 without substantive change.

11

See Section 68065 (“federal act” defined).

12

Article 3. Public Outreach

13

§ 68420. Community service offices

14

68420. (a) The department and the State Water Resources Control Board shall establish two community service offices, one to serve northern California and the other to serve southern California.

15

(b) Notwithstanding **subdivision (c) of Section 25390.3**, the department and, if appropriate, the State Water Resources Control Board shall expend a total of four hundred thousand dollars (\$400,000) per year from the Orphan Share Reimbursement Trust Fund established **pursuant to Article 7.8 (commencing with Section 25390)** on the operation of the community service offices established pursuant to **this section**. The offices shall use these funds to provide direct technical and logistical support to any community advisory group established pursuant to **Section 25358.7.1**. Funds allocated pursuant to this subdivision shall supplement, and not supplant, any funds expended for the purposes of developing and implementing other public participation activities required to be undertaken pursuant to this part, including, but not limited to, activities undertaken pursuant to the National Contingency Plan or the public participation workplan required to be adopted by the department pursuant to **Section 25358.7**.

16

1 (c) The State Water Resources Control Board may contract with the department
2 to provide this service on behalf of a regional board if the State Water Resources
3 Control Board finds that it would be more practical and economical to do so.

4 (d) In implementing **this section**, the department and the regional boards are not
5 obligated to expend funds beyond the amounts appropriated in any fiscal year for
6 purposes of developing and implementing public participation activities required
7 by other provisions of this part unless the Orphan Share Reimbursement Trust
8 Fund contains funding at the level specified in subdivision (b).

9 **Comment.** Section 68420 continues former Section 25358.7.2, with the exceptions described
10 in this comment, without substantive change. Obsolete language in subdivision (a) about the
11 timing for the establishment of the community service offices is not continued. The second
12 sentence of former Section 25358.7.2(a) is continued elsewhere in this part.

13 See Sections 68050 (“department” defined), 68100 (“regional board” defined).

14 **Staff Notes. (1)** The first sentence of subdivision (a) of Section 25358.7.2 provides:

15 “On or before July 1, 2000, the department and the State Water Resources Control Board
16 shall establish two community service offices, one to serve northern California and the other to
17 serve southern California.”

18 Proposed Section 68420(a) does not continue the introductory clause, “[o]n or before July 1,
19 2000.” Given that it is well past July 1, 2000, this language would appear to be obsolete. The
20 changes reflected in proposed Section 68420(a) are intended to be nonsubstantive. **The staff
21 welcomes any comment on this proposed change.**

22 **(2)** The staff believes that subdivision (d) is difficult to understand and could benefit from
23 restatement for clarity. **The staff welcomes comment on the meaning of this provision and
24 whether stakeholders find this provision sufficiently clear.**

25 Article 4. Investigatory Powers

26 **Staff Note.** Proposed Article 4 contains the substance of Section 25358.1. This provision would
27 benefit from changes to standardize terms and provide short forms for lengthy, repeated phrases.
28 In many cases, the subdivisions use different terms (or, more often, groups of terms) to refer to
29 roughly the same concepts. In the staff’s view, it seems likely that some of these differences are
30 immaterial and the terms are used interchangeably. For instance, it is unclear why one provision
31 governs “[t]he department, *a representative of the department*, or any person designated by the
32 director” (see proposed Section 68435), while another governs “[a]ny officer or employee of the
33 department, *a representative of the director*, or a person designated by the director” (see proposed
34 Section 68440(a)), and, yet another, governs “[a]n officer, employee, *representative*, or designee”
35 (proposed Section 68450(d)).

36 Similarly, the provisions describe the purposes for which different activities authorized by the
37 article may be undertaken. Overall, proposed Section 68435 provides that the actions in this
38 article may be taken only for the purpose of “determining under this part the need for a response
39 action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this
40 part.” However, proposed Section 68440(c) indicates that a person required to provide
41 information to the department must allow the department access to the records “for purposes of
42 assisting the department in determining the need for a response action.” And, proposed Section
43 68460 grants immunity to an authorized person for entering land “for the purpose of taking a
44 response action pursuant to this part.” The staff was unsure whether the different purposes for
45 different provisions were intended or might be inadvertent.

46 The staff believes that this proposed Article could be improved by standardizing terminology
47 and using defined terms to simplify the provisions and improve readability. Such changes,

1 however, pose a risk of substantive change. **For this reason, the staff proposes adding**
2 **restatement of this article to standardize terms, simplify the provisions and improve**
3 **readability to the list of substantive issues for possible future study that will be included in**
4 **the Commission’s recommendation.**

5 **§ 68435. Purpose of investigation**

6 68435. The department, a representative of the department, or any person
7 designated by the director may take the actions specified in this article only if
8 there is a reasonable basis to believe that there has been or may be a release or
9 threatened release of a hazardous substance, and only for the purpose of
10 determining under this part the need for a response action, the choosing or taking
11 of a response action, or otherwise for the purpose of enforcing this part.

12 **Comment.** Section 68435 continues subdivision (a) of former Section 25358.1 without
13 substantive change.

14 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
15 substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68140 (“response”
16 defined).

17 **§ 68440. Authority to require person to provide relevant information**

18 68440. (a) Any officer or employee of the department, a representative of the
19 director, or a person designated by the director may require any person who has or
20 may have information relevant to any of the following matters to furnish the
21 information, upon reasonable notice:

22 (1) The identification, nature, and quantity of materials that have been, or are,
23 generated, treated, stored, or disposed of at a hazardous substance release site or
24 that have been, or are, transported to a hazardous substance release site.

25 (2) The nature or extent of a release or a threatened release of a hazardous
26 substance at, or from, a hazardous substance release site.

27 (3) The ability of a person to pay for or to perform a response action, consistent
28 with Section 104(e) of the federal act (42 U.S.C. Sec. 9604(e)).

29 (b) Any person required to furnish information pursuant to this article shall pay
30 any costs of photocopying or transmitting the information.

31 (c) A person who is required to provide information pursuant to subdivision (a)
32 shall, in accordance with Section 68455, allow the officer, employee,
33 representative, or designee, upon reasonable notice and at reasonable times, to
34 have access to, and copy, all records relating to the hazardous substances for
35 purposes of assisting the department in determining the need for a response action.

36 **Comment.** Section 68440 continues subdivisions (b)–(d), inclusive, of former Section 25358.1
37 without substantive change.

38 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
39 defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release”
40 defined), 68140 (“response” defined), 68155 (“site” defined).

41 **Staff Notes.** (1) Section 25358.1(b)(3) contains a reference to “subdivision (e) of Section 104 of
42 the federal act (42 U.S.C. Sec. 9604(e)).” In proposed Section 68440(a)(3), the format of this

1 citation has been standardized in accordance with the predominant form for federal act citations
2 contained in Chapter 6.8.

3 (2) Proposed Section 68440(c) provides that a person required to provide information *shall* allow
4 access to records “pursuant to Section 68455.” Proposed Section 68455 applies when the
5 department is denied access to property. That section requires the department to obtain an
6 inspection warrant (pursuant to Title 13 of Part 3 of the Code of Civil Procedure), unless it is an
7 emergency.

8 The purpose of the cross-reference to Section 68455 is unclear in this provision. The cross-
9 reference may simply be intended to clarify that the department should seek a warrant in
10 accordance with proposed Section 68455 *if* access to records is denied.

11 Another reading of this provision could be that this provision places additional requirements on
12 the department seeking record access, even with a warrant. In particular, this provision could be
13 read to require the department, after obtaining a warrant for record access, to seek access only
14 “upon reasonable notice and at reasonable times.” However, those requirements appear to be in
15 tension with Code of Civil Procedure Section 1822.56, which places notice and timing
16 requirements on the execution of an inspection warrant, but authorizes immediate execution in
17 specified circumstances with court approval.

18 **The staff welcomes comment on these issues.**

19 (3) Proposed Section 68440(c) requires access to records “relating to hazardous substances for
20 purposes of assisting the department in determining the need for a response action.” This
21 contrasts with proposed Section 68450(a)(4), which allows access to property “to determine the
22 need for a response action, *or the appropriate remedial action, to effectuate a response action*
23 *under this part*” (emphasis added). The difference in these provisions suggests that the
24 department’s ability to seek documentary information is more limited than the department’s
25 ability to enter and inspect property. In particular, the department’s access to documentary
26 information seems to extend only to information relevant to whether a response action is needed,
27 and not the scope or design of the needed response action. The staff cannot discern a policy
28 justification for this discrepancy and, thus, believes that the discrepancy may be unintentional.

29 **The staff welcomes comment on this issue.**

30 **§ 68445. Disclosure of information**

31 68445. (a) The department may disclose information submitted pursuant to this
32 article to authorized representatives, contractors, or other governmental agencies
33 only in connection with the department’s responsibilities pursuant to this part. The
34 department shall establish procedures to ensure that information submitted
35 pursuant to this article is used only in connection with these responsibilities and is
36 not otherwise disseminated without the consent of the person who provided the
37 information to the department.

38 (b) The department may also make available to the United States Environmental
39 Protection Agency any information required by law to be furnished to that agency.
40 The sharing of information between the department and that agency pursuant to
41 this article does not constitute a waiver by the department or of any affected
42 person of any privilege or confidentiality provided by law that pertains to the
43 information.

44 **Comment.** Section 68445 continues subdivisions (j) and (k) of former Section 25358.1 without
45 substantive change.

46 See Sections 68050 (“department” defined), 68085 (“person” defined).

1 **§ 68450. Entry, inspection, and sampling of property**

2 68450. (a) Any officer or employee of the department, representative of the
3 director, or person designated by the director may, in accordance with Section
4 68455, enter, at reasonable times, any of the following properties:

5 (1) Any nonresidential establishment or other place or property where any
6 hazardous substances may be, or have been, produced, stored, treated, disposed of,
7 or transported from.

