Memorandum 2019-59

Recodification of Toxic Substance Statutes
(Cleanup Loans, Redevelopment Insurance, and Compensation for Losses)

In this study, the Commission\(^1\) 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.\(^3\)

The Commission has been preparing a draft of the proposed recodification for Chapter 6.8. Attached to this memorandum is an initial draft of “Chapter 10. Cleanup Loans and Environmental Assistance to Neighborhoods,” “Chapter 11. California Financial Assurance and Insurance for Redevelopment Program,” and “Chapter 12. Compensation.” Proposed Chapter 12 will be the last chapter of the proposed legislation for the recodification of Chapter 6.8. Memorandum 2019-60 will discuss a few remaining provisions that need to be incorporated into earlier chapters in the draft proposed legislation.

Commissioners and other interested persons should review the attached draft and raise any concerns identified. Comments on any aspect of the draft, including issues that the Commission should consider adding to the list of substantive items for possible future study, would be welcome.

Unless otherwise indicated, any statutory citations are to the Health and Safety Code.

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). 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)).

GENERAL DRAFTING APPROACH

As with the prior draft legislation for this project, the staff has taken a fairly conservative approach to drafting. For the most part, the language used in the draft is drawn from existing law verbatim.

Certain minor language changes to conform to standard legislative drafting practices or correct clear technical errors were made without notation.4

In accordance with the Commission’s prior decisions in this study, certain minor changes were made as a matter of course, but these changes are flagged in the corresponding Comment or Staff Note.5 Any other proposed changes to the language of the provision would also be described in the corresponding Comment or Staff Note.6

In several instances, the staff discovered problems with the existing language or cross-references. Where possible, the staff proposed a correction and discussed the issue in a Staff Note.7 Where the appropriate resolution was unclear, the staff requested comment on the issue.8

In addition, the staff identified one provision that would seem to benefit from restatement for clarity, but could not easily be restated without raising the possibility of a substantive change.9 For this provision, the staff seeks comment on whether the provision is sufficiently clear in practice. Depending on the comment received, the Commission can consider whether to add restatement of that provision to the list of issues for possible future study.

The proposed legislation contains an introductory, explanatory Staff Note.10 This initial Staff Note describes the Commission’s comments, the tables included in the proposed legislation, the Staff Notes, and other helpful information for stakeholders reviewing the proposed legislation. This Staff Note will be reproduced in future drafts of proposed legislation and updated as needed.

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4. Changes the staff made to conform to legislative drafting practice included, where appropriate, eliminating uses of the word “such,” changing uses of the word “which” to “that,” and standardizing citation formats. In rare cases where making these changes requires additional, conforming adjustments, these changes may be flagged in a Staff Note. See, e.g., Staff Note for proposed Section 70925 (Note 1).
5. See Minutes (April 2019), pp. 3-4. Such changes are discussed, for example, in Comments for proposed Sections 70210 and 70230.
6. See, e.g., Staff Notes for proposed Sections 70305 and 70620 (Notes 1 and 2).
7. See, e.g., Staff Notes for proposed Sections 70230 (Note 2), 70370, and 70490 (Note 1).
8. See, e.g., Staff Notes for proposed Sections 70230 (Notes 1 and 3), 70280, 70490 (Note 2), and 70805 (Note 2).
9. See Staff Note for proposed Article 11 (commencing with Section 70570) of Chapter 10.
10. See page i of attached draft proposed legislation.
STRUCTURE OF PROPOSED CHAPTERS 10, 11, & 12

Proposed Chapter 10 relates to a program that provides financial assistance for cleanup of “brownfields” and “underutilized properties.” The chapter is organized into the following articles:

(1) Definitions
(2) General Provisions
(3) Financial Provisions
(4) Loans Generally
(5) Investigating Site Contamination Program
(6) Cleanup Loans and Environmental Assistance to Neighborhoods (“CLEAN”) Program
(7) Review of CLEAN Loan Applications
(8) Conditions for Loan Approval
(9) Obligations of Loan Recipient
(10) Security for Loan
(11) Administering Agency
(12) Emergency Regulations

Proposed Chapter 11 relates to environmental insurance for redevelopment. The chapter is organized into the following articles:

(1) Definitions
(2) Environmental Insurance Products
(3) Subsidies
(4) Liability
(5) Regulations

Proposed Chapter 12 relates to a compensation program for people who are harmed by a release of hazardous substances. The chapter is organized into the following articles:

(1) Financial Provisions
(2) Claims for Compensation
(3) Compensable Losses
(4) Claim Proceedings
(5) Relationship to Other Remedies
(6) Nonadmissibility of Evidence in Other Proceedings
(7) State Recovery from Liable Party
(8) Implementing Rules and Regulations

**PRESUMED CONSENT ITEMS**

At the July 2019 Commission meeting, the Commission expressed a preference that the staff use consent procedures to streamline consideration of purely technical and uncontroversial matters. The staff identified the issues discussed below as potential consent items. This memorandum describes these items using the same level of detail as if these matters would be up for discussion at the Commission’s meeting, but the staff does not plan to present these items at the meeting.

If any Commissioner would like to discuss a consent item, the Commissioner may request discussion at the meeting. In the absence of such a request, the staff will presume that the item was approved by all Commissioners who are present when the Commission takes a vote on the attached draft proposed legislation.

**Unused Definitions**

In Chapters 10 and 11, the first article of the chapter includes defined terms for that chapter. In recodifying those definitions, the staff found that some of the defined terms were not used in the relevant chapter. If the term is not used, the definition has no application and appears to be unnecessary.

For each term that is defined but unused, the staff recommends: (1) proposing to eliminate the definition and (2) requesting comment on whether there is any reason to retain the definition.

**Standard for Emergency Regulations**

Proposed Sections 70620 and 70625, which would recodify Section 25395.29, provide authority to adopt emergency regulations to implement the specified law. Each of these sections specifies that the Office of Administrative Law shall consider such regulations.

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12. See Staff Notes for proposed Article 1 (commencing with Section 70200) of Chapter 10 (proposing discontinuing definition for “implementation costs”) and Article 1 (commencing with Section 70680) of Chapter 11 (proposing discontinuing definitions for “FAIR” and “unforeseen and unexpected response action costs”). The Staff Note for proposed Article 1 (commencing with Section 70200) of Chapter 10 also discusses discontinuing the definition of “regional board” for a different reason (i.e., term is already defined for the part as a whole in proposed Section 68100).
to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.

Formerly, this language was a required standard for adoption of emergency regulations in Government Code Section 11349.6.13 If the Office of Administrative Law determined that regulations did not meet this standard, the office was obligated not to file the emergency regulations with the Secretary of State.14 Thus, it appears that the purpose of the quoted language was to effectively deem that regulations adopted pursuant to Section 25359.29 qualify for treatment as emergency regulations.

The current version of Government Code Section 11349.6 does not, however, contain the language establishing the standard for what constitutes an emergency. In 2006, the language establishing the standard for emergency regulations was moved out of Government Code Section 11349.6 and a definition for “emergency” was enacted.15 Government Code Section 11349.6 currently requires the Office of Administrative Law to disapprove the emergency regulations “if it determines that the situation addressed by the regulations is not an emergency....”16 And, Government Code Section 11342.545 defines “emergency” as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” This language is similar to, but different than, the language quoted above.

In light of these changes to the standard for emergency regulations in the Government Code, the staff believes it makes sense to conform the language of proposed Sections 70620 and 70625. For instance, proposed Section 70620 would instead provide, as follows:

The Office of Administrative Law shall consider the situation addressed by those regulations to be an emergency for purposes of Section 11349.6 of the Government Code.

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13. See former Government Code Section 11349.6, as amended by 2000 Cal. Stat. ch. 1060, § 34. In relevant part, former Government Code Section 11349.6 specifies that the Office of Administrative Law shall not file an emergency regulation “if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.”
16. Gov’t Code § 11349.6(b).
Each of the proposed provisions includes a Staff Note discussing the issue and requesting comment on this proposed change.

In looking at this issue, the staff found that this outdated language was also included in a section addressed earlier in this study, proposed Section 68885.\(^{17}\) The staff proposes to make similar conforming changes to the language of proposed Section 68665.

**Emergency Regulation Duration**

Multiple provisions in this draft authorize the adoption of emergency regulations.\(^{18}\) Each of these provisions contains similar language about the duration of emergency regulations. For example, one of the existing provisions provides:

> Notwithstanding the 120-day limitation in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.\(^{19}\)

This provision refers to a 120-day limitation in Government Code Section 11346.1(e). Formerly, the Government Code section provided for a 120-day limitation, but it was changed to instead provide for a 180-day limitation.\(^{20}\) Given this change, the reference to the 120-day limitation in the quoted language, above, is now obsolete.

The staff considered whether to eliminate these provisions as obsolete altogether, as the Government Code now provides for a 180-day limitation for emergency regulations. However, the staff proposes a more conservative approach of simply eliminating the obsolete language from the relevant provisions. In this way, these provisions would continue to serve as a backstop in the case of future legislative changes that adjust the default time periods for emergency regulations in the Government Code.

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\(^{17}\) See Cumulative Draft attached to Memorandum 2019-61.
\(^{18}\) See proposed Sections 70620, 70625, and 70870.
\(^{19}\) Section 25395.29(a).
Under the staff’s proposed approach, the provision would be continued without the changes shown in strikeout and underscore below.

Notwithstanding the **120-day limitation** time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations...

For each provision referring to the **120-day limitation** in Government Code Section 11346.1(e), the staff proposes replacing the outdated reference to a “120-day limitation” with a reference to “the time period” specified in Government Code Section 11346.1(e). The draft also includes a Staff Note inviting comment on the proposed change.

**COMMISSION DECISION ON THE DRAFT**

Does the Commission tentatively approve the proposed legislation contained in the attached draft for inclusion in a future tentative recommendation?

Respectfully submitted,

Kristin Burford
Staff Counsel
PROPOSED CHAPTERS 10, 11, AND 12 OF PART 2
OF DIVISION 45 OF HEALTH & SAFETY CODE

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. The staff does not plan
to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft,
identify any issues of concern, and then raise those issues for discussion at the meeting or express
their concerns in writing before the meeting, or both. Where a Staff Note serves as a prompt for
public comment, these prompts for comment will typically be continued in the Commission’s
tentative recommendation as “Notes” 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. Those cross-references were updated to reflect the
proposed recodification.
When a cross-reference needs to be updated, but there are questions about the cross-reference
or how it should be updated, the cross-reference is shown in bracketed bold text and a Staff Note
describes the issue and seeks comment on how the provision should be changed.