8 (2) Any nonresidential establishment or other place or property from which, or
9 to which, a hazardous substance has been, or may have been, released.

10 (3) Any nonresidential establishment or other place or property where a
11 hazardous substance release is, or may be, threatened.

12 (4) Any nonresidential establishment or other place or property where entry is
13 needed to determine the need for a response action, or the appropriate remedial
14 action, to effectuate a response action under this part.

15 (5) Any residential place or property that, if it were a nonresidential
16 establishment or other place or property, would otherwise meet the criteria
17 described in paragraphs (1) to (4), inclusive, if the department, representative, or
18 person designated by the director is able to establish, based upon reasonably
19 available evidence, that hazardous substances have been released onto or under the
20 residential place or real property and if entry is made only at reasonable times and
21 after reasonable notification to the owners and occupants.

22 (b) Any officer or employee of the department, representative of the director, or
23 person designated by the director may, in accordance with Section 68455, carry
24 out any of the following activities:

25 (1) Inspect and obtain samples from any establishment or other place or property
26 specified in subdivision (a) or from any location of any suspected hazardous
27 substance.

28 (2) Inspect and obtain samples of any substances from any establishment or
29 place or property specified in subdivision (a).

30 (3) Inspect and obtain samples of any containers or labeling for the suspected
31 hazardous substances, and samples of the soil, vegetation, air, water, and biota on
32 the premises.

33 (4) Set up and maintain monitoring equipment for the purpose of assessing or
34 measuring the actual or potential migration of hazardous substances.

35 (5) Survey and determine the topographic, geologic, and hydrogeologic features
36 of the land.

37 (6) Photograph any equipment, sample, activity, or environmental condition
38 described in paragraphs (2) to (5), inclusive.

39 (c)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision
40 (b), the department shall do all of the following:

41 (A) Comply with all procedures established pursuant to Section 68490.

42 (B) Notify the person whose facility is photographed prior to public disclosure
43 of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 68480, or facility security, would be revealed by the photograph.

(2) “Disclosure,” as used in Section 68485, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(d) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this article shall make a reasonable effort to inform the owner or the owner’s authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

Comment. Section 68450 continues subdivisions (e)–(h), inclusive, of former Section 25358.1 without substantive change.

See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68140 (“response” defined).

Staff Notes. (1) Proposed Section 68450(c)(1)(C) contains a cross-reference to a definition for “trade secret.” Currently, that cross-reference points to Section 25358.2. Section 25358.2 is proposed for recodification as Article 5 of this chapter. The definition of “trade secret” is contained in proposed Section 68480. As proposed above, the updated cross-reference would refer only to proposed Section 68480, as opposed to proposed Article 5 as a whole. This change is intended to be nonsubstantive, but it seemed more helpful to more precisely point to the relevant provision. **The staff welcomes comment on this proposed cross-reference update.**

(2) Proposed Section 68450(c)(2) contains a cross-reference to a use of the term “disclosure.” Currently, that cross-reference points to Section 25358.2, which is proposed for recodification as Article 5. The term “disclosure” was only used once in Section 25358.2. Proposed Section 68485 will continue the portion of Section 25358.2 that uses the term “disclosure.” For this reason, the updated cross-reference would refer only to proposed Section 68485, as opposed to proposed Article 5 as a whole. This change is intended to be nonsubstantive, but it seemed more helpful to more precisely point to the relevant provision. **The staff welcomes comment on this proposed cross-reference update.**

(3) Proposed Section 68450 would seem to benefit from a restatement for clarity. In the staff’s review of this provision, we identified several issues that may need to be addressed. The most significant of these are discussed in turn below. **The staff welcomes comment on these issues and whether they have caused problems in practice.**

- Overall, the section suffers from a lack of parallelism. For instance, the section uses different terms to refer to the same general concept (e.g., “establishment or other place or property” in subdivision (a), “facility” in subdivision (c), “premises” in paragraph (b)(3)). It is not clear whether the different terms are interchangeable or, if not, how the different terms relate to each other (e.g., is “facility” a subset of “establishment or other place or property”?).

- Proposed paragraph (a)(5) would seem to benefit from restatement for clarity. This paragraph appears to permit entry to residential property if three conditions are established:

- (1) The property, were it nonresidential, would meet the criteria in paragraphs (1)-(4)
- (2) Hazardous substances have been released onto or under the property
- (3) Entry is made at a reasonable time after reasonable notice

The first criterion appears to be superfluous. Anytime the second criterion is met, it would seem that the first criterion would necessarily be satisfied (proposed paragraph (a)(2) applies when

1 “hazardous substance has been ...released” to/from property). **The staff welcomes comment on**
2 **how this provision is understood in practice.**

3 • Proposed subdivision (b) is unclear and inconsistent in its description of activities and
4 locations. For this reason, the scope of the provisions is not clear from the text of the statutes. For
5 instance, paragraph (1) permits obtaining samples at a specified place, while paragraph (2)
6 permits obtaining samples “*of any substances*” at the specified place.

7 • Proposed paragraph (c)(4) contains a limitation on the term “[d]isclosure, as used in
8 [proposed Section 68485 (Section 25358.2)]” that applies for “the purposes of this paragraph.”
9 The legal effect of this provision is unclear. First, it appears that the limitation (“for purposes of
10 this paragraph”) is too narrow, as “disclosure” is not otherwise used in the paragraph. Even
11 assuming a broader application was intended, the staff cannot determine the intended effect of
12 this provision.

13 **§ 68455. Entry to property without voluntary grant of access**

14 68455. If the owner or the owner’s authorized representative does not
15 voluntarily grant access to a place, establishment, or property pursuant to this
16 article, the officer, employee, representative, or designee shall first obtain a
17 warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the
18 Code of Civil Procedure. However, if there is an emergency posing an immediate
19 threat to public health and safety, the officer, employee, representative, or
20 designee may enter the place, establishment, or property without the consent of the
21 owner or owner’s authorized representative and without the issuance of a warrant.

22 **Comment.** Section 68455 continues subdivision (i) of former Section 25358.1 without
23 substantive change.

24 **§ 68460. Immunity for entry and response action**

25 68460. The department, and any person authorized by the department to enter
26 upon any lands for the purpose of taking a response action pursuant to this part,
27 shall not be held liable, in either a civil or criminal proceeding, for trespass or for
28 any other acts that are necessary to carry out the response action.

29 **Comment.** Section 68460 continues subdivision (l) of former Section 25358.1 without
30 substantive change.

31 See Sections 68050 (“department” defined), 68085 (“person” defined), 68140 (“response”
32 defined).

33 Article 5. Protection of Trade Secrets

34 **§ 68480. “Trade secrets”**

35 68480. “Trade secrets,” as used in this article, may include, but are not limited
36 to, any formula, plan, pattern, process, tool, mechanism, compound, procedure,
37 production data, or compilation of information that is not patented, that is known
38 only to certain individuals within a commercial concern who are using it to
39 fabricate, produce, develop, or compound an article of trade or a service having
40 commercial value, and that gives its user an opportunity to obtain a business
41 advantage over competitors who do not know or use it.

1 **Comment.** Section 68480 continues subdivision (a) of former Section 25358.2 without
2 substantive change.

3 **§ 68485. Identification of trade secret information**

4 68485. Any person providing information pursuant to subdivision (a) of Section
5 68440 shall, at the time of its submission, identify all information that the person
6 believes is a trade secret. Any information or record not identified as a trade secret
7 is available to the public, unless exempted from disclosure by other provisions of
8 law.

9 **Comment.** Section 68485 continues subdivision (c) of former Section 25358.2 without
10 substantive change.

11 See Sections 68085 (“person” defined), 68480 (“trade secret” defined).

12 **§ 68490. Procedures for protection of trade secret information**

13 68490. The department shall establish procedures to ensure that trade secret
14 information is utilized by the department only in connection with the
15 responsibilities of the department pursuant to this part and is not otherwise
16 disseminated without the consent of the person who provided the information to
17 the department. However, any information shall be made available to
18 governmental agencies for use in making studies and for use in judicial review or
19 enforcement proceedings involving the person furnishing the information.

20 **Comment.** Section 68490 continues subdivision (b) of former Section 25358.2 without
21 substantive change.

22 See Sections 68050 (“department” defined), 68085 (“person” defined), 68480 (“trade secret”
23 defined).

24 **§ 68495. Penalty for knowing and willful dissemination of trade secret information**

25 68495. Any person who knowingly and willfully disseminates information
26 protected by this article or procedures established by the department pursuant to
27 Section 68490 shall, upon conviction, be punished by a fine of not more than five
28 thousand dollars (\$5,000), imprisonment in the county jail not to exceed one year,
29 or by both that fine and imprisonment.

30 **Comment.** Section 68495 continues subdivision (d) of former Section 25358.2 without
31 substantive change.

32 See Sections 68050 (“department” defined), 68085 (“person” defined).

33 **Article 6. Abandoned Sites**

34 **§ 68505. Notice regarding abandoned sites**

35 68505. (a) The director shall notify, within 20 working days, each of the
36 appropriate county health officers as to all the potential abandoned sites of which
37 the department has knowledge or that the department is investigating for releases
38 of hazardous substances that may have occurred or might be occurring at

1 abandoned sites. The county health officers may request quarterly updates on the
2 status of the investigations of these sites.

3 (b) As used in this section, “abandoned site” means an inactive disposal,
4 treatment, or storage facility that cannot, with reasonable effort, be traced to a
5 specific owner, a site whose owner is the subject of an order for relief in
6 bankruptcy, or a location where a hazardous substance has been illegally disposed.

7 (c) Within 10 working days of the identification of an abandoned site, the
8 department or a county health officer shall notify the other agency of the status of
9 the site. The department and the county health officer shall inform the other
10 agency of orders to fence and post these sites and the status of compliance with
11 those orders. The department or the county health officers may request quarterly
12 updates of the testing, enforcement action, and remedial or removal actions that
13 are proposed or ongoing.

14 **Comment.** Section 68505 continues former Section 25359.6 without substantive change.

15 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
16 substance” defined), 68105 (“release” defined), 68135 (“remove” defined), 68155 (“site”
17 defined).

18 **Staff Note.** Proposed Section 68505(a) requires the director to notify county health officers of all
19 potential abandoned sites “of which the department has knowledge or that the department is
20 investigating for releases of hazardous substances.” The director must perform this notification
21 “within 20 working days.” It appears that this subdivision required a one-time, initial notification
22 to county health officers of the status of the department’s abandoned site work within 20 working
23 days of the effective date of the legislation enacting this duty. It is not clear whether this
24 provision has an ongoing effect and needs to be continued. **The staff welcomes comment on this
25 issue.**

26 Article 7. Laboratories

27 § 68510. Accreditation requirement

28 68510. The analysis of any material that is required to demonstrate compliance
29 with this part shall be performed by a laboratory accredited by the State Water
30 Resources Control Board pursuant to Article 3 (commencing with Section 100825)
31 of Chapter 4 of Part 1 of Division 101.

32 **Comment.** Section 68510 restates former Section 25358.4 without substantive change. The
33 reference to the “State Department of Health Services” in former Section 25358.4 was changed to
34 refer instead to the “State Water Resources Control Board.” Formerly, the State Department of
35 Health Services was the state agency authorized to accredit laboratories under Article 3
36 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section
37 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water
38 Resources Control Board is the agency authorized to accredit laboratories under that article. See
39 Section 100825(c)(1), (4), (11), (12).

40 **Staff Note.** Proposed Section 68510 would replace a reference to the “State Department of Health
41 Services” with a reference to the “State Water Resources Control Board.” Formerly, the State
42 Department of Health Services had the accreditation authority under the referenced article. See
43 former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat. ch. 406, § 2 (AB 1317).

1 Currently, the State Water Resources Control Board is the agency granted the authority to
2 accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

3 The change to the agency reference is intended to be nonsubstantive. **The staff welcomes**
4 **comment on this proposed change.**

5 The staff did not simply delete the agency name, which could prevent future discrepancies
6 from arising if the accrediting agency changes. The staff concluded that deleting the agency name
7 could potentially be substantive. The referenced article provides for a second form of
8 accreditation (“TNI accreditation”) conducted by accrediting bodies recognized by a national
9 nonprofit (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation
10 would be sufficient for the purposes of laboratory analyses conducted under this part. **The staff**
11 **welcomes comment on this issue.**

12 Article 8. Technology Demonstration Program

13 § 68525. Technology demonstration program for treatment technologies

14 68525. Notwithstanding **Section 25355.5**, the department shall carry out a
15 program of full-scale demonstrations to evaluate treatment technologies that can
16 be safely utilized for removal and remedial actions to hazardous substance
17 releases.

18 **Comment.** Section 68525 continues former Section 25368 without substantive change.

19 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
20 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68530 (“full-scale
21 demonstration” and “treatment technologies” defined).

22 § 68530. Definitions

23 68530. For the purposes of this article, the following definitions apply:

24 (a) “Treatment technologies” means methods, techniques, or processes,
25 including proprietary or patented methods, that permanently alter the composition
26 of hazardous substances at hazardous substance release sites through chemical,
27 biological, or physical means so as to make the substances nonhazardous or to
28 significantly reduce the toxicity, mobility, or volume, or any combination of these
29 characteristics, of the hazardous substances or contaminated materials being
30 treated.

31 (b) “Full-scale demonstration” means a demonstration of a technology that is of
32 a size or capacity that permits valid comparison of the technology to the technical
33 performance and cost of conventional technologies, that is likely to be cost-
34 effective, and that will result in a substantial or complete remedial or removal
35 action to a hazardous substance release site.

36 **Comment.** Section 68530 restates former Section 25368.1 without substantive change.

37 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125
38 (“remedy” defined), 68135 (“remove” defined), 68155 (“site” defined).

39 **Staff Note.** Proposed Section 68530(a) restates Section 25368.1 to eliminate the word “thereof.”
40 “Thereof” was replaced with “of these characteristics.” This change is intended to be
41 nonsubstantive. **The staff welcomes any comment on this proposed change.**

1 § 68535. Criteria for selection

2 68535. The department shall select technology demonstration projects to be
3 evaluated pursuant to this article using criteria that include, at a minimum, all of
4 the following requirements:

5 (a) The project proposal includes complete and adequate documentation of
6 technical feasibility.

7 (b) The project proposal includes evidence that a technology has been
8 sufficiently developed for full-scale demonstration and can likely operate on a
9 cost-effective basis.

10 (c) The department has determined that a site is available and suitable for
11 demonstrating the technology, taking into account the following:

12 (1) The physical, biological, chemical, and geological characteristics of the site.

13 (2) The extent and type of contamination found at the site.

14 (3) The capability to conduct demonstration projects in a manner to ensure the
15 protection of human health and the environment.

16 (d) The technology to be demonstrated preferably has widespread applicability
17 in removal and remedial actions at other sites in the state.

18 (e) The project will be developed to the extent that a successful demonstration
19 on a hazardous substance release site may lead to commercial utilization by
20 responsible parties at other sites in the state.

21 (f) The department has determined that adequate funding is available from one
22 or more of the following sources:

23 (1) Responsible parties.

24 (2) The United States Environmental Protection Agency.

25 (3) The state account.

26 **Comment.** Section 68535 restates former Section 25368.2 without substantive change.

27 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
28 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
29 party” defined), 68155 (“site” defined), 68165 (“state account” defined), 68530 (“full-scale
30 demonstration” defined).

31 **Staff Notes. (1)** Proposed Section 68535(c) restates Section 25368.2(c) to add paragraphs and to
32 eliminate uses of the singular and plural form of the same word (see Section 13; see also Note for
33 proposed Section 68300). Section 25368.2(c) reads as follows (with emphasis on relevant text
34 added):

35 “(c) The department has determined that a site is available and suitable for demonstrating the
36 *technology or technologies*, taking into account the physical, biological, chemical, and geological
37 characteristics of the site, the extent and type of contamination found at the site, and the
38 capability to conduct demonstration projects in a manner to ensure the protection of human health
39 and the environment.”

40 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For
41 this reason, it does not appear to be necessary to use both the singular and plural forms of the
42 same word. Proposed Section 68535 was simplified to use only the singular form in accordance
43 with standard drafting practice.

44 The changes reflected in proposed Section 68535 are intended to be nonsubstantive. **The staff
45 welcomes any comment on the proposed restatement.**

1 (2) Section 25368.2(f)(2) lists “The Environmental Protection Agency” as a source of funding.
2 Both the state and federal government have an Environmental Protection Agency. It seems likely
3 that this provision was intended to refer to the federal agency, as the original enactment of these
4 statutes occurred before the creation of the state agency. See 1987 Cal. Stat. ch. 1156, § 2;
5 Executive Order W-5-91 of Governor Wilson (1991). For this reason, proposed Section
6 68535(f)(2) was changed to read “[t]he *United States* Environmental Protection Agency”
7 (emphasis added). This change is intended as a nonsubstantive correction. **The staff welcomes**
8 **comment on this issue.**

9 § 68540. Selection of sites

10 68540. The department shall identify hazardous substance release sites, listed
11 pursuant to Article 5 (commencing with Section 68760) of Chapter 4, that are
12 particularly well-suited for technology demonstration projects. In identifying
13 hazardous substance release sites, the department shall consider, at a minimum, all
14 of the following:

15 (a) The state’s priority ranking for removal and remedial actions to hazardous
16 substance release sites adopted pursuant to Article 5 (commencing with Section
17 68760) of Chapter 4.

18 (b) The volume and variability of the hazardous substance release at the site.

19 (c) The availability of data characterizing the hazardous substance release.

20 (d) The accessibility of the hazardous substance release.

21 (e) Availability of required utilities.

22 (f) Support of federal and local governments.

23 (g) Potential for adverse effects to public health and the environment.

24 **Comment.** Section 68540 continues former Section 25368.3 without substantive change.

25 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
26 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68155 (“site”
27 defined).

28 § 68545. Solicitation of proposals

29 68545. (a) The department shall annually, on or before July 1, publish a
30 solicitation for proposals to conduct treatment demonstration projects that utilize
31 technologies that are at a stage of development suitable for full-scale
32 demonstrations at hazardous substance release sites. The solicitation notice shall
33 prescribe information to be included in the proposal, including technical and
34 economic data derived from the applicant’s own research and development efforts,
35 and any other information that may be prescribed by the department to assess the
36 technology’s potential and safety and the types of removal or remedial action to
37 which it may be applicable.

38 (b) Any person, private entity, or public entity may submit an application to the
39 department in response to the solicitation. The application shall contain a proposed
40 treatment demonstration plan setting forth how the treatment demonstration
41 project is to be carried out and any other information that the department may
42 require.

43 **Comment.** Section 68545 restates former Section 25368.4 without substantive change.

1 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
2 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
3 defined), 68140 (“response” defined), 68155 (“site” defined), 68530 (“full-scale demonstration”
4 defined).