Public comment. The Commission welcomes public comment on any issue relating to the
content of this draft or any other aspect of its ongoing Recodification of Toxic Substance Statutes
study. Comments should be directed to Kristin Burford (kburfard@clrc.ca.gov).
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DRAFT LEGISLATION

Health & Safety Code §§ 68000-7XXXX (added). Hazardous substance response

SEC. ____. Division 45 (commencing with Section 68000) is added to the Health and Safety Code, to read:

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE


PART 2. HAZARDOUS SUBSTANCE ACCOUNT


CHAPTER 10. CLEANUP LOANS AND ENVIRONMENTAL ASSISTANCE TO NEIGHBORHOODS

Article 1. Definitions

Staff Note. Proposed Article 1 restates Section 25395.20(a). Two definitions in that subdivision were not proposed for continuation. This note identifies those terms and the reason that each definition was not continued. The staff welcomes comment on whether either of these definitions should be continued in the proposed recodification.

(1) Section 25395.20(a)(9) defines “implementation costs.” However, the term is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.

(2) Section 25395.20(a)(17) defines “regional board” as “a California regional water quality control board.” This term is already defined for the part as a whole in proposed Section 68100. Proposed Section 68100 defines “regional board” for this part as “a California regional water quality control board.” For this reason, the redundant definition of “regional board” in Section 25395.20(a)(17) was not continued.

§ 70200. Application of definitions

70200. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 70200 restates the initial clause of former Section 25395.20(a) without substantive change.

§ 70205. “Account”

70205. “Account” means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350.

Comment. Section 70205 continues former Section 25395.20(a)(1) without substantive change.
§ 70210. “Brownfield”

70210. (a) “Brownfield” means property that meets all of the following conditions:

(1) It is located in an urban area.

(2) It was previously the site of an economic activity that is no longer in operation at that location.

(3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this chapter.

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

(1) Property listed, or proposed for listing, on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in paragraph (5) of subdivision (a) of Section 70230.

Comment. Section 70210 continues former Section 25395.20(a)(2) without substantive change. A technical change was made to conform to the standard federal act citation format used in this part.

See Sections 68065 (“federal act”), 68155 (“site”), 70225 (“economic activity”), 70250 (“no longer in operation”), 70260 (“property”), 70280 (“urban area”).

§ 70215. “Cleanup and abatement order”

70215. “Cleanup and abatement order” means an order issued by a regional board pursuant to Section 13304 of the Water Code.

Comment. Section 70215 continues former Section 25395.20(a)(3) without substantive change.

See Section 68100 (“regional board”).

§ 70220. “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or “CLEAN”

70220. “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or “CLEAN” means the loan program established by the department pursuant to Article 6 (commencing with Section 70450), to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

Comment. Section 70220 continues former Section 25395.20(a)(4) without substantive change.

See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70230 (“eligible property”), 70235 (“hazardous material”).
§ 70225. “Economic activity”

70225. “Economic activity” means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

Comment. Section 70225 continues former Section 25395.20(a)(5) without substantive change.

§ 70230. “Eligible property”

70230. (a) “Eligible property” means a site that is any of the following:

(1) A brownfield.

(2) An underutilized property that is a property described in paragraph (5) of subdivision (d) of Section 70275.

(3) An underutilized property that is a property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(4) An underutilized property that is a property, the redevelopment of which will result in any of the following:

(A) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(B) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(C) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(D) Housing for very low, low-, or moderate-income households, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(E) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(5) A brownfield or an underutilized property described in paragraph (3) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(A) A small business.

(B) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4
(commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(C) A small business incubator that is undertaking the expansion with the [assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code].

(b) “Eligible property” does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in paragraph (5) of subdivision (a).

Comment. Section 70230 continues former Section 25395.20(a)(6) and (7) without substantive change. Technical changes were made to correct an erroneous cross-reference and conform to the standard federal act citation format used in this part.


Staff Notes. (1) Section 25395.20(a)(6)(B)(ii), which would be continued in proposed Section 70230(a)(3), refers to a property “located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.”

The Enterprise Zone Act and Government Code Section 7072 have been repealed. See 2013 Cal. Stat. ch. 69, § 2. While these obsolete cross-references could be excised, it is unclear whether the relevant enterprise zones and eligible areas designated under these former provisions may have ongoing effect.

In 2012, legislation “eliminate[d] redevelopment agencies (RDAs) and specific[d] a process for the orderly wind-down of RDA activities.” See Senate Floor Analysis of Assembly Bill 26 (1st Ex. Sess.) (June 15, 2011), p. 1. While redevelopment plans prepared before this change may have continuing effect, this provision is likely to become obsolete over time as old plans expire and no new plans are prepared.

It is unclear whether this provision is obsolete (or will become so soon) or could be adjusted to achieve the intended legislative purpose (and, if so, what changes are needed). The staff welcomes comment on how this provision should be addressed in the recodification.

In addition, two provisions in this draft refer, either directly or indirectly, to this provision. See proposed Sections 70210(b)(3) and 70230(a)(5). Given the possible need to adjust this provision, it is unclear whether the provisions that reference this proposed provision are similarly in need of changes to achieve their intended purpose. The staff also welcomes comment on whether, in light of possible adjustments needed to proposed Section 70230(a)(3), any conforming changes are required in proposed Sections 70210(b)(3) and 70230(a)(5).

(2) Section 253955.20(a)(6)(B)(iii)(IV), which would be continued in proposed Section 70230(a)(4)(D), refers to the definition of “housing for very low, low-, or moderate income
(3) Section 25395.20(6)(C)(iii), which would be continued in proposed Section 70230(a)(5)(C), cross-references two repealed sections related to small business grants and loan guarantees. Although the cross-referenced sections were repealed, it appears that the legislation repealing these sections shifted the authority for small business grant and loan guarantee programs. In 2003, the legislation repealing Gov’t Code Section 15339.3 moved duties related to small business loans from one agency, which was being abolished, to another agency (the Business, Transportation and Housing Agency). See Legislative Counsel’s Digest for Assembly Bill 1757 (2003 Cal. Stat. ch. 229). In 2013, the legislation repealing Corporations Code Section 14090 transferred functions of the Business, Transportation and Housing Agency related to small businesses to a new agency, the California Infrastructure and Economic Development Bank. See Legislative Counsel’s Digest for Assembly Bill 1247 (2013 Cal. Stat. ch. 537). However, it is unclear how the small business grant and loan guarantee program may have changed over this time and whether this provision is obsolete or could be updated to achieve the intended legislative purpose. The staff welcomes comment on how this provision should be addressed in the recodification.

In addition, one section in this draft (proposed Section 70275(e)(3)) cross-references to this provision. Given the possible need to adjust this provision, it is unclear whether the cross-reference to it is also in need of changes to achieve its intended purpose. The staff welcomes comment on whether, in light of possible adjustments needed to proposed Section 70230(a)(5), any conforming changes are required in proposed Section 70275(e)(3).

§ 70235. “Hazardous material”

70235. (a) “Hazardous material” means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 68075.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(4) A substance specified in subdivision (b) of Section 68075.

(b) “Hazardous material” does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

Comment. Section 70235 restates former Section 25395.20(a)(8) without substantive change. See Sections 68075 (“hazardous substance”), 68140 (“response”), 70260 (“property”).

Staff Notes. (1) Section 25395.20(a)(8)(A)(i), which would be continued as proposed Section 70235(a)(1), was restated for clarity. The provision currently provides that “hazardous material” includes:

“A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.”
Reading this provision in isolation, the cross-reference to Section 25317 is somewhat unclear, as Section 25317 lists substances that are excluded from the definition of “hazardous substance” provided in Section 25316. Because other provisions of this chapter address underground fuel tanks that contain petroleum (a substance that is excluded from the definition of “hazardous substance” by Section 25317), it seems reasonably clear that the substances listed in Section 25317 are intended to be “hazardous materials” for the purpose of this law. See Sections 25299.24, 25395.20(a)(11), 25395.28. To make that point more clear, the clause that refers to Section 25317 would be recodified in a separate paragraph (proposed Section 70235(a)(4)). The staff welcomes comment on this proposed restatement.

(2) The definition of “hazardous material” in proposed Section 70235 specifically includes “a waste” as that term is defined in two cited sections. See proposed Section 70235(a)(3). The first cited section, Section 101075, defines the terms “waste” and “hazardous waste.” The definition of “waste” is very broad, including “[a]ny material for which no use or reuse is intended and that is to be discarded.”

The definition of “waste” in the second cited section, Water Code Section 13050, is also broad, including “sewage and any and all other waste substances … associated with human habitation.” Thus, the kinds of “wastes” that are included in this section’s definition of “hazardous material” seem to include waste that is not hazardous (like nonhazardous household garbage). That result probably stems from a drafting oversight. Nonetheless, the plain meaning of the existing language is clear. It does, by its terms, include such waste.

Given the nonsubstantive nature of this study, the apparent oversight cannot be addressed in this recodification. It may be appropriate to add this issue to the list of substantive issues for possible future study. The staff welcomes comment on this issue.

§ 70240. “Investigating site contamination program”

70240. “Investigating site contamination program” means the loan program established by the department pursuant to Article 5 (commencing with Section 70400) to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

Comment. Section 70240 continues former Section 25395.20(a)(10) without substantive change.

See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70210 (“brownfield”), 70260 (“property”).

§ 70245. “Leaking underground fuel tank”

70245. “Leaking underground fuel tank” has the same meaning as “tank,” as defined in Section 25299.24.

Comment. Section 70245 continues former Section 25395.20(a)(11) without substantive change.

§ 70250. “No longer in operation”

70250. “No longer in operation” means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

Comment. Section 70250 continues former Section 25395.20(a)(12) without substantive change.
See Sections 70225 (“economic activity”), 70260 (“property”).

§ 70255. “Project”

70255. “Project” means any response action, and the planned future development, included in an application for a loan pursuant to Article 6 (commencing with Section 70450).

Comment. Section 70255 continues former Section 25395.20(a)(13) without substantive change.

§ 70260. “Property”

70260. “Property” means real property, as defined in Section 658 of the Civil Code.

Comment. Section 70260 continues former Section 25395.20(a)(14) without substantive change.

§ 70265. “Small business”

70265. “Small business” means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

Comment. Section 70265 continues former Section 25395.20(a)(15) without substantive change.

§ 70270. “State board”

70270. “State board” means the State Water Resources Control Board.

Comment. Section 70270 continues former Section 25395.20(a)(18) without substantive change.

§ 70275. “Underutilized property”

70275. “Underutilized property” means property that meets all of the following conditions:

(a) It is located in an urban area.