5 **Staff Note.** Proposed Section 68545(b) restates the introductory clause of the subdivision. The
6 introductory clause of Section 25368.4(b) provides “[a]ny person and private or public entity”
7 may submit an application to propose a treatment demonstration project. The use of the
8 conjunction “and” in this phrase appears to be an error. The proposed change reflected in Section
9 68545 is intended to be nonsubstantive. **The staff welcomes comment on this issue.**

10 **§ 68550. Selection of technology demonstration projects**

11 68550. (a) On or before January 1, after reviewing all proposals submitted
12 pursuant to Section 68545, the department shall annually select at least two
13 treatment demonstration projects, to be commenced during that calendar year,
14 using, at a minimum, the criteria specified in Section 68535.

15 (b) If the department determines that the required number of demonstrations
16 required by subdivision (a) cannot be initiated consistent with the criteria specified
17 in Section 68535 in any fiscal year, the department shall inform the appropriate
18 committees of the Legislature of the reasons for its inability to conduct these
19 demonstration projects.

20 (c) Each treatment demonstration project selected pursuant to this section shall
21 be performed by the applicant, or by a person approved by the applicant and the
22 department.

23 **Comment.** Section 68550 continues former Section 25368.5 without substantive change.
24 See Sections 68050 (“department” defined), 68085 (“person” defined).

25 **§ 68555. Recovery of incremental costs**

26 68555. Notwithstanding **Section 25360**, if the department determines that using
27 an alternative treatment technology to conduct a removal or remedial action at a
28 hazardous substance release site listed pursuant to **[paragraph (2) or (3) of**
29 **subdivision (b) of Section 25356]** would be more costly than another available
30 and feasible removal or remedial action method that would also achieve
31 satisfactory results, the department may determine not to attempt to recover from
32 the liable person the incremental costs of the removal or remedial action
33 attributable to the alternative treatment technology.

34 **Comment.** Section 68555 continues former Section 25368.6 without substantive change.

35 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
36 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
37 party” defined), 68155 (“site” defined), 68530 (“treatment technologies” defined).

38 **Staff Note.** Section 25368.6 references a hazardous substance release site listed “pursuant to
39 paragraph (2) or (3) of subdivision (b) of Section 25356.” Section 25356(b), which is proposed
40 (with renumbering of the provisions) for recodification in this draft as proposed Section 68520,
41 does not currently have a paragraph (3). However, an earlier version of Section 25356(b) did have
42 a paragraph (3). See former Section 25356, as amended by 1988 Cal Stat. ch. 1387, § 6. At that
43 time, the “list” was significantly different and structured differently. And, it appears that a site

1 “listed pursuant to paragraph (2) and (3)...” would include only sites where the department (as
2 opposed to a responsible party) was conducting the response action.

3 Given the significant changes to the law since this cross-reference was added originally, the
4 staff is unsure whether this cross-reference can or should be updated to achieve the same
5 substantive result as the cross-reference did previously. Regardless, this cross-reference is broken
6 and must be updated in the recodification. **The staff invites comment on how this cross-
7 reference should be revised.**

8 **§ 68560. Technology transfer program**

9 68560. (a) The department shall conduct a technology transfer program that
10 shall include the development, collection, evaluation, coordination, and
11 dissemination of information relating to the utilization of alternative or innovative
12 hazardous waste treatment technologies demonstrated pursuant to this article.

13 (b) The information in subdivision (a) shall include all of the following:

14 (1) An evaluation of each treatment demonstration project’s efficacy relating to
15 performance and cost in achieving permanent and significant reduction in risks
16 from hazardous substance releases.

17 (2) Documentation of the testing procedures utilized in the project, the data
18 collected, and the quality assurance and quality control that was conducted.

19 (3) The technology’s applicability, pretreatment and posttreatment
20 measurements, and the technology’s advantages or disadvantages compared to
21 other available technologies.

22 **Comment.** Section 68560 restates former Section 25368.7 without substantive change.

23 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
24 (“release” defined), 68530 (“treatment technologies” defined).

25 **Staff Notes.** (1) Proposed Section 68560 restates Section 25368.7 to add subdivisions. Section
26 25368.7 provides:

27 25368.7. The department shall conduct a technology transfer program that shall include
28 the development, collection, evaluation, coordination, and dissemination of information relating
29 to the utilization of alternative or innovative hazardous waste treatment technologies
30 demonstrated pursuant to this article. The information shall include an evaluation of each
31 treatment demonstration project’s efficacy relating to performance and cost in achieving
32 permanent and significant reduction in risks from hazardous substance releases. The information
33 shall also include documentation of the testing procedures utilized in the project, the data
34 collected, and the quality assurance and quality control which was conducted. The information
35 shall also include the technology’s applicability, pretreatment and posttreatment measurements,
36 and the technology’s advantages or disadvantages compared to other available technologies.

37 The changes reflected in proposed Section 68560 are intended to be nonsubstantive. **The staff
38 welcomes any comment on the proposed restatement.**

39 (2) Proposed Section 68560 uses the term “hazardous waste.” The term “hazardous waste” is not
40 defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous substances.”
41 And, proposed Section 68560 generally governs technologies used for responding to a “hazardous
42 substance” release. See, e.g., proposed Sections 68525, 68530, 68535. Given this context, it
43 seems likely that the use of the term “hazardous waste” in this section should be replaced with
44 “hazardous substance.” **The staff welcomes comment on this issue.**

1 § 68565. Consideration of cost-effectiveness

2 68565. Notwithstanding **paragraph (5) of subdivision (c) of Section 25356.1**,
3 when preparing or approving a remedial action plan for a site listed pursuant to
4 **[paragraph (2) or (3) of subdivision (b) of Section 25356]**, that has been
5 selected for a treatment demonstration project pursuant to this article, the
6 department shall consider the cost-effectiveness of the project but is not required
7 to choose the most cost-effective measure.

8 **Comment.** Section 68565 continues former Section 25368.8 without substantive change.
9 See Section 68050 (“department” defined), 68125 (“remedy” defined), 68155 (“site” defined).

10 **Staff Note.** Section 25368.8 references a hazardous substance release site listed “pursuant to
11 paragraph (2) or (3) of subdivision (b) of Section 25356.” As described in the Note for proposed
12 Section 68555, Section 25356(b)(3) does not currently exist. It is unclear how this cross-reference
13 should be updated, for the reasons described in the earlier Note.

14 **The staff welcomes comment on the appropriate resolution of this issue.**

15 Article 9. Content of Biennial Report

16 **Staff Note.** The reporting requirements in this proposed article both pertain to “the biennial report
17 specified in Section 25178.” It may be beneficial to consolidate all of the required contents of that
18 report in Section 25178.

19 Section 25178 is currently located in Chapter 6.5 of Division 20, which is also included in the
20 Commission’s recodification assignment. Section 25178 provides:

21 “25178. On or before January 1 of each odd-numbered year, the department shall post on
22 its Web site, at a minimum, all of the following:

23 (a) The status of the regulatory and program developments required pursuant to legislative
24 mandates.

25 (b) (1) The status of the hazardous waste facilities permit program that shall include all of the
26 following information:

27 (A) A description of the final hazardous waste facilities permit applications received.

28 (B) The number of final hazardous waste facilities permits issued to date.

29 (C) The number of final hazardous waste facilities permits yet to be issued.

30 (D) A complete description of the reasons why the final hazardous waste facilities permits yet
31 to be issued have not been issued.

32 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that uses a land
33 disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes
34 regulated as hazardous waste pursuant to the federal act.

35 (c) The status of the hazardous waste facilities siting program.

36 (d) The status of the hazardous waste abandoned sites program.

37 (e) A summary of enforcement actions taken by the department pursuant to this chapter and
38 any other actions relating to hazardous waste management.

39 (f) Summary data on annual quantities and types of hazardous waste generated, transported,
40 treated, stored, and disposed.

41 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

42 (h) Research activity initiated by the department.

43 (i) Regulatory action by other agencies relating to hazardous waste management.

44 (j) A revised listing of recyclable materials showing any additions or deletions to the list
45 prepared pursuant to Section 25175 that have occurred since the last report.

46 (k) Any other data considered pertinent by the department to hazardous waste management.

47 (l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision
48 (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

1 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange
2 County.”

3 The existing provisions that are proposed for recodification in this article are currently cross-
4 referenced in subdivision (I). Subdivision (I) also contains an obsolete cross-reference to Section
5 25356.5, which was part of Chapter 6.8, but has been repealed; this cross-reference will need to
6 be deleted or corrected as appropriate when the Commission recodifies Chapter 6.5.

7 **The staff welcomes comment on the whether the requirements proposed for inclusion in
8 this article should, instead, be incorporated into Section 25178.**

9 **§ 68575. San Gabriel Valley groundwater sites**

10 68575. (a) The department shall report to the Governor and the Legislature on
11 the progress of the cleanup of the San Gabriel Valley groundwater sites in Los
12 Angeles County, and on the progress of enforcement actions relating to those sites,
13 in the biennial report specified in Section 25178. The report shall include, but not
14 be limited to, all of the following:

15 (1) State expenditures and planned expenditures.

16 (2) Actions accomplished at the sites.

17 (3) Actions planned, including a time schedule for the accomplishment of
18 planned actions.

19 (b) The report may be prepared in cooperation with other state and federal
20 agencies involved with the sites, and shall include a summary of the activities of
21 those additional agencies.

22 **Comment.** Section 68575 continues former Section 25334.7 without substantive change.
23 See Section 68050 (“department” defined), 68155 (“site” defined).