(b) An economic activity is conducted on the property.

(c) It is the subject of a proposal for development pursuant to this chapter.

(d) One of the following applies:

(1) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(2) The economic activity on the property employs less than 25 percent of the property for productive purposes.
(3) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(4) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(5) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this chapter and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(e) An underutilized property does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in paragraph (5) of subdivision (a) of Section 70230.

Comment. Section 70275 continues former Section 25395.20(a)(16) without substantive change. A technical change was made to conform to the standard federal act citation format used in this part.

See Sections 68065 (“federal act”), 68155 (“site”), 70210 (“brownfield”), 70225 (“economic activity”), 70255 (“project”), 70260 (“property”), 70280 (“urban area”).

§ 70280. “Urban area”

70280. “Urban area” means either of the following:

(a) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(b) An urbanized area as defined in [paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code].

Comment. Section 70280 continues former Section 25395.20(a)(19) without substantive change.

See Section 68085 (“person”).

Staff Note. Section 25395.20(a)(19)(2), which would be continued in proposed Section 70280(b), refers to an urbanized area as defined in Public Resources Code Section 21080.7(b)(2). The referenced section was repealed in 2003. See 2002 Cal. Stat. ch. 1039, § 7. It is unclear how that cross-reference should be updated. The staff welcomes comment on this issue.

Based on the history of Public Resources Code Section 21080.7, the staff identified two candidates for replacing the obsolete cross-reference, based on the historical legislative record:

(1) Before its repeal, Public Resources Code Section 21080.7 cross-referred to “urbanized areas” designated by the U.S. Census Bureau. See former Pub. Res. Code § 21080.7, as amended by 1993 Cal. Stat. ch. 1130, § 6. The cross-reference could be updated to incorporate the
substance of the former rule (i.e., it could refer to urbanized areas designated by the U.S. Census Bureau). See, e.g., https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html.

(2) The legislation that repealed Public Resources Code Section 21080.7 also added a new section that defines “urbanized area.” See Pub. Res. Code § 21071. That new definition of “urbanized area” is significantly different from the one in the repealed provision. The current definition focuses on incorporated areas above a specified population threshold and unincorporated areas that meet specified criteria (related to population, compact development, and location in proximity to incorporated areas or urban growth boundaries). The cross-reference could be updated to refer to the new definition of “urbanized area” in Public Resources Code Section 21071.

Looking beyond the legislative history, one could identify other reasonable candidates to replace this outdated cross-reference. For instance, the staff received informal input from DTSC staff that, from a practical perspective, the definition of “urban area” in Section 25395.79.2 would be a good alternative. Although this option may be preferable from a practical perspective, such a change would likely be seen as substantive. Rather than replacing the cross-reference at this time, it may be appropriate to include this provision on the list of substantive issues for possible future study so that a more robust set of options could be considered.

Article 2. General Provisions

§ 70300. Governing law

70300. Except as provided in Sections 70570 and 70575, any response action carried out under this chapter shall be conducted in accordance with the requirements of this part and Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 70300 continues the first sentence of former Section 25395.27(a)(1) without substantive change. See Section 68140 (“response”).

§ 70305. Administering agency

70305. (a)(1) Notwithstanding Section 70300, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Article 11 (commencing with Section 70570).

(2) A person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260) of Division 20.

(b)(1) For purposes of this article, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Article 11 (commencing with Section 70570), as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this chapter.
(2) Upon the approval of a loan under Article 7 (commencing with Section 70480), the department shall notify the Site Designation Committee of the administering agency for the site.

Comment. Section 70305 restates the second sentence of former Section 25395.27(a)(1) and the continues the whole of former Section 25395.27(a)(2) without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68155 (“site”), 70270 (“state board”).

Staff Note. The second sentence of Section 25395.27(a)(1), which would be restated in proposed Section 70305(a), was restated to break the sentence into two sentences and to conform to the separate recodification of the first sentence of Section 25395.27(a)(1) as proposed Section 70300.

Currently, the second sentence of Section 25395.27(a)(1) reads:

“However, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Section 25395.28, and a person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260)”.

The restatement of this provision is intended to be nonsubstantive. The staff welcomes any comment on this proposed restatement.

§ 70310. References to “hazardous substance”

70310. For sites that are the subject of a loan under this chapter, all references in this part to a hazardous substance shall be deemed to be a reference to a hazardous material.

Comment. Section 70310 continues former Section 25395.27(b) without substantive change.

See Sections 68075 (“hazardous substance”), 68155 (“site”), 70235 (“hazardous material”).

Staff Note. Proposed Section 70310, by its terms, would seem to broaden the application of every provision of Chapter 6.8 that governs “hazardous substances” so that they also apply to “hazardous materials” (a broader class of materials) on a site that receives a loan under this proposed chapter. Compare proposed Section 68075 (“hazardous substance”) with proposed Section 70235 (“hazardous material”).

In some cases, the purpose of that rule of construction seems clear. If a loan is granted to conduct a response action at a site that contains hazardous materials (the broader class), that response must be conducted under the rules that govern a response action at a site that contains hazardous substances (the narrower class). In other words, one must read the provisions that govern such a response action as if they refer to (and therefore apply to) “hazardous materials” rather than “hazardous substances.”

For provisions of Chapter 6.8 that do not govern response actions, it seems less clear how those rules should apply to sites that received a loan. The staff welcomes comment on the intended effect of this provision and whether it has caused any confusion in practice.

§ 70315. Application of part

70315. Except as provided in Sections 70570 and 70575, this part shall apply to a site that is the subject of a loan under this chapter, regardless of whether the site is on the list created pursuant to Article 5 (commencing with Section 68760) of Chapter 4.
Comment. Section 70315 continues former Section 25395.27(c) without substantive change.
See Section 68155 (“site”).

§ 70320. Construction of chapter
70320. (a) Except as provided in Section 25264, this chapter shall not be construed to limit the authority of the department, the regional board, or the state board to take any action otherwise authorized under any other provision of law.
(b) This chapter shall not be construed to limit, extend, or affect local land use and zoning authority.

Comment. Section 70320(a) continues former Section 25395.27(d) without substantive change. Subdivision (b) continues former Section 25395.26(e) without substantive change.
See Sections 68050 (“department”), 68100 (“regional board”), 70270 (“state board”).

§ 70325. Required posting
70325. (a)(1) The department shall post, and update at least monthly, a list of loan applications received pursuant to this chapter on the department’s internet website.
(2) The list shall include the name of the applicant, the location of the property that is the subject of the loan application, the administering agency, and a contact at the department for further information.
(b) The department shall also annually post on that website a summary of the response action status for each site with a loan approved under Article 7 (commencing with Section 70480).

Comment. Section 70325 continues former Section 25395.27(e) without substantive change.
See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 70260 (“property”).


§ 70350. Cleanup Loans and Environmental Assistance to Neighborhoods Account
70350. The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this chapter, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with Section 70355. All of the following moneys shall be deposited in the account:
(a) Funds appropriated by the Legislature for the purposes of this chapter.
(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.
(c) Proceeds from loan repayments.
(d) Proceeds from the sale of property pursuant to this chapter that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

Comment. Section 70350 continues former Section 25395.20(b) without substantive change. See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 68140 (“response”), 70205 (“account”), 70210 (“brownfield”), 70260 (“property”).

§ 70355. Appropriation and expenditure
70355. (a) Except as provided in subdivision (b), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Articles 5 (commencing with Section 70400) and 6 (commencing with Section 70450) and for the purpose of providing subsidies for environmental insurance pursuant to Chapter 11 (commencing with Section 70680), the California Financial Assurance and Insurance for Redevelopment Program.

(b) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Chapter 11 (commencing with Section 70680)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

Comment. Section 70355 continues former Section 25395.20(c) without substantive change. See Sections 68040 (“agency”), 68050 (“department”), 68100 (“regional board”), 70205 (“account”), 70270 (“state board”).

Staff Note. Section 25395.20(c)(2) twice refers to “the California Financial Assurance and Insurance for Redevelopment Program.” In one instance, the reference contains an erroneous citation to the relevant law. Both references have been updated to refer to the proposed recodification of that law.

Article 4. Loans Generally

§ 70370. Ineligible persons
70370. The following persons are not eligible to apply for a loan under this chapter:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under former Section 25395.13 (repealed by Section 73 of Chapter 39 of the California Statutes of 2012).

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.
(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this chapter.

Comment. Section 70370 restates former Section 25395.30 without substantive change. This provision was restated to update a cross-reference to a repealed section by specifying that the reference is to a “former” section and including the citation to the legislation repealing that section.

See Sections 68085 (“person”), 68140 (“response”), 68150 (“secretary”), 68155 (“site”), 70235 (“hazardous material”).

Staff Note. Section 25395.30 designates persons convicted under “Section 25395.13” as ineligible for a loan. The cross-referenced section is offered as an example of a criminal law related to the regulation of hazardous materials. The cross-referenced section was repealed in 2012. See 2012 Cal. Stat. ch. 39, § 73. The cross-reference was updated to refer to the “former” section and provide a citation to the law repealing that section. Because this cross-reference is simply an illustrative example, updating it to refer to the former section seems unproblematic. Absent comment, the staff will presume this cross-reference update is correct.

§ 70375. Interest rate for loans

70375. The rate of interest to be applied to loans made pursuant to this chapter shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 70520.

Comment. Section 70375 continues former Section 25395.31 without substantive change.

§ 70380. Reporting on loan program

70380. On or before January 10 of each year when a loan under this chapter is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the internet website of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Article 5 (commencing with Section 70400), the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to Section 70425.

(c) The number and dollar amount of loans approved pursuant to Article 7 (commencing with Section 70480), the number and dollar amount of those loans
that have been repaid, and the number and dollar amount of those loans that are in
default.
(d) The number of preliminary endangerment assessments completed pursuant
to agreements entered into under this chapter.
(e) The number of sites where necessary response actions have been completed
pursuant to agreements entered into under this chapter.

Comment. Section 70380 continues former Section 25395.32 without substantive change.
See Sections 68040 (“agency”), 68095 (“preliminary endangerment assessment”), 68140
(“response”), 68150 (“secretary”), 68155 (“site”).

Article 5. Investigating Site Contamination Program

§ 70400. Establishment of program
70400. The department, with the approval of the secretary, shall establish an
Investigating Site Contamination Program to provide loans to eligible persons to
conduct preliminary endangerment assessments of brownfields and underutilized
properties. A loan provided pursuant to this article shall not be used for the cost of
a phase I environmental assessment or the department’s oversight of the
preparation and approval of the preliminary endangerment assessment.

Comment. Section 70400 continues former Section 25395.21(a) without substantive change.
See Sections 68050 (“department”), 68085 (“person”), 68090 (“phase I environmental
assessment”), 68095 (“preliminary endangerment assessment”), 68150 (“secretary”), 68155
(“site”), 70210 (“brownfield”), 70240 (“investigating site contamination program”).

§ 70405. Loan application
70405. The department shall develop a loan application form for an
investigating site contamination program loan and shall include, in the form, any
provisions that the department considers to be appropriate. The application form
shall be signed by the loan applicant and shall be submitted to the department with
all of the following documentation:
(a) The phase I environmental assessment for the property that is the subject of
the loan application.
(b) Information that demonstrates that the property is a brownfield or an
underutilized property.
(c) If the owner of the property that is the subject of the loan application is not
the loan applicant, one of the following:
(1) Documentation that demonstrates that the owner consents to the performance
of the preliminary endangerment assessment of the property.
(2) A copy of an agreement between the property owner and the loan applicant
that gives the loan applicant an option to purchase the property.
(3) If the loan applicant is a local government entity, or a developer or
prospective purchaser acting together with a local government entity pursuant to
an enforceable agreement, a demonstration to the department that the local
government entity, or developer or prospective purchaser acting together with the
local government entity pursuant to an enforceable agreement, has legal access to
perform the preliminary endangerment assessment at the property, or will have
legal access, prior to receiving loan funds.

(d) Any other information the department deems necessary.

Comment. Section 70405 continues former Section 25395.21(b) without substantive change.
See Sections 68050 (“department”), 68090 (“phase I environmental assessment”), 68095
(“preliminary endangerment assessment”), 68155 (“site”), 70210 (“brownfield”), 70240
(“investigating site contamination program”), 70260 (“property”), 70275 (“underutilized
property”).

§ 70410. Decision on loan application

70410. The department shall determine whether to approve a loan application
pursuant to this article based upon the information submitted pursuant to Section
70405. In making a decision regarding whether to approve a loan application, the
department shall approve a loan pursuant to this article for a property only if the
department determines the property is a brownfield or an underutilized property.

Comment. Section 70410 continues former Section 25395.21(c) without substantive change.
See Sections 68050 (“department”), 70210 (“brownfield”), 70260 (“property”), 70275
(“underutilized property”).

§ 70415. Maximum loan amount

70415. The maximum amount of a loan granted pursuant to this article shall not exceed one hundred thousand dollars ($100,000).

Comment. Section 70415 continues former Section 25395.21(d) without substantive change.

§ 70420. Loan repayment

70420. (a) Except as provided in subdivision (b) and in Section 70425, upon
approval of the loan application by the department, the loan recipient shall execute
an agreement with the department to repay the loan over a period not to exceed
three years.

(b) If the loan is to a local government entity, or to a developer or prospective
purchaser acting together with a local government entity pursuant to an
enforceable agreement, the department may delay the beginning of the loan
repayment period.

(c) Except as provided in subdivision (d), the agreement made pursuant to
subdivision (a) shall require that if the loan recipient recovers from a responsible
party any costs incurred in taking a response action at the site that is the subject of
the loan application, any money so recovered, except for reasonable costs and the
fees incurred to recover that money, shall be used first to repay the loan or repay
the grant.

(d) Notwithstanding subdivision (c), a loan recipient is not required to first use
the money recovered to repay the loan or grant, if the recipient can demonstrate, to
the satisfaction of the department, that the recovered money is necessary to, and is
being applied to, the total environmental remediation of the property, and that the
total of the recovered money and the loan amount does not exceed the cost of
remediation.

Comment. Section 70420 continues former Section 25395.21(e) without substantive change.
See Sections 68050 (“department”), 68140 (“response”), 68145 (“responsible party”), 68155
(“site”), 70260 (“property”).

§ 70425. Waiver of loan repayment

70425. If a loan recipient who is not the owner of the property and the
department determine, after the completion of the preliminary endangerment
assessment, that the sum of the cost of remediation and the property purchase price
makes the redevelopment of the property not economically feasible, the
department may waive the repayment of up to 75 percent of the loan, and the
amount waived shall be deemed a grant to the loan recipient. If the department
waives the repayment of part of the loan, the recipient shall repay the remaining
portion of the loan within one year of that waiver.

Comment. Section 70425 continues former Section 25395.21(f) without substantive change.
See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70260
(“property”).

§ 70430. Oversight agreement

70430. Upon approval of a loan, the recipient shall enter into an agreement with
the department for the department to provide regulatory oversight of the
preparation and approval of the preliminary endangerment assessment.

Comment. Section 70430 continues former Section 25395.21(g) without substantive change.
See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”).

§ 70435. Nonliability for oversight costs

70435. Notwithstanding any requirement of Division 20 or this part regarding
cost recovery or reimbursement for oversight costs, a loan recipient is not liable
for paying the department’s cost associated with the oversight of the preparation
and approval of the preliminary endangerment assessment if the department
determines there are sufficient funds in the account to reimburse the department
for that oversight. If the department determines that the account has insufficient
funds to pay for the oversight costs associated with the oversight of the
preparation and approval of the preliminary endangerment assessment, the loan
recipient shall pay the department the amount of those costs.

Comment. Section 70435 continues former Section 25395.21(h) without substantive change.
See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70205
(“account”).
Article 6. Cleanup Loans and Environmental Assistance to Neighborhoods Program

§ 70450. Establishment of CLEAN Program

70450. The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property.

Comment. Section 70450 continues the first sentence of former Section 25395.22(a) without substantive change.

See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 68150 (“secretary”), 70220 (“Cleanup Loans and Environmental Assistance to Neighborhoods Program”), 70230 (“eligible property”), 70235 (“hazardous material”).

§ 70455. CLEAN loan application

70455. The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(a) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(b) The name and address of the project coordinator for the site and the résumé of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(c) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Article 7 (commencing with Section 70480), sufficient information to enable the department to determine the priority score for the property.

(d) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(e) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, one of the following:

(1) Documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.
(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(f) Any other information the department deems necessary.

Comment. Section 70455 continues former Section 25395.22(b) without substantive change.


§ 70460. Use of CLEAN loan funds

70460. (a) A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this article may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California.

(b) A loan provided pursuant to this article shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department’s oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

Comment. Section 70460 continues the second and fourth sentences of former Section 25395.22(a) without substantive change.


§ 70465. Use of CLEAN loans by local government

70465. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments.

Comment. Section 70465 continues the third sentence of former Section 25395.22(a) without substantive change.

See Section 68050 (“department”), 70220 (“Cleanup Loans and Environmental Assistance to Neighborhoods Program”).
Article 7. Review of CLEAN Loan Applications

§ 70480. Approval of CLEAN loans

70480. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Article 6 (commencing with Section 70450).

(b) The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

Comment. Section 70480 continues former Section 25395.23(a) without substantive change. See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 68150 (“secretary”), 70230 (“eligible property”), 70235 (“hazardous material”).

§ 70485. Ranking loan applications

70485. If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in Section 70490. The department shall approve loans for a project based on its priority scores.

Comment. Section 70485 continues former Section 25395.23(b) without substantive change. See Section 68050 (“department”).

§ 70490. Factors for ranking loan applications

70490. The system for ranking loan applications pursuant to Section 70485 shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(a) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(b) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(c) The potential for the project to provide additional protection of the public health and safety.
(d) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

1. The creation of new jobs.
2. Generation of additional tax revenue.
3. The likelihood that the project will stimulate additional redevelopment in adjacent areas.
4. The degree to which implementation of the project will improve local property values.
5. The degree to which implementation of the project will result in the development of new parks.
6. The extent to which the project may have a beneficial effect on the construction of new schools.
7. The extent to which the project will result in the construction of affordable inner-city housing.
8. The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.
9. The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.
10. The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.
11. The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.
12. The degree of likelihood that the response action would not be completed if a loan pursuant to Article 6 (commencing with Section 70450) is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.
13. The ability to obtain conventional financing absent a loan under this program.

**Comment.** Section 70490 restates former Section 25395.23(c) without substantive change. This section corrects the cross-reference to the Mello-Roos Community Facilities Act of 1982. See Sections 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70255 (“project”), 70260 (“property”).

**Staff Note.** Section 25395.23(c)(2) refers to financing “under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).” In 2012, existing redevelopment agencies were barred from undertaking new obligations and were dissolved. See CLRC Staff Memorandum 2012-7, pp. 9-13. In addition, revenues that would have been allocated to a redevelopment agency are allocated to a fund that is administered for the benefit of those to which the redevelopment agency had an enforceable obligation. See id. at 12-13; see also 2011 Cal. Stat. ch. 5 (ABx1 26 (Blumenfield)). It is unclear whether projects could still be receiving
The staff welcomes comment on whether this reference to financing under the Community Redevelopment Law is obsolete.

Article 8. Conditions for Loan Approval

§ 70500. Maximum loan amount

70500. The department may approve all, or part of, a loan request pursuant to Article 7 (commencing with Section 70480), except the maximum amount of a loan approved pursuant to Article 7 (commencing with Section 70480) shall not exceed two million five hundred thousand dollars ($2,500,000).

Comment. Section 70500 continues former Section 25395.24(a) without substantive change.

§ 70505. Percentage of debt to future value

70505. The department shall not approve a loan pursuant to Article 7 (commencing with Section 70480) if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

Comment. Section 70505 continues former Section 25395.24(b) without substantive change.

Article 9. Obligations of Loan Recipient

§ 70520. Obligations

70520. Upon the approval of a loan pursuant to Article 7 (commencing with Section 70480), the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2)(A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.
(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b)(1) Enter into an agreement with the department or with the regional board or state board pursuant to Article 11 (commencing with Section 70570) for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department’s costs pursuant to this chapter or the regional board’s or state board’s costs pursuant to Article 11 (commencing with Section 70570) associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department’s costs pursuant to this chapter or the regional board’s or state board’s costs pursuant to Article 11 (commencing with Section 70570) for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department’s costs pursuant to this chapter or the regional board’s or state board’s costs pursuant to Article 11 (commencing with Section 70570) for the amount of those costs.

(c)(1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in Section 70730, from the insurance company selected by the secretary pursuant to Section 70760, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 70800.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance
products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

Comment. Section 70520 continues former Section 25395.25 without substantive change.