24 **Staff Notes. (1)** Proposed Section 68575 requires that the department report “to the Governor and
25 the Legislature...in the biennial report specified in Section 25178.” Section 25178 currently
26 involves posting information on a website biennially and does not appear to require that a report
27 be submitted to the Governor or the Legislature. Formerly, Section 25178 required a report to be
28 submitted to the Legislature biennially. See former Section 25178, as amended by 1987 Cal. Stat.
29 ch. 822, § 1. The staff is unsure how to reconcile the requirements of proposed Section 68575 and
30 Section 25178. **The staff welcomes comment on this issue.**

31 **(2)** Proposed Section 68575 requires the department to report to the Governor and the Legislature
32 regarding the status of cleanup at the specified sites.

33 In the course of the staff’s work on this study, the staff came across a Government Code
34 provision regarding legislation that requires state agencies to submit reports to the Legislature.
35 Specifically, Government Code Section 10231.5 provides, in part:

36 “10231.5. (a) A bill that, as introduced or amended in either house of the Legislature,
37 would require a state agency to submit a report on any subject to either house of the Legislature
38 generally, a committee or office of either house of the Legislature, or the Legislative Counsel
39 Bureau shall include a provision that repeals the reporting requirement, or makes the requirement
40 inoperative, no later than a date four years following the date upon which the bill, as enacted,
41 becomes operative or four years after the due date of any report required every four or more
42 years. If the bill requires that the report be submitted to either house of the Legislature generally,
43 it shall also include a provision that requires the report to be submitted pursuant to Section 9795.”

44 This provision seems to indicate a legislative policy determination that reporting requirements
45 may become stale. This reporting requirement was originally enacted in 1990. See 1990 Cal. Stat.
46 ch. 1624, § 1. It may be appropriate to consider and seek input on whether there is a continuing

1 need for this particular report to be submitted to the Legislature. Given the nonsubstantive nature
2 of this study, any change to the legal duty to provide a report to the Legislature would be beyond
3 the scope of this study. However, the Commission may want to add this topic to the list of
4 substantive issues for future study. **The staff welcomes comment on this issue.**

5 **§ 68580. Accounting of expenditures from emergency reserve account**

6 68580. The department shall include in the biennial report specified in Section
7 25178 an accounting of the moneys expended pursuant to Section 68240.

8 **Comment.** Section 68580 continues the first sentence of subdivision (c) of former Section
9 25354 without substantive change.

10 See Section 68050 (“department” defined).

11 **CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES**

12 **Article 1. General Powers of Director**

13 **§ 68650. Powers of director in event of release or threatened release of hazardous**
14 **substances**

15 68650. When the director determines that a release of a hazardous substance has
16 occurred or is about to occur, the director may do any or all of the following:

17 (a) Undertake those investigations, monitoring, surveys, testing, and other
18 information gathering necessary to identify the existence, source, nature, and
19 extent of the hazardous substances involved and the extent of danger to the public
20 health or environment.

21 (b) Undertake those planning, legal, fiscal, economic, engineering, architectural,
22 and other studies or investigations that are necessary or appropriate to plan and
23 direct response actions, to recover the cost of those actions, and to enforce this
24 part.

25 **Comment.** Section 68650 continues subdivision (b) of former Section 25358.3 without
26 substantive change.

27 See Sections 68055 (“director” defined), 68075 (“hazardous substance” defined), 68105
28 (“release” defined), 68140 (“response” defined).

29 **§ 68655. Authority to take or contract for response or other authorized actions**

30 68655. (a) Whenever there is a release or threatened release of a hazardous
31 substance into the environment, the director may take or contract for any
32 necessary removal or remedial action and may take or contract for any actions
33 authorized by Section 68650, in compliance with the provisions of this part,
34 including, but not limited to, **subdivision (b) of Section 25355.**

35 (b) Any person bidding for a contract specified in subdivision (a) shall submit a
36 disclosure statement, as specified by Section 25112.5, except for a federal, state,
37 or local agency. The director may prohibit a person from bidding on such a
38 contract if the director makes any of the following determinations:

1 (1) The director determines, in writing, that the bidder, or, if the bidder is a
2 business entity, any trustee, officer, director, partner, or any person holding more
3 than 5 percent of the equity in or debt liability of that business entity, has engaged
4 in activities resulting in any federal or state conviction that are significantly related
5 to the fitness of the bidder to perform the bidder’s duties or activities under the
6 contract. For purposes of this paragraph, “conviction” means a plea or verdict of
7 guilty or a conviction following a plea of nolo contendere. Any action that the
8 department may take pursuant to this subdivision relating to the department’s
9 refusal to permit a person to bid on the contract may be based upon a conviction
10 for which any of the following has occurred:

11 (A) The time for appeal has elapsed.

12 (B) The judgment of conviction has been affirmed on appeal.

13 (C) Any order granting probation is made suspending the imposition of
14 sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the
15 Penal Code permitting that person to withdraw the plea of guilty and to enter a
16 plea of not guilty, or setting aside the verdict of guilty, or dismissing the
17 accusation, information, or indictment.

18 (2) The director determines, in writing, that the bidder, or, if the bidder is a
19 business entity, any trustee, officer, director, partner, or any person holding more
20 than 5 percent of the equity in or debt liability of that business entity, has violated
21 or failed to comply with this part, Chapter 6.5 (commencing with Section 25100)
22 or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-
23 Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)
24 of the Water Code), the federal act, the federal Resource Conservation and
25 Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal
26 Hazardous Materials Transportation Authorization Act of 1994, as amended (49
27 U.S.C. Sec. 5101 et seq.), the federal Toxic Substances Control Act (15 U.S.C.
28 Sec. 2601 et seq.), or any other equivalent federal or state statute or any
29 requirement or regulation adopted pursuant thereto relating to the generation,
30 transportation, treatment, storage, recycling, disposal, or handling of a hazardous
31 waste, as defined in Section 25117, a hazardous substance, as defined in
32 subdivision (a) of Section 68075, or a hazardous material, as defined in Section
33 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or
34 recurring pattern or may pose a threat to public health or safety or the
35 environment.

36 (3) The director determines, in writing, that the bidder has had a license, permit,
37 or registration for the generation, transportation, treatment, storage, recycling,
38 disposal, or handling of hazardous waste or hazardous substances revoked or
39 suspended.

40 **Comment.** Section 68655 restates subdivisions (c) and (d) of former Section 25358.3 without
41 substantive change.

42 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
43 defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release”
44 defined), 68125 (“remedy” defined), 68135 (“remove” defined).

1 **Staff Notes. (1)** Section 25358.3(d)(2) (proposed Section 68655(b)(2)) refers to the “the federal
 2 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended
 3 (42 U.S.C. Sec. 9601 et seq.)” Proposed Section 68655 replaces that reference with the “federal
 4 act.” In proposed Section 68065, “federal act” is defined as “the federal Comprehensive
 5 Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
 6 9601 et seq.)”

7 The names of the other federal acts in proposed Section 68655(b)(2) have been updated to
 8 include the designation “federal” in accordance with drafting practice. The order of the listed
 9 federal acts was changed to improve clarity.

10 **The staff welcomes any comment on these proposed nonsubstantive changes.**

11 **(2)** As indicated above, Section 25358.3(d)(2) lists several federal acts. For all but one of those
 12 federal acts, the reference specifically refers to the act “as amended.” The reference to the federal
 13 Toxic Substances Control Act does not include the “as amended” designation. That may have
 14 been an error. **The staff welcomes comment on this issue.**

15 **(3)** Section 25358.3(d)(2) refers to “the Hazardous Materials Transportation Authorization Act of
 16 1994, as amended (49 U.S.C. Sec. 5101 et seq.)” The named act and the U.S. Code cite do not
 17 appear to be coextensive. The staff does not know how to interpret this cross-reference as drafted.
 18 **The staff welcomes comment on the meaning of this cross-reference and whether the cross-**
 19 **reference is causing problems in practice.**

20 **(4)** Section 25358.3(d)(2) refers to the definition for hazardous substance in “Section 25316.”
 21 Currently, Section 25316 defines “hazardous substance,” while Section 25317 contains
 22 exclusions from the definition for “hazardous substance.” It is not clear whether the reference to
 23 Section 25316 was intended to avoid incorporating the exclusions in Section 25317. **The staff**
 24 **welcomes comment on this issue.**

25 **(5)** Section 25358.3(d)(3) (proposed Section 68655(b)(3)) uses the term “hazardous waste”
 26 without reference to an applicable definition. The preceding paragraph also uses the term
 27 “hazardous waste,” but refers to a definition in “Section 25117.” It seems likely that the definition
 28 of “hazardous waste” in Section 25117 should also apply to the use of the term in paragraph
 29 (d)(3). **The staff welcomes comment on this issue.**

30 **§ 68660. Judicial proceedings**

31 68660. (a) Whenever there is a release or threatened release of a hazardous
 32 substance, the director may request the Attorney General to secure such relief as
 33 may be necessary from the responsible party to abate the release or threatened
 34 release. The superior court of the county in which the release or threatened release
 35 occurs has jurisdiction to grant that relief that the public interest and equities of the
 36 case may require to protect the public health and safety and the environment.
 37 Upon a showing by the department that a release or threatened release of a
 38 hazardous substance has occurred or is occurring, and that there may be an
 39 imminent or substantial endangerment to the public health and safety or to the
 40 environment, the court may grant a temporary restraining order or a preliminary or
 41 permanent injunction.

42 (b) Upon the failure of any person to comply with any order issued by the
 43 department pursuant to this article, **subdivision (a) of Section 25358.3, or Section**
 44 **25355.5**, the director may request the Attorney General to petition the superior
 45 court for the issuance of an injunction requiring that person to comply with the

1 order. The superior court shall have jurisdiction to grant a temporary restraining
2 order or a preliminary or permanent injunction.

3 (c) In any civil action brought pursuant to this part in which a temporary
4 restraining order or a preliminary or permanent injunction is sought, the
5 department shall prove that the defendant is a responsible party and that there is a
6 release or threatened release of a hazardous substance. It shall not be necessary to
7 allege or prove at any stage of the proceeding that irreparable damage will occur
8 should the temporary restraining order or the preliminary or permanent injunction
9 not be issued, or that the remedy at law is inadequate. The temporary restraining
10 order or the preliminary or permanent injunction shall issue without those
11 allegations and without that proof.

12 **Comment.** Section 68660 restates subdivisions (e)-(g), inclusive, of former Section 25358.3
13 without substantive change.

14 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
15 substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy”
16 defined), 68145 (“responsible party” defined).

17 **Staff Notes. (1)** Proposed Section 68660(a) restates subdivision (e) of Section 25358.3 to
18 eliminate uses of the singular and plural form of the same word (see Section 13; see also Note for
19 proposed Section 68300). Section 25358.3(e) reads as follows (with emphasis on relevant text
20 added):

21 “(e) Whenever there is a release or threatened release of a hazardous substance, the director
22 may request the Attorney General to secure such relief as may be necessary from the responsible
23 *party or parties* to abate the release or threatened release. The superior court of the county in
24 which the release or threatened release occurs has jurisdiction to grant that relief that the public
25 interest and equities of the case may require to protect the public health and safety and the
26 environment. Upon a showing by the department that a release or threatened release of a
27 hazardous substance has occurred or is occurring, and that there may be an imminent or
28 substantial endangerment to the public health and safety or to the environment, the court may
29 grant a temporary restraining order or a preliminary or permanent injunction.”

30 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For
31 this reason, it does not appear to be necessary to use both the singular and plural forms of the
32 same word. Proposed Section 68660 was simplified to use only the singular form in accordance
33 with standard drafting practice.

34 The changes reflected in proposed Section 68660 are intended to be nonsubstantive. **The staff
35 welcomes any comment on the proposed restatement.**

36 **(2)** Section 25358.3(g), proposed for recodification as Section 68660(c), contained a semicolon.
37 The provision has been restated to avoid the use of a semicolon by making the material after the
38 semicolon a separate sentence.

39 Article 2. Reporting Requirement

40 § 68675. Prohibition and reporting requirement for releases

41 68675. (a) A person shall not release, or allow or cause a release of, a reportable
42 quantity of a hazardous substance into the environment that is not authorized or
43 permitted pursuant to state law.

1 (b) Any release of a reportable quantity of hazardous substance shall be reported
2 to the department in writing within 30 days of discovery, unless any of the
3 following apply:

4 (1) The release is permitted or in the permit process.

5 (2) The release is authorized by state law.

6 (3) The release requires immediate reporting to the Office of Emergency
7 Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code,
8 or pursuant to Section 25510.

9 (4) The release has previously been reported to the department or the Office of
10 Emergency Services.

11 (5) The release occurred prior to January 1, 1994.

12 (c) For the purposes of this article, “reportable quantity” means either of the
13 following:

14 (1) The quantity of a hazardous substance established in Part 302 (commencing
15 with Section 302.1) of Title 40 of the Code of Federal Regulations, the release of
16 which requires notification pursuant to that part.

17 (2) Any quantity of a hazardous substance that is not reportable pursuant to
18 paragraph (1), but that may pose a significant threat to public health and safety or
19 to the environment. The department may establish guidelines for determining
20 which releases are reportable under this paragraph.

21 **Comment.** Section 68675 continues subdivisions (a)-(c), inclusive, of former Section 25359.4
22 without substantive change. A cross-reference to Section 25507 has been corrected to refer to
23 Section 25510.

24 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
25 (“person” defined), 68105 (“release” defined).

26 **Staff Note.** Proposed Section 68675(b)(3) pertains to a release that “requires immediate reporting
27 to the Office of Emergency Services...pursuant to Section 25507.” The cross-reference to Section
28 25507 appears to be inapt. Section 25507 governs which businesses are required to implement a
29 business plan for emergency response for hazardous material releases. Another section in the
30 same article, Section 25510, pertains to immediate reporting of hazardous material releases.
31 Section 25510 provides, in part:

32 “Except as provided in subdivision (b), the handler or an employee, authorized
33 representative, agent, or designee of a handler, shall, upon discovery, immediately report any
34 release or threatened release of a hazardous material, or an actual release of a hazardous
35 substance, as defined in Section 374.8 of the Penal Code, to the UPA, and to the [Office of
36 Emergency Services], in accordance with the regulations adopted pursuant to this section. The
37 handler or an employee, authorized representative, agent, or designee of the handler shall provide
38 all state, city, or county fire or public health or safety personnel and emergency response
39 personnel with access to the handler’s facilities.”

40 The cross-reference has been updated to refer to Section 25510 in proposed Section 68675. **The**
41 **staff welcomes comment on the proposed correction to this cross-reference.**

42 **§ 68680. Liability for failure to report**

43 68680. (a) The owner of property on which a reportable release has occurred and
44 any person who releases, or causes a reportable release and who fails to make the

1 written report required by subdivision (b) of Section 68675, shall be liable for a
2 penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate
3 violation and for each day that a violation continues. Each day on which the
4 released hazardous substance remains is a separate violation unless the person has
5 either filed the report or is in compliance with an order issued by a local, state, or
6 federal agency with regard to the release.

7 (b) Liability under this article may be imposed in a civil action or may be
8 administratively imposed by the department pursuant to **Section 25359.3**.

9 (c) If the violation of subdivision (b) of Section 68675 results in, or significantly
10 contributes to, an emergency, including, but not limited to, a fire, to which a
11 county, city, or district is required to respond, the responsible party may be
12 assessed the full cost of the emergency response by the city, county, or district.

13 **Comment.** Section 68680 continues subdivisions (d)-(f), inclusive, of former Section 25359.4
14 without substantive change.

15 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
16 (“person” defined), 68105 (“release” defined), 68140 (“response” defined), 68145 (“responsible
17 party” defined).

18 Article 3. Disclosure Requirement

19 § 68700. Disclosure requirement for property owner

20 68700. Any owner of nonresidential real property who knows, or has reasonable
21 cause to believe, that any release of hazardous substance has come to be located
22 on or beneath that real property shall, prior to the sale, lease, or rental of the real
23 property by that owner, give written notice of that condition to the buyer, lessee,
24 or renter of the real property. Failure of the owner to provide written notice when
25 required by this section to the buyer, lessee, or renter shall subject the owner to
26 actual damages and any other remedies provided by law. In addition, where the
27 owner has actual knowledge of the presence of any release of a material amount of
28 a hazardous substance and knowingly and willfully fails to provide written notice
29 to the buyer, lessee, or renter, as required by this section, the owner is liable for a
30 civil penalty not to exceed five thousand dollars (\$5,000) for each separate
31 violation.

32 **Comment.** Section 68700 continues subdivision (a) of former Section 25359.7 without
33 substantive change.

34 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125
35 (“remedy” defined).

36 § 68705. Disclosure requirement for lessee or renter

37 68705. Any lessee or renter of real property who knows or has reasonable cause
38 to believe that any release of a hazardous substance has come or will come to be
39 located on or beneath that real property shall, within a reasonable period of time,
40 either prior to the release or following the discovery by the lessee or renter of the
41 presence or believed presence of the hazardous substance release, give written

1 notice of that condition to the owner of the real property or to the lessor under the
2 lessee's or renter's lease or rental agreement.

3 (a) A lessee or renter who fails to provide written notice when required by this
4 section to the owner or lessor is subject to actual damages and any other remedy
5 provided by law.

6 (b) If the lessee or renter has knowledge of the presence of a release of a
7 material amount of a hazardous substance, or of a hazardous substance release that
8 is required to be reported to a state or local agency pursuant to law, on or under the
9 real property leased or rented by the lessee or renter and knowingly and willfully
10 fails to provide written notice when required by this section to the owner or lessor,
11 both of the following shall apply:

12 (1) The failure is deemed to constitute a default, upon the owner's or lessor's
13 written notice to the lessee or renter, under the lessee's or renter's lease or rental
14 agreement, except that this paragraph does not apply to lessees and renters of
15 property used exclusively for residential purposes.

16 (2) The lessee or renter is liable for a civil penalty not to exceed five thousand
17 dollars (\$5,000) for each separate violation.

18 (c) A lessee or renter may cure a default under the lessee's or renter's lease or
19 rental agreement that resulted from a violation of this section, by promptly
20 commencing and completing the removal of, or taking other appropriate remedial
21 action with respect to, the hazardous substance release. The removal or remedial
22 action shall be conducted in accordance with all applicable laws and regulations
23 and in a manner that is reasonably acceptable to, and that is approved in writing
24 by, the owner or lessor. This subdivision does not relieve the lessee or renter of
25 any liability for actual damages or for any civil penalty for a violation of this
26 section.

27 **Comment.** Section 68705 continues subdivision (b) of former Section 25359.7 without
28 substantive change.

29 See Sections 68075 ("hazardous substance" defined), 68105 ("release" defined), 68125
30 ("remedy" defined), 68135 ("remove" defined).

31 Article 4. Securing Site of Release

32 § 68720. Conditions when order to secure site is required

33 68720. After making a determination, based upon a preliminary site assessment
34 that there has been a release of a hazardous substance on, under, or into the land
35 on a site, the department or a county health officer shall order the property owner
36 to secure the site if all of the following conditions apply to that site:

37 (a) The release does not comply with the terms of a current permit or interim
38 status document or regulation of the department.

39 (b) The site poses a public health risk if human contact is made with the
40 hazardous waste or the surrounding contaminated area.

41 (c) There is a likelihood of human or domestic animal contact.