Staff Notes. (1) Section 25395.25(c)(1) refers to an insurance company “selected by the secretary pursuant to subdivision (b) of Section 25395.41.” Section 25395.41(b) has been proposed for recodification as several sections (proposed Sections 70755, 70760, and 70765). Proposed Section 70760 continues the provision authorizing the secretary to select a state-authorized environmental insurance provider. The other provisions do not appear to be relevant for the purposes of this cross-reference. For this reason, the cross-reference has been updated to refer to proposed “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.

(2) Section 25395.25(c)(2)(A) references the “subsidies authorized pursuant to Section 25395.42.” Section 25395.42 is proposed for recodification as two sections (proposed Sections 70800 and 70805). This cross-reference was updated to refer only to proposed Section 70800, which authorizes the use of funds to provide subsidies. Absent comment on this proposed cross-reference update, it will be presumed correct.

Article 10. Security for Loan

§ 70540. Security required

70540. (a) A loan approved pursuant to Article 7 (commencing with Section 70480) shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state’s interest.

(b) The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department.

(c)(1) The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this article.

(2) Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this chapter shall be deposited in the account.

Comment. Section 70540 continues former Section 25395.26(a) without substantive change.

See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70205 (“account”), 70235 (“hazardous material”), 70260 (“property”).

§ 70545. Liability of security interest holder

70545. (a) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in Section 70540 or because the department
acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this chapter.

(b) Chapter 6.96 (commencing with Section 25548) of Division 20 does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to Section 70540.

Comment. Section 70545 continues former Section 25395.26(b) and (c) without substantive change.
See Sections 68040 (“agency”), 68050 (“department”), 68150 (“secretary”), 70205 (“account”), 70260 (“property”).

§ 70550. Application of other laws

70550. (a) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this chapter.

(b) The acquisition of a property pursuant to this chapter through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(c) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this chapter at the property’s current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

Comment. Section 70550 continues former Section 25395.26(d) without substantive change. See Section 68050 (“department”), 70260 (“property”).

Article 11. Administering Agency

Staff Note. This article contains provisions continuing Section 25395.28. This section is quite lengthy and has been proposed for recodification as several sections. While this appears to be an improvement, the language of existing Section 25395.28 is difficult to follow. It seems that this provision would benefit from further restatement for clarity. The staff welcomes comment on whether Section 25395.28 is sufficiently clear in practice.

§ 70570. Administering agency for leaking underground fuel tank property

70570. (a) Except as provided in subdivision (b) and Section 70575, upon the request of a regional board or the state board, the administering agency for any site that is the subject of a loan approved under Article 7 (commencing with Section 70480) shall be a regional board, the state board, or a local oversight program agency under contract with the state board in accordance with Chapter 6.7 (commencing with Section 25280) of Division 20 and Chapter 6.75 (commencing with Section 25299.10) of Division 20, if the property is subject to a release from a leaking underground fuel tank and the release from the leaking underground fuel
tank is the principal threat at that property, as determined by the regional board, the state board, and the department.

(b) If the site specified in subdivision (a) was not subject to oversight by a local oversight program agency prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 70450), the regional board shall serve as the administering agency.

(c) Any response action for a property subject to this section for a leaking underground fuel tank shall be carried out under Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75 (commencing with Section 25299.10) of Division 20.

Comment. Section 70570 continues former Section 25395.28(a) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140 (“response”), 68155 (“site”), 70245 (“leaking underground fuel tank”), 70260 (“property”), 70270 (“state board”).

§ 70575. Administering agency for site subject to Water Code orders or agreements

70575. (a) Upon the request of a regional board, the regional board shall be the administering agency for a property specified in Section 70570, if the site is subject to one or more of the following orders or agreements under Division 7 (commencing with Section 13000) of the Water Code prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 70450):

(1) A cleanup and abatement order.
(2) Other cleanup order issued by a regional board.
(3) A written voluntary agreement with a regional board.

(b) Any response action for a site subject to this section shall be carried out pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 70575 continues former Section 25395.28(b) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68155 (“site”), 70215 (“cleanup and abatement order”), 70260 (“property”).

§ 70580. Request for department to be administering agency

70580. Notwithstanding Sections 70570 and 70575, the regional board and the state board, in consultation with the department, may request the department to be the administering agency for a property subject to this article.

Comment. Section 70580 continues former Section 25395.28(c) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 70260 (“property”), 70270 (“state board”).

§ 70585. Administering agency for site subject to multiple agreements or orders

70585. Notwithstanding Section 70575, if a regional board has issued a cleanup order or entered into a written voluntary agreement under Division 7 (commencing with Section 13000) of the Water Code for a site and the department has issued an
order or entered into an enforceable agreement under Chapter 6.5 (commencing with Section 25100) of Division 20 or this part, the regional board and the department shall consult and determine which agency shall be the administering agency for the site under this chapter.

Comment. Section 70585 continues former Section 25395.28(d) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68155 (“site”).

§ 70590. Notice of loan application

70590. The department shall provide a written notice of the receipt of a loan application under Article 6 (commencing with Section 70450), including the name and address of the loan applicant and the location of the property, to both of the following:
(a) A regional board for any property within that regional board’s jurisdiction.
(b) The state board for any property that contains a leaking underground fuel tank.

Comment. Section 70590 continues former Section 25395.28(e) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 70245 (“leaking underground fuel tank”), 70260 (“property”), 70270 (“state board”).

§ 70595. Election to oversee response action

70595. The regional board or state board shall respond with a written notice to the department within 20 working days after receipt of the notice or information provided pursuant to Section 70590 indicating whether the regional board or a local oversight program agency under contract with the state board will oversee the response action pursuant to this article. If the regional board or state board does not provide this notice within that time period, the regional board or state board shall be deemed to have elected not to oversee the response action.

Comment. Section 70595 continues former Section 25395.28(f) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 70245 (“response”), 70270 (“state board”).

§ 70600. Reimbursement for oversight costs

70600. (a) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the department shall reimburse the regional board or state board from the account for oversight costs, if all of the following occur:
(1) The department determines, pursuant to paragraph (2) of subdivision (b) of Section 70520, that there are sufficient funds in the account.
(2) The department receives the report required upon completion of the response action under Section 70605.
(3) The regional board or a local oversight program agency under contract with the state board, as appropriate, certifies that it is not eligible to be reimbursed for oversight costs from any other fund or account, including, but not limited to, the
Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20.

(b) If the department determines pursuant to paragraph (2) of subdivision (b) of Section 70520 that the account has insufficient funds, the regional board or state board shall recover its oversight costs from the loan recipient, and the department shall not be liable for these oversight costs.

(c) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the recipient of a loan approved pursuant to Article 7 (commencing with Section 70480) shall enter into an agreement with the regional board or the state board under paragraph (1) of subdivision (b) of Section 70520 for the oversight and approval of the response action at the site, prior to the release of loan funds by the department. The agreement shall meet the requirements specified in the regulations adopted pursuant to Article 12 (commencing with Section 70620).

Comment. Section 70600 continues former Section 25395.28(g) and (h) without substantive change.

§ 70605. Reporting and notification of completion

70605. If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this article, the regional board or the state board shall do both of the following:

(a) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(b) Notify the department upon completion of the response action.

Comment. Section 70605 continues former Section 25395.28(i) without substantive change.

§ 70610. Application of article

70610. This article does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Comment. Section 70610 continues former Section 25395.28(j) without substantive change.

Article 12. Emergency Regulations

§ 70620. Authority to adopt emergency regulations

70620. (a) The department may adopt regulations to implement this chapter as emergency regulations. The Office of Administrative Law shall consider the
situation addressed by those regulations to be an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 70620 restates former Section 25395.29(a) without substantive change. See Sections 68050 (“department”), 68150 (“secretary”).

Staff Notes. (1) Section 25395.29(a) requires the Office of Administrative Law to “consider [] regulations [adopted to implement this chapter] to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.” Government Code Section 11349.6 used to include this language as a standard for enactment of emergency regulations. See former Government Code Section 11349.6, as amended by 2000 Cal. Stat. ch. 1060, § 34.

Thus, the purpose of the quoted language in Section 25395.29(a) was to essentially deem regulations adopted under this chapter to qualify as emergency regulations pursuant to Government Code Section 11349.6.

Section 11349.6 was revised to replace this standard for the enactment of emergency regulations with a requirement that the situation addressed by the regulation be an emergency. The standard for what constitutes an emergency is now found in Government Code Section 11342.545, which defines “emergency” as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”

Proposed Section 70620(a) has been restated to conform to these changes. This change is intended to continue the legislative policy of deeming regulations adopted pursuant to this provision to qualify for treatment as emergency regulations. The staff requests comment on this proposed update.

(2) Section 25395.29(a) also provides that, “[n]otwithstanding the 120-day limitation specified in” Government Code Section 11346.1(e), a 180-day period applies for these regulations. The cross-referenced Government Code provision currently provides for a 180-day limitation period. For this reason, the reference to a 120-day period is obsolete. The language was restated to read “[n]otwithstanding the time period specified in” Government Code Section 11346.1, without any reference to 120 days.

Because the time periods specified in Government Code Section 11346.1(e) and Section 25395.29 are now the same (i.e., 180 days), this provision may be surplus. However, if Government Code Section 11346.1(e) were to be amended in the future, to provide a different period of effect for emergency regulations, this provision would once again have its originally intended effect of providing a 180-day period for emergency regulations adopted under Section 25395.29 (notwithstanding the general rule for emergency regulations). For that reason, the staff has retained the provision in this draft. The staff welcomes comment on the proposed treatment of this provision.

§ 70625. Authority to adopt emergency regulations for Chapter 548 of the Statutes of 2001

70625. (a) The department may adopt emergency regulations to implement the changes made by Chapter 548 of the Statutes of 2001. The Office of Administrative Law shall consider the situation addressed by the regulations
adopted pursuant to this section, to be an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 70625 restates former Section 25395.29(b) without substantive change. See Sections 68050 (“department”), 68150 (“secretary”).

Staff Notes. (1) Section 25395.29(b), which would be restated in proposed Section 70625, appears to be largely a transitional provision, authorizing emergency regulations to address specified legislative changes. Nearly 20 years have passed since the relevant legislation was enacted, so it seems likely that the need for emergency regulations has ended. Moreover, the authority provided by this proposed section appears to be largely redundant. Proposed Section 70620 would appear to provide authority for emergency regulations with respect to nearly all of the changes in the relevant legislation. See 2001 Cal. Stat. ch. 548 (only Section 25264 appears to be outside of the scope of proposed Section 70620). The staff welcomes comment on whether this provision has continuing effect in practice.