1 **Comment.** Section 68720 continues subdivision (a) of former Section 25359.5 without
2 substantive change.

3 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
4 (“release” defined), 68155 (“site” defined).

5 **Staff Note.** Proposed Section 68720(b) refers to “hazardous waste.” The term “hazardous waste”
6 is not defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous
7 substances.” And, proposed Section 68720 itself governs a site where there has been a release of a
8 “hazardous substance.” It seems unlikely that the use of the term “hazardous waste” was intended
9 in this provision, particularly without an applicable definition. **The staff welcomes comment on
10 this issue.**

11 **§ 68725. Requirements of order to secure site**

12 68725. (a) The order to secure the site shall require, within five days after
13 receiving notification of the order, the posting of the site with signs. The order
14 shall also require, within five days after receiving notification of the order, that the
15 site be enclosed with a fence, unless it is physically and economically infeasible or
16 unless the fencing is unnecessary because it will not alleviate the danger to the
17 public health.

18 (b) If fencing is ordered, the fences shall be maintained at the site to prevent
19 unauthorized persons from gaining access to the site. The signs shall be
20 maintained and shall meet all of the following requirements:

21 (1) The signs shall be bilingual, appropriate to the local area, and may include
22 international symbols, as required by the department.

23 (2) The signs shall have lettering that is legible from a distance of at least 25
24 feet.

25 (3) The signs shall read: “Caution: Hazardous Substance Area, Unauthorized
26 Persons Keep Out” and shall have the name and phone number of the department
27 or the county health officer that ordered the posting.

28 (4) The signs shall be visible from the surrounding contaminated area and posted
29 at each route of entry into the site, including those routes that are likely to be used
30 by unauthorized persons, at access roads leading to the site, and facing navigable
31 waterways where appropriate.

32 (5) The signs shall be of a material able to withstand the elements.

33 **Comment.** Section 68725 continues subdivisions (b) and (c) of former Section 25359.5
34 without substantive change.

35 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
36 (“person” defined), 68155 (“site” defined).

37 **§ 68730. Advising agencies on health risks and site requirements**

38 68730. The department or the county health officer shall advise other agencies
39 on the public health risks and the need for fencing and posting of sites when those
40 agencies confirm the release of a hazardous substance pursuant to Section 68720.

41 **Comment.** Section 68730 continues subdivision (e) of former Section 25359.5 without
42 substantive change.

1 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
2 (“release” defined), 68155 (“site” defined).

3 **§ 68735. Penalty for failure to comply with order to secure site**

4 68735. (a) A property owner who fails to comply with an order of the
5 department or the county health officer is subject to a civil penalty of up to
6 twenty-five thousand dollars (\$25,000). In determining the amount of a civil
7 penalty to be imposed, the court shall consider all relevant circumstances,
8 including, but not limited to, the economic assets of the property owner and
9 whether the property owner has acted in good faith.

10 (b) If the property owner fails to secure and post the site, the department or the
11 county health officer shall secure and post the site pursuant to subdivision (a) of
12 Section 68725 within 30 days of the expiration of the five-day period and shall
13 seek recovery of the costs of that securing and posting from the property owner. If
14 the site is an abandoned site, as defined in Section 68505, if the site cannot be
15 traced to a specific owner, or if the owner is the subject of an order for relief in
16 bankruptcy, the department or the county health officer shall secure and post the
17 site, using any source of funds, pursuant to subdivision (a) of Section 68725.

18 **Comment.** Section 68735 continues subdivision (d) of former Section 25359.5 without
19 substantive change.

20 See Sections 68050 (“department” defined), 68155 (“site” defined).

21 **§ 68740. Remedies and penalties not exclusive**

22 68740. The remedies and penalties specified in this article and Section 68505
23 are in addition to, and do not affect, any other remedies, enforcement actions,
24 requirements, or penalties otherwise authorized by law.

25 **Comment.** Section 68740 continues subdivision (f) of former Section 25359.5 without
26 substantive change.

27 **Article 5. Listing of Hazardous Substance Release Sites**

28 **§ 68760. List of selected hazardous substance release sites**

29 68760. (a) The department shall publish and revise, at least annually, a listing of
30 the hazardous substance release sites selected for, and subject to, a response action
31 under this part.

32 (b) The department shall list the sites based upon the criteria adopted pursuant to
33 Section 68765 and the extent to which deferral of a response action at a site will
34 result, or is likely to result, in a rapid increase in response costs at the site or in a
35 significant increase in risk to human health or safety or the environment.

36 (c) The department shall list sites alphabetically within each priority tier, as
37 specified in Section 68770, and shall update the list of sites at least annually to
38 reflect new information regarding previously listed sites or the addition of new
39 sites requiring response actions.

1 (d) The list of sites established pursuant to this section shall be published by the
2 department and made available to the public or any interested person upon request
3 and without cost.

4 **Comment.** Section 68760 continues subdivision (b) of former Section 25356 without
5 substantive change.

6 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
7 (“person” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”
8 defined), 68170 (“tier” defined).

9 **§ 68765. Criteria for selection of hazardous substance release sites**

10 68765. (a) The department shall adopt, by regulation, criteria for the selection of
11 hazardous substance release sites for a response action under this part. The criteria
12 shall take into account pertinent factors relating to public health, safety and the
13 environment. The pertinent factors shall include, but are not necessarily limited to,
14 potential hazards to public health, safety or the environment, the risk of fire or
15 explosion, and toxic hazards, and shall also include the criteria established
16 pursuant to Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).

17 (b) The criteria adopted pursuant to subdivision (a) may include a minimum
18 hazard threshold, below which sites shall not be listed pursuant to this article, if
19 the sites are subject to the authority of the department to order a response action,
20 or similar action, pursuant to Chapter 6.5 (commencing with Section 25100) of
21 Division 20.

22 **Comment.** Section 68765 restates subdivision (a) of former Section 25356 without substantive
23 change. A cross-reference to the federal act has been corrected.

24 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous
25 substance” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”
26 defined).

27 **Staff Notes. (1)** Proposed Section 68765(a) restates Section 25356(a)(1), which provides as
28 follows:

29 “The department shall adopt, by regulation, criteria for the selection of hazardous
30 substance release sites for a response action under this chapter. The criteria shall take into account
31 pertinent factors relating to public health, safety and the environment, which shall include, but are
32 not necessarily limited to, potential hazards to public health, safety or the environment, the risk of
33 fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to
34 Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).”

35 The changes reflected in proposed Section 68765(a) are intended to be nonsubstantive. **The staff
36 welcomes any comment on the proposed restatement.**

37 **(2)** The cross-reference to the federal act in the last sentence of proposed Section 68765(a) has
38 been corrected. The existing cross-reference refers to “Section 105(8) of the federal act (42
39 U.S.C. Sec. 9605(8)).” This cross-reference is missing a subdivision designation. Only
40 subdivision (a) of Section 105 has a paragraph 8. For this reason, the cross-reference was
41 corrected to refer to “Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).” **The staff
42 welcomes comments on this proposed correction.**

1 **§ 68770. Priority tiers for listed hazardous substance release sites**

2 68770. The department shall assign each site listed pursuant to Section 68760 to
3 one of the following priority tiers for the purpose of informing the public of the
4 relative hazard of listed sites:

5 (a) “Priority tier one” shall include any site that the department determines,
6 using the criteria described in Section 68760, meets any of the following
7 conditions:

8 (1) The site may pose a known or probable threat to public health or safety
9 through direct human contact.

10 (2) The site may pose a substantial probability of explosion or a fire or a
11 significant risk due to hazardous air emissions.

12 (3) The site has a high potential to contaminate or to continue to contaminate
13 groundwater resources that are present or possible future sources of drinking
14 water.

15 (4) There is a risk that the costs of a response action will increase rapidly or
16 risks to human health or safety or the environment will increase significantly if
17 response action is deferred.

18 (b) “Priority tier two” shall include any site that poses a substantial but less
19 immediate threat to public health or safety or the environment and any site that
20 will require a response action, but presents only a limited and defined threat to
21 human health or safety or the environment. Priority tier two may contain sites
22 previously listed in priority tier one if the department determines that direct threats
23 to human health or safety have been removed and if physical deterioration of the
24 site has been stabilized so that threats to the environment are not significantly
25 increasing.

26 **Comment.** Section 68770 continues subdivision (c) of former Section 25356 without
27 substantive change.

28 See Sections 68050 (“department” defined), 68135 (“remove” defined), 68140 (“response”
29 defined), 68155 (“site” defined), 68170 (“tier” defined).

30 **§ 68775. Requirements for listed hazardous substance release sites**

31 68775. Hazardous substance release sites listed by the department pursuant to
32 Section 68760 are subject to this part and all actions carried out in response to
33 hazardous substance releases or threatened releases at listed sites shall comply
34 with the procedures, standards, and other requirements set forth in this part or
35 established pursuant to the requirements of this part.

36 **Comment.** Section 68775 continues subdivision (d) of former Section 25356 without
37 substantive change.

38 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
39 (“release” defined), 68140 (“response” defined), 68155 (“site” defined).

40 **§ 68780. Conformance of expenditures with prioritization of sites**

41 68780. (a) Except as provided in subdivision (b), the department shall expend all
42 funds appropriated to the department for any response action pursuant to this part,

1 and shall take all response action pursuant to this part, in conformance with the
2 assignment of sites to priority tiers pursuant to Section 68770.

3 (b) The department may expend funds appropriated for a response action and
4 take a response action, without conforming to the listing of sites by tier pursuant to
5 Section 68770, or at a site that has not been listed pursuant to Section 68760, if
6 any of the following apply:

7 (1) The department is monitoring a response action conducted by a responsible
8 party at a site listed pursuant to Section 68760 or at a site that is not listed but is
9 being voluntarily remediated by a responsible party or another person.

10 (2) The expenditure of funds is necessary to pay for the state share of a response
11 action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

12 (3) The department is assessing, evaluating, and characterizing the nature and
13 extent of a hazardous substance release at a site for which the department has not
14 been able to identify a responsible party, the responsible party is defunct or
15 insolvent, or the responsible party is not in compliance with an order issued, or an
16 enforceable agreement entered into, pursuant to **subdivision (a) of Section**
17 **25355.5**.

18 (4) The department is carrying out activities pursuant to **paragraph (2) or (3) of**
19 **subdivision (b) of, or subdivision (c) or (d) of, Section 25355.5**.

20 (c) The department may, at any one time, expend funds and take a response
21 action at more than one site on the list established pursuant to Section 68760. In
22 addition, the department may, at any one time, oversee the performance of any
23 activities conducted by a responsible party on more than one site on the list
24 established pursuant to Section 68760.

25 **Comment.** Section 68780 continues subdivision (f) of former Section 25356 without
26 substantive change.

27 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous
28 substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68140 (“response”
29 defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68170 (“tier” defined).

30 **§ 68785. Commencement of response actions at sites**

31 68785. This article does not require the department to characterize every site
32 listed pursuant to Section 68760 before the department begins response actions at
33 those sites.

34 **Comment.** Section 68785 continues subdivision (g) of former Section 25356 without
35 substantive change.

36 See Sections 68050 (“department” defined), 68140 (“response” defined), 68155 (“site”
37 defined).

38 **§ 68790. Responsibility for response action compliance**

39 68790. The department, or, if appropriate, the regional board, is the state agency
40 with sole responsibility for ensuring that required action in response to a
41 hazardous substance release or threatened release at a listed site is carried out in
42 compliance with the procedures, standards, and other requirements set forth in this

1 part, and shall, as appropriate, coordinate the involvement of interested or affected
2 agencies in the response action.

3 **Comment.** Section 68790 continues subdivision (h) of former Section 25356 without
4 substantive change.

5 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
6 (“regional board” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”
7 defined).

8 **Staff Note.** Section 25356(h) refers to the “California regional water quality board.” It appears
9 that this provision should instead refer to the “California regional water quality *control* board.”
10 Proposed Section 68790 replaces the phrase with the “regional board.” In proposed Section
11 68100, “regional board” is defined as “a California regional water quality control board.”

12 **§ 68795. Application of administrative rulemaking requirements**

13 68795. (a) The adoption of the minimum hazard threshold pursuant to
14 subdivision (b) of Section 68765, the department’s development and publication
15 of the list of sites pursuant to Section 68760, and the assignment of sites to a tier
16 pursuant to Section 68770, including the classification of a site as within a
17 minimum threshold pursuant to Section 68770, are not subject to Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
19 Government Code.

20 (b) The adoption of the criteria used by the department pursuant to Section
21 68760 to determine the extent to which deferral of a response action at a site will
22 result, or is likely to result, in a rapid increase in response costs at a site or in a
23 significant increase in risk to human health or safety or the environment is subject
24 to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
25 of the Government Code.

26 **Comment.** Section 68795 continues subdivision (e) of former Section 25356 without
27 substantive change.

28 See Sections 68050 (“department” defined), 68140 (“response” defined), 68155 (“site”
29 defined), 68170 (“tier” defined).

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.8 of Division 20 of the Health and Safety Code (§§ 25300-25395.45), as the law existed on January 1, 2019. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	New Provision	Existing Provision	New Provision
25300.....	68000(a)	25356(b)	68760
25301.....	68005	25356(d)	68775
25310.....	68035	25356(e).....	68795
25310.5.....	68040	25356(f).....	68780
25311.....	68045	25356(g).....	68785
25312.....	68050	25356(h).....	68790
25313.....	68055	25356(c).....	68770
25314.....	68060	25357	68225
25315.....	68065	25358	68410
25316.....	68075(a)	25358.1(a).....	68435
25317.....	68075(b)	25358.1(b)-(d)	68440
25318.5.....	68080	25358.1(j), (k).....	68445
25319.....	68085	25358.1(e)-(h).....	68450
25319.1.....	68090	25358.1(i)	68455
25319.5.....	68095	25358.1(l)	68460
25319.6.....	68100	25358.2(d)	68495
25320.....	68105(a)	25358.2(b)	68490
25321.....	68105(b)	25358.2(c).....	68485
25322.....	68125	25358.2(a).....	68480
25322.1.....	68115	25358.3(b)	68650
25322.2.....	68120	25358.3(c)-(d).....	68655
25323.....	68135	25358.3(e)-(g).....	68660
25323.1.....	68130	25358.4	68510
25323.3.....	68140	25358.7.2(a) 1st sent., (b)-(d)	68420
25323.5.....	68145	25359.4(a)-(c).....	68675
25323.9.....	68155	25359.4(d)-(f)	68680
25324(a)	68165	25359.5(a).....	68720
25325.....	68070	25359.5(b)-(c).....	68725
25326.....	68110	25359.5(e).....	68730
25326.3.....	68150	25359.5(d)	68735
25326.5.....	68160	25359.5(f)	68740
25327.....	68170	25359.6	68505
25330.2.....	68265	25359.7(a).....	68700
25330.4.....	68230	25359.7(b)	68705
25330.5.....	68235	25366	68185
25331.....	68220	25368	68525
25334.7.....	68575	25368.1	68530
25337.....	68260	25368.2	68535
25342.....	68200	25368.3	68540
25351.5.....	68400	25368.4	68545
25353.5.....	68210(a)-(f)	25368.5	68550
25354(a), (b), (c) (2nd-3rd sent.), (d)	25368.6	68555
.....	68240	25368.7	68560
25354(c), 1st sent.	68580	25368.8	68565
25354.5(f).....	68370	25385	68280
25356(a)	68765	25385.1	68285

Existing Provision	New Provision	Existing Provision	New Provision
25385.2.....	68290	25386.2.....	68325
25385.4.....	68295	25386.25.....	68330
25385.5.....	68300	25386.3.....	68335
25385.6.....	68305	25386.4.....	68340
25385.7.....	68310	25386.5.....	68345
25386.....	68315	25395.35.....	68360
25386.1.....	68320	25395.36.....	68365

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in the proposed Hazardous Substance Account Recodification Act of 2020, as reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

New Provision	Existing Provision	New Provision	Existing Provision
68000(a)	25300	68240	
68000(b)	new 25354(a), (b), (c) (2nd-3rd sent.), (d)	
68005	25301	68260	25337
68010	new	68265	25330.2
68015	new	68280	25385
68020	new	68285	25385.1
68025	new	68290	25385.2
68030	new	68295	25385.4
68035	25310	68300	25385.5
68040	25310.5	68305	25385.6
68045	25311	68310	25385.7
68050	25312	68315	25386
68055	25313	68320	25386.1
68060	25314	68325	25386.2
68065	25315	68330	25386.25
68070	25325	68335	25386.3
68075(a)	25316	68340	25386.4
68075(b)	25317	68345	25386.5
68080	25318.5	68360	25395.35
68085	25319	68365	25395.36
68090	25319.1	68370	25354.5(f)
68095	25319.5	68400	25351.5
68100	25319.6	68410	25358
68105(a)	25320	68420	25358.7.2(a) 1st sent., (b)-(d)
68105(b)	25321	68435	25358.1(a)
68110	25326	68440	25358.1(b)-(d)
68115	25322.1	68445	25358.1(j), (k)
68120	25322.2	68450	25358.1(e)-(h)
68125	25322	68455	25358.1(i)
68130	25323.1	68460	25358.1(l)
68135	25323	68480	25358.2(a)
68140	25323.3	68485	25358.2(c)
68145	25323.5	68490	25358.2(b)
68150	25326.3	68495	25358.2(d)
68155	25323.9	68505	25359.6
68160	25326.5	68510	25358.4
68165	25324(a)	68525	25368
68170	25327	68530	25368.1
68185	25366	68535	25368.2
68200	25342	68540	25368.3
68210(a)-(f)	25353.5	68545	25368.4
68210(g)	new	68550	25368.5
68220	25331	68555	25368.6
68225	25357	68560	25368.7
68230	25330.4	68565	25368.8
68235	25330.5	68575	25334.7

New Provision	Existing Provision	New Provision	Existing Provision
68580	25354(c), 1st sent.	68735	25359.5(d)
68650	25358.3(b)	68740	25359.5(f)
68655	25358.3(c)-(d)	68760	25356(b)
68660	25358.3(e)-(g)	68765	25356(a)
68675	25359.4(a)-(c)	68770	25356(c)
68680	25359.4(d)-(f)	68775	25356(d)
68700	25359.7(a)	68780	25356(f)
68705	25359.7(b)	68785	25356(g)
68720	25359.5(a)	68790	25356(h)
68725	25359.5(b)-(c)	68795	25356(e)
68730	25359.5(e)		

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2018 Cal. Stat. res. ch. 158. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.8, the Commission identified the issues listed below for possible future study. For the most part, the listed issues are relatively minor, clean-up issues, but the issues could not be addressed without risking the possibility of a substantive change. **If any of the listed issues is likely to involve substantial controversy, please notify the Commission.**

- Should the provision that governs the application of certain definitions (continued in proposed Section 68035) be revised to add an express exception to allow for a different meaning when appropriate (e.g., “unless the context requires otherwise”)?
- Should the definition of “release authorized or permitted pursuant to state law” (continued in proposed Section 68110) be restated for clarity?
- Should the definition of “remedy” (continued in proposed Section 68125) be restated for clarity?