(2) If this proposed section has continuing effect, the staff invites comment on the following issues:

- Section 25395.29(b) provides authority to adopt emergency regulations to implement “changes made by the act of the 2001-02 Regular Session of the Legislature that amends this section.” This reference was updated to cite to the statute chapter for the relevant legislation (i.e., 2001 Cal. Stat. ch. 548). Absent comment, this change will be presumed correct.
- Section 25395.29(b) contains an out-of-date reference to the standard for emergency regulations. This issue is more fully described in Note #1 to proposed Section 70620. The language of proposed Section 70625 was restated to better coordinate with the current language of Government Code Section 11349.6.
- Proposed Section 70625 would replace an obsolete reference to a 120-day limit for emergency regulations. As with proposed Section 70620 and discussed in Note #2 for that provision, this provision references Government Code Section 11346.1(e), which no longer provides for a 120-day limitation for emergency regulations. Government Code Section 11346.1(e) now provides for 180 days. The obsolete 120-day language was replaced with a reference to the “time period specified in” Government Code Section 11346.1(e).

CHAPTER 11. CALIFORNIA FINANCIAL ASSURANCE AND INSURANCE FOR REDEVELOPMENT PROGRAM

Article 1. Definitions

Staff Note. Proposed Article 1 would restate Section 25395.40. Two definitions in the section would not be continued:

(1) Section 25395.40(f) defines the acronym “FAIR” as “the Financial Assurance and Insurance for Redevelopment Program….” However, the acronym is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.
(2) Section 25395.40(m) defines “unforeseen and unexpected response action costs.” However, this term is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.

The staff welcomes comment on whether either of these definitions should be continued in the proposed recodification.

§ 70680. Application of definitions
70680. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 70660 restates the initial clause of former Section 25395.40 without substantive change.

§ 70685. “CLEAN Program”
70685. “CLEAN Program” means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 70450.

Comment. Section 70685 continues former Section 25395.40(a) without substantive change.

Staff Note. Section 25395.40(a) refers to a loans and assistance program established pursuant to “Section 25395.22.” Section 25395.22 has been proposed for recodification as several provisions in this recodification. The cross-reference was updated to refer to proposed Section 70450, which continues the provision of Section 25395.22 that provides for the establishment of the program. Absent comment, this proposed cross-reference update will be presumed correct.

§ 70690. “Cost overrun insurance”
70690. (a) “Cost overrun insurance” means insurance that covers some, or all of the response costs caused by a known pollution condition at a site, that exceed the estimated response action costs that have been accepted and approved by the insurer, based on information from the department and other relevant sources at the time the insurance is first obtained.

(b) Cost overrun insurance shall, at a minimum, provide for all of the following:
(1) The response costs in excess of the estimated response action costs that have been accepted and approved by the insurer.
(2) A policy period of sufficient length to cover the duration of the response activities, not including post-completion operation and maintenance.
(3) A self-insured retention amount not to exceed 25 percent of the estimated response action costs that have been accepted and approved by the insurer.

Comment. Section 70690 continues former Section 25395.40(b) without substantive change. See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 70705 (“estimated response action costs”), 70720 (“pollution condition”), 70735 (“self-insured retention amount”).

§ 70695. “Eligible property”
70695. “Eligible property” has the same meaning as defined in subdivision (a) of Section 70230.

Comment. Section 70695 continues former Section 25395.40(c) without substantive change.
§ 70700. “Environmental insurance”

70700. “Environmental insurance” means insurance intended to limit the liability associated with the discovery and cleanup of a hazardous material release, including secured creditor insurance, pollution liability insurance, and cost overrun insurance, and any other insurance product that the secretary selects to be provided pursuant to Article 2 (commencing with Section 70750).

Comment. Section 70700 restates former Section 25395.40(d) without substantive change. This provision was restated to singularize the phrase “hazardous materials release.” This is a nonsubstantive change. See Section 13.

See Sections 68105 (“release”), 68150 (“secretary”), 70690 (“cost overrun insurance”), 70710 (“hazardous material”), 70725 (“pollution liability insurance”), 70730 (“secured creditor insurance”).

§ 70705. “Estimated response action costs”

70705. “Estimated response action costs” means the projected costs of taking a response action in implementing an approved removal action work plan or remedial action plan prepared to address a pollution condition at a site.

Comment. Section 70705 continues former Section 25395.40(e) without substantive change.

See Sections 68125 (“remedy”), 68130 (“removal action work plan”), 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).

§ 70710. “Hazardous material”

70710. “Hazardous material” means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(a) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 68075, including the substances specified in subdivision (b) of Section 68075.

(b) A hazardous waste, as defined in Section 25117.

(c) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

Comment. Section 70710 continues former Section 25395.40(g) without substantive change.

See Section 68075 (“hazardous substance”).

Staff Notes. (1) Section 25395.40(g) cross-refers to several provisions to define the term “hazardous material.” Among other things, it refers to provisions that define the term “hazardous substance” and list exclusions from that term. As described more fully in Note #1 to proposed Section 70235, the phrasing of these references is ambiguous. In light of that issue, it may be helpful to delete the last clause of proposed Section 70710(a) and instead include a proposed Section 70710(d): “(d) Substances specified in subdivision (b) of Section 68075.” The staff welcomes comment on this issue.

(2) The definition of “hazardous material” in Section 25395.40(g) specifically includes “a waste” as that term is defined in two cited sections. As described in Note #2 to proposed Section 70235, the definitions of “waste” are quite broad. It is unclear whether this provision was intended to
§ 70715. “Insurance company”

70715. “Insurance company” means an insurance company authorized in California to offer environmental insurance and that has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger.

Comment. Section 70715 continues former Section 25395.40(h) without substantive change. See Section 70700 (“environmental insurance”).

§ 70720. “Pollution condition”

70720. “Pollution condition” means a release or threatened release of a hazardous material and any resulting impact upon the environment.

Comment. Section 70720 continues former Section 25395.40(i) without substantive change. See Section 68105 (“release”), 70710 (“hazardous material”).

§ 70725. “Pollution liability insurance”

70725. (a) “Pollution liability insurance” means insurance that covers damages caused by a pollution condition from, or at, a site that is preexisting and unknown, or was otherwise unknown at the time the insurance is first obtained, and, at a minimum, provides for all of the following:

(1) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(2) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(b) For purposes of this section, “damages” means either of the following:

(1) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(2) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(c) For purposes of this section, “damages” includes the property damage, bodily injury, and response costs specified in subdivision (b), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury, or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

Comment. Section 70725 continues former Section 25395.40(j) without substantive change. See Sections 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).
§ 70730. “Secured creditor insurance”

70730. “Secured creditor insurance” means insurance made available to an insured that covers all of the following:

(a) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(b) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(c) Loss or damages incurred by a lender as a result of a borrower’s inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(d) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

Comment. Section 70730 continues former Section 25395.40(k) without substantive change. See Sections 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).

§ 70735. “Self-insured retention amount”

70735. “Self-insured retention amount” means response action costs in excess of the estimated response action costs that have been accepted and approved by the insurer that the insured is obligated to pay before being eligible to make a claim of an insurer under a cost overrun insurance policy.

Comment. Section 70735 continues former Section 25395.40(l) without substantive change. See Sections 68140 (“response”), 70690 (“cost overrun insurance”), 70705 (“estimated response action costs”).

Article 2. Environmental Insurance Products

§ 70750. Request for proposal

70750. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process.

(b)(1) The request for proposal prepared by the secretary shall identify the objectives of this chapter and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions.

(2) The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy.
(c) The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

Comment. Section 70750 continues former Section 25395.41(a) without substantive change. See Sections 68150 ("secretary"), 70700 ("environmental insurance").

§ 70755. Factors for evaluation of proposals

70755. The secretary shall evaluate the extent to which each proposal submitted pursuant to Section 70750 meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(a) Product pricing.
(b) Claims history.
(c) Underwriting history.
(d) Company financial strength and size.
(e) Scope of policy coverages, including endorsements and exclusions.
(f) Marketing and distribution of the insurance products.
(g) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this chapter and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

Comment. Section 70755 continues former Section 25395.41(b)(1) without substantive change. See Sections 68085 ("person"), 68150 ("secretary"), 70700 ("environmental insurance"), 70715 ("insurance company").

§ 70760. Selection of state-designated provider

70760. (a) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to Section 70750 to be the exclusive state-designated provider of environmental insurance under this chapter for a period of three years from the date of selection.

(b) The secretary shall select a company that, in the Secretary’s determination, has submitted a proposal that best meets the requirements of this chapter and the objectives stated in the request for proposal at the best possible price.

Comment. Section 70760 continues the first two sentences of former Section 25395.41(b)(2) without substantive change. See Sections 68150 ("secretary"), 70700 ("environmental insurance").

§ 70765. Bidding every three years

70765. Every three years, the secretary shall repeat the competitive bidding process specified in this article.

Comment. Section 70765 continues the third sentence of former Section 25395.41(b)(2) without substantive change.
See Section 68150 (“secretary”).

§ 70770. Offer of insurance products
70770. (a) An insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 70760 shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program.

(b) The insurance company shall also offer the environmental insurance products made available under this chapter to any other person who conducts a response action in the state.

Comment. Section 70770 continues former Section 25395.41(c) without substantive change. See Sections 68085 (“person”), 68140 (“response”), 70685 (“CLEAN Program”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Staff Note. Section 25395.41(c) refers to an insurance company selected to offer products pursuant to “subdivision (b).” Section 25395.41(b) is proposed for recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.

§ 70775. Consultation with state agencies and interested parties
70775. The secretary shall implement this article in consultation with representatives of other appropriate state agencies, including the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations.

Comment. Section 70775 continues the first sentence of former Section 25395.41(d) without substantive change. See Sections 68050 (“department”), 68150 (“secretary”).

Staff Note. Proposed Section 70775 identifies agencies that the secretary must consult in implementing this article, including the “state board.” “State board” is used here without an applicable definition. Existing Chapter 6.8 contains a few, limited-application definitions for state board that define the term as the “State Water Resources Control Board.” See, e.g., Section 25356.1, 25395.20(a)(18). It seems likely that this was the intended definition here. The staff welcomes comment on this issue.

§ 70780. Consistency with requirements for state procurement of services
70780. The secretary shall implement this article in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 70780 continues the second sentence of former Section 25395.41(d) without substantive change.
See Section 68150 (“secretary”).

Article 3. Subsidies

§ 70800. Funds for subsidies

70800. The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to Section 70760, in accordance with Section 70805.

Comment. Section 70800 continues former Section 25395.42(a) without substantive change. See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Staff Notes. (1) Section 25395.42(a) refers to the Cleanup Loans and Environmental Assistance to Neighborhoods account established pursuant to “Section 25395.20.” Section 25395.20 is proposed for recodification as multiple provisions (sections contained in proposed Articles 1 and 3 of Chapter 10). The cross-reference was updated to refer only to proposed Section 70350, which contains language establishing the account. Absent comment on this proposed cross-reference update, it will be presumed correct.

(2) Section 25395.42(a) also refers to an insurance company selected pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.

§ 70805. Amount of subsidies

70805. The secretary shall provide the following subsidies, in accordance with the application process specified in this article, from the funds made available pursuant to Section 70800:

(a) Up to 50 percent of the cost of the premiums for the environmental insurance products provided pursuant to Section 70770.

(b)(1) Up to 80 percent of the self-insured retention amount of the cost overrun insurance provided pursuant to Section 70770, up to a maximum of five hundred thousand dollars ($500,000).

(2) The secretary may expend the funds available to pay a portion of the self-insured retention amount of the cost overrun insurance provided pursuant to [subdivision (b) of Section 25395.41] only under all of the following conditions:

(A) The insured demonstrates that it exercised reasonably prudent business judgment in insuring the cost overrun, consistent with an attempt to minimize the incurred costs, and incurred the costs through no fault of its own.

(B) The insured pays, at a minimum, the first 20 percent of the self-insured retention amount.
(C) The secretary determines that the amount of the payment is in the best interests of the state, taking into account the environmental and economic benefits of the specified project, as compared to the benefit of conserving funds for assistance at other sites.

Comment. Section 70805 continues former Section 25395.42(b) without substantive change. See Sections 68150 (“secretary”), 68155 (“site”), 70690 (“cost overrun insurance”), 70700 (“environmental insurance”), 70735 (“self-insured retention amount”).

Staff Notes. (1) Section 25395.42(b) cross-references the application process for subsidies specified in “Section 25395.43.” This article contains multiple proposed provisions that recodify Section 25395.43, as well as one other section that recodifies Section 25395.42(a). Section 25395.42(a) does not relate to applications for subsidies. Rather than referring to each of the proposed sections that recodify Section 25395.43, the cross-reference was updated to refer to “this article.” This is a nonsubstantive change. Absent comment on this proposed cross-reference update, it will be presumed correct.

(2) Section 25395.42(b) refers to insurance “provided pursuant to subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for recodification as multiple provisions (proposed Sections 70755, 70760, 70765). It is not clear how this cross-reference should be updated, as Section 25395.41(b) does not seem to relate to the providing of insurance products. Rather it appears that this cross-reference should instead point to subdivision (c) of Section 25395.41, which is twice cross-referenced in this proposed section as a provision pursuant to which insurance products are provided. The staff welcomes comment on how this cross-reference should be updated.

§ 70810. Eligibility for subsidies
70810. (a) Any person who is conducting a response action at an eligible property under the oversight of the department or a regional board and who purchases the prenegotiated environmental insurance products from the insurance company selected pursuant to Section 70760 may apply to the secretary for the subsidies that are made available pursuant to this article.

(b) To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this chapter are available, an applicant is eligible for a subsidy in the order in which the applicant’s application is received.

Comment. Section 70810 continues former Section 25395.43(a) without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140 (“response”), 68150 (“secretary”), 70695 (“eligible property”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Staff Notes. (1) Section 25395.43(a) refers to an insurance company selected to offer products pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.
Section 25395.43(a) also refers to subsidies available “pursuant to Section 25395.42.” This article contains multiple proposed provisions that recodify Section 25395.42 (proposed Sections 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43. Rather than referring to each of the proposed sections that recodify Section 25395.42, the cross-reference was updated to refer to “this article.” This is a nonsubstantive change. **Absent comment on this proposed cross-reference update, it will be presumed correct.**

**§ 70815. Information to be provided by applicant**

70815. An applicant for a subsidy made available pursuant to this article shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

Comment. Section 70815 continues former Section 25395.43(b) without substantive change.

Staff Note. Section 25395.43(b) refers to subsidies available “pursuant to Section 25395.42.” This article contains multiple proposed provisions that recodify 25395.42 (proposed Sections 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43. Rather than referring only to the proposed sections that recodify Section 25395.42, the cross-reference was updated to refer to “this article.” This is a nonsubstantive change. **Absent comment on this proposed cross-reference update, it will be presumed correct.**

**§ 70820. No obligation to provide subsidy funds**

70820. The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this chapter.

Comment. Section 70820 continues the first sentence of former Section 25395.43(c) without substantive change.

See Section 68085 (“person”).

**§ 70825. Subsidy availability limited to reserved funds**

70825. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

Comment. Section 70825 continues the second sentence of former Section 25395.43(c) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68150 (“secretary”), 70700 (“environmental insurance”).

Staff Note. Section 25395.43(c) refers to the Cleanup Loans and Environmental Assistance to Neighborhoods account established pursuant to “Section 25395.20.” Section 25395.20 is proposed for recodification as multiple provisions (sections contained in proposed Articles 1 and 3 of Chapter 10). The cross-reference was updated to refer only to proposed Section 70350, which contains language establishing the account. **Absent comment on this proposed cross-reference update, it will be presumed correct.**
Article 4. Liability

§ 70840. Immunity from liability

70840. Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state’s other political subdivisions or their employees, shall not be liable to any person for any of the following:

(a) Any acts or omissions by the agency, the secretary, the state, their respective employees and agents, and any of the state’s other political subdivisions or their employees, in implementing this chapter.

(b) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 70760.

(c) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this chapter.

Comment. Section 70840 restates former Section 25395.44(a) without substantive change. See Sections 68040 (“agency”), 68085 (“person”), 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Staff Notes. (1) Section 25395.44(a) was restated to replace the phrase “employees thereof” with “their employees.”

(2) Section 25395.44(a) refers to an insurance company selected to offer products pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.

§ 70845. Immunity includes specified acts

70845. The immunity from liability set forth in Section 70840 specifically includes, but is not limited to, immunity if an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 70760 does any of the following:

(a) Cancels, rescinds, or otherwise terminates its contract with the secretary.

(b) Fails, for any reason, to compensate an insured for a loss covered by a policy.

(c) Delays payment to an insured, or otherwise breaches a duty or covenant imposed by law or required by a policy or contract with an insured that purchased an environmental insurance product pursuant to this chapter.

Comment. Section 70845 continues former Section 25395.44(b) without substantive change. See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Staff Note. Section 25395.44(b) refers to an insurance company selected to offer products pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for
recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.” Absent comment on this proposed cross-reference update, it will be presumed correct.

§ 70850. Immunity in addition to other immunities and defenses

70850. The immunity set forth in this article is in addition to other immunities and defenses otherwise available to the agency, the secretary, the state, their respective employees and agents, and any of the state’s political subdivisions and employees thereof.

Comment. Section 70850 continues former Section 25395.44(c) without substantive change. See Sections 68040 ("agency"), 68150 ("secretary").

§ 70855. Application of Insurance Code to acts under this chapter

70855. In implementing this chapter, the agency, the secretary, the state, their respective employees and agents, and any of the state’s other political subdivisions and employees thereof, may not:

(a) Be construed to be an insurer, as defined in Section 23 of the Insurance Code, an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

(b) Be construed to be transacting insurance, as defined in Section 35 of the Insurance Code.

(c) Be required to obtain a license or other authorization pursuant to any provision of the Insurance Code.

Comment. Section 70855 continues former Section 25395.44(d) without substantive change. See Sections 68040 ("agency"), 68150 ("secretary").

Article 5. Regulations

§ 70870. Adoption of regulations

70870. (a) The agency may adopt regulations to implement this chapter pursuant to this section.

(b)(1) The regulations adopted to implement this chapter shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code.

(2) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

Comment. Section 70870 continues former Section 25395.45 without substantive change. See Section 68040 ("agency").
Staff Note. Section 25395.45 indicates that, “[n]otwithstanding the 120-day limit specified in” Government Code Section 11346.1(e), a 180-day period applies for these regulations. The cross-referenced Government Code provision was later amended to provide for a 180-day limitation period. For this reason, the quoted language above appears to be obsolete. The obsolete language was restated to read “[n]otwithstanding the time period specified in” Government Code Section 11346.1.

Because the time periods specified in the referenced Government Code section and this proposed section are now the same, this provision may be surplus. However, if Government Code Section 11346.1(e) were to be amended in the future, to provide a different period of effect for emergency regulations, this provision would once again have its originally intended effect of providing a 180-day period for emergency regulations adopted under Section 25395.45 (notwithstanding the general rule for emergency regulations). For that reason, the staff has retained the provision in this draft. The staff welcomes comment on the proposed treatment of this provision.

CHAPTER 12. COMPENSATION


§ 70900. Funds for payment of claims

70900. (a) Claims approved by the Department of General Services pursuant to this chapter shall be paid from the state account.

(b) The Legislature may appropriate up to two million dollars ($2,000,000) annually from the state account to be used by the Department of General Services for the payment of awards pursuant to this chapter.

(c) Claims against or presented to the Department of General Services shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

Comment. Section 70900 continues former Section 25381(b)-(d), inclusive, without substantive change.

See Section 68165 (“state account”).

Staff Note. Section 25381(d), which would be continued in proposed Section 70900(c), allows payment of claims beyond the appropriated amount “only when additional money is collected, appropriated, or otherwise added to that account.” By its terms, that language does not require a nexus between the added funds and this claims payment program.

The account referenced in this provision appears to be the “state account.” The state account is a primary funding source for the Department of Toxic Substances Control. See http://www.ebudget.ca.gov/2019-20/pdf/GovernorsBudget/3890/3960.pdf. Several different types of revenues are deposited into the state account. Id. It seems unlikely that all revenue added to the state account was intended to be available to pay compensation claims under this chapter.

The staff welcomes comment on how this provision is understood in practice and whether it needs to be clarified.
§ 70905. Funds for administration of program

70905. The Department of General Services may expend from the state account those sums of money as are reasonably necessary to administer and carry out this chapter.

Comment. Section 70905 continues former Section 25382 without substantive change. See Section 68165 (“state account”).

Article 2. Claims for Compensation

§ 70920. Conditions for application for compensation

70920. Any person may apply to the Department of General Services pursuant to Section 70925, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection with the release or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100) of Division 20, because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party that the person reasonably believes is liable for a loss specified in subdivision (a) of Section 70940 that was incurred by that person and is compensable pursuant to this chapter, the person has presented the Department of General Services with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in subdivision (a) of Section 70940, or has not responded to the demand. Only losses specified in subdivision (a) of Section 70940 are compensable under a claim filed pursuant to this subdivision.

Comment. Section 70920 restates former Section 25372 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135 (“remove”), 68140 (“response”).

Staff Notes. (1) Section 25372(a) was restated for clarity to replace the phrase “damages in connection therewith” with “damages in connection with the release.” Absent comment on this change, it will be presumed correct.

(2) Section 25372(b) uses the term “liable party.” The term “liable party” is undefined, but is very similar to the defined terms, “responsible party” and “liable person.” See proposed Section 68145 (defining “responsible party” and “liable person”). It is unclear whether the use of the undefined term “liable party” was intentional and, if so, what it means. The staff welcomes comment on this issue.
§ 70925. Forms and procedures

70925. (a) The Department of General Services shall prescribe appropriate forms and procedures for claims filed pursuant to this chapter, which shall include, as a minimum, all of the following:
   (1) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant’s knowledge.
   (2) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.
   (3) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.
   (4) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.
   (5) The claimant’s income as reported on the claimant’s federal income tax return for the preceding three years in order to compute lost wages or income.

(b) Any person who knowingly gives, or causes to be given, any false information as a part of any claim pursuant to this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars ($5,000), or imprisoned for not more than one year, or both.

Comment. Section 70925 restates former Section 25373 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”).

Staff Notes. (1) Section 25373(f), which would be restated in proposed Section 70925(b), was restated to replace the phrase “any such claim” with “any claim pursuant to this chapter.” Absent comment on this change, it will be presumed correct.

(2) Section 25373 is structured with an unnumbered introductory clause, followed by a list of items that the Department of General Services shall prescribe for claim forms and procedures. The final item in the list appears to be stating a substantive rule (making it a crime to provide false information), as opposed to describing content for forms or procedures. For this reason, the subdivision and paragraph numbering was adjusted in this proposed section to make the final item its own subdivision, where it would not be part of the listed content of claims forms and procedures. Absent comment on this change, it will be presumed correct.

§ 70930. Time for presenting claims

70930. No claim may be presented to the Department of General Services pursuant to this chapter later than three years from the date of discovery of the loss or from January 1, 1982, whichever is later.

Comment. Section 70930 continues former Section 25376 without substantive change.
Article 3. Compensable Losses

§ 70940. Types of losses

70940. If the Department of General Services makes the determination, specified in Section 70945, that losses resulted from the claimant’s damages, injury, or disease, only the following losses are compensable pursuant to this chapter:

(a) One hundred percent of uninsured, out-of-pocket medical expenses, for up to three years from the onset of treatment.

(b) Eighty percent of any uninsured, actual lost wages, or business income in lieu of wages, caused by injury to the claimant or the claimant’s property, not to exceed fifteen thousand dollars ($15,000) per year for three years.

(c)(1) One hundred percent of uninsured, out-of-pocket expenses for remedial action on the claimant’s property undertaken to address a release of a hazardous substance when all of the following apply:

(A) The claimant’s property is an owner-occupied single-family residence.

(B) The remedial action was ordered by federal, state, or local authorities due to a release of a hazardous substance.

(C) The department makes one of the following determinations:

(i) The release of the hazardous substance originated outside the boundaries of the property.

(ii) The release of the hazardous substance occurred on the property, was the result of an action that violated state or federal law, and the responsible party cannot be identified or cannot be located, or a judgment against the responsible party cannot be satisfied.

(2) The maximum compensation under this subdivision is limited to twenty-five thousand dollars ($25,000) per residence and to one hundred thousand dollars ($100,000) for five contiguous residential properties. Any compensation provided shall be reduced by the amount that the remedial action results in a capital improvement to the claimant’s residence.

(d)(1) One hundred percent of the fair market value of owner-occupied real property that is rendered permanently unfit for occupancy because of the release of a hazardous substance.

(2) For purposes of this subdivision, real property is rendered permanently unfit for occupancy only if a state or federal agency requires that it be evacuated for a period of six or more months because of the release of a hazardous substance.

(3) The fair market value of the real property shall be determined by an independent appraiser, and shall be considered by the independent appraiser as being equal to the value of the real property prior to the release of the hazardous substance that caused the evacuation of the property.

(4) Where compensation is made by the Department of General Services pursuant to this subdivision, sole ownership of the real property shall be
transferred to the state and any proceeds resulting from the final disposition of the real property shall be deposited into the state account, for expenditure by the department upon appropriation by the Legislature.

(5) To be eligible for compensation pursuant to this subdivision, claims for compensation shall be made within 12 months of the date on which the evacuation was ordered.

(e)(1) One hundred percent of the expenses incurred due to the evacuation of a residence ordered by a state or federal agency.

(2) For purposes of this subdivision, “evacuation expenses” include the cost of shelter and any other emergency expenditures incurred due to an evacuation ordered by a state or federal agency.

(3) The Department of General Services may provide compensation, pursuant to this subdivision, only if it finds that the evacuation expenses represent reasonable costs for the goods or services purchased, and would not have been incurred if an evacuation caused by a hazardous substance release had not occurred.

(4) The Department of General Services may provide compensation for these evacuation expenses only if they were incurred within 12 months from the date on which evacuation was ordered.

Comment. Section 70940 continues former Section 25375(a) without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68145 (“responsible party”), 68165 (“state account”).

§ 70945. Required findings

70945. A loss specified in Section 70940 is compensable if the Department of General Services makes all of the following findings, based upon a preponderance of the evidence:

(a) A release of a hazardous substance occurred.

(b) The claimant or the claimant’s property was exposed to the release of the hazardous substance.

(c) The exposure of the claimant to the release of the hazardous substance was of such a duration, and to such a quantity of the hazardous substance, that the exposure caused the damages, injury, or disease that resulted in the claimant’s loss.

(d) For purposes of subdivisions (d) and (e) of Section 70940, the hazardous substance release, or the order that resulted in the claim for compensation occurred on or after January 1, 1986.

(e) The conditions and requirements of this chapter including, but not limited to, the conditions of Sections 70920 and 70925, have been met.

Comment. Section 70945 continues former Section 25375(b) without substantive change. See Sections 68075 (“hazardous substance”), 68105 (“release”).
§ 70950. Noncompensable claim

70950. No money shall be used for the payment of any claim authorized by this part, where the claim is the result of long-term exposure to ambient concentrations of air pollutants.

Comment. Section 70950 continues former Section 25375(c) without substantive change.

Staff Note. Section 25375(c) refers to a claim authorized by “this chapter” (i.e., Chapter 6.8 of Division 20). It is not clear why this provision refers to Chapter 6.8 as a whole, as opposed to the article related to claims for compensation. The staff welcomes comment on this issue. In this proposed section, the reference has tentatively been updated to refer to “this part,” which will include all of the provisions of Chapter 6.8 Absent comment on this issue, this cross-reference update will be presumed correct.

Article 4. Claim Proceedings

§ 70970. Applicable law

70970. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(c) The Department of General Services may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of Section 70920. The evidence presented by that person shall become a part of the record upon which the Department of General Services’ decision shall be based.

Comment. Section 70970 continues former Section 25375.5 without substantive change.

See Section 68085 (“person”).

§ 70975. Decisions

70975. (a) All decisions rendered by the Department of General Services shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to the Department of General Services unless all the parties to the claim agree in writing to an extension of time.

(b) The decision shall be considered a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision.

Comment. Section 70975 continues former Section 25374 without substantive change.

See Section 68040 (“agency”).
Article 5. Relationship to Other Remedies

§ 70990. Claim not condition precedent to other remedies
70990. Nothing in this chapter shall require, or be deemed to require, pursuit of any claim against the Department of General Services as a condition precedent to any other remedy.
Comment. Section 70990 continues former Section 25377 without substantive change.

§ 70995. Compensation from other sources
70995. (a) Compensation of any loss pursuant to this chapter shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this chapter.
(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this chapter, the claimant shall reimburse the state account in an amount equal to the compensation that the claimant has received from the state account pursuant to this chapter. The Attorney General may bring an action against the claimant to recover the amount that the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant’s rights pursuant to Article 7 (commencing with Section 71030).
(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this chapter.
Comment. Section 70995 continues former Section 25378 without substantive change.

Article 6. Nonadmissibility of Evidence in Other Proceedings

§ 71010. Evidence not admissible
71010. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Article 7 (commencing with Section 71030), to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:
(1) A final decision made by the Department of General Services pursuant to this chapter.
(2) A decision made by the Department of General Services to admit or not admit any evidence.
(3) Any finding of fact or conclusion of law entered by the Department of General Services in a proceeding for a claim pursuant to this chapter.

(4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 70920:

(A) Chosen to participate or appear.
(B) Chosen not to participate or appear.
(C) Failed to appear.
(D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the Department of General Services for any act, decision, or failure to act on a claim submitted by the claimant.

Comment. Section 71010 continues former Section 25379 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”).

Article 7. State Recovery from Liable Party

Staff Note. Proposed Article 7 is entitled “State Recovery from Liable Party.” The term “liable party” is similar to the defined terms, “responsible party” and “liable person.” Those defined terms were intentionally not used for this article heading, as it was not clear whether the defined term is apt for this article. The staff welcomes comment on this issue.

§ 71030. State acquisition of claimant’s right to recover

71030. Compensation of any loss pursuant to this chapter shall be subject to the state’s acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable for the loss.

Comment. Section 71030 restates the first sentence of former Section 25380 without substantive change.

Staff Note. The first sentence of Section 25380 was restated for clarity to replace the phrase “liable therefor” with “liable for the loss.”

§ 71035. Action for recovery

71035. Upon the request of the Department of General Services, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this chapter against any party who is liable to the claimant for any loss compensable pursuant to this chapter in accordance with the procedures set forth in Chapter 8 (commencing with Section 69650).

Comment. Section 71035 continues the second sentence of former Section 25380 without substantive change.

Staff Note. Section 25380 specifies that recovery of funds is subject to “the procedures set forth in Sections 25360 to 25364, inclusive.” The referenced provisions are proposed for recodification, along with other, unreferenced provisions, in Chapter 8. In particular, Articles 3-7, inclusive, 11, and 12 are all entirely comprised of referenced provisions. Articles 1 and 9 contain referenced provisions, but each also contains a single unreferenced provision. Given the
impracticality of reproducing this cross-reference exactly, the staff proposes updating this cross-reference to refer to the entirety of Chapter 8. **The staff welcomes comment on this proposed cross-reference update.**

§ 71040. Deposit of recovered funds

71040. Moneys recovered pursuant to this article shall be deposited in the state account.

**Comment.** Section 71040 continues the third sentence of former Section 25380 without substantive change.

See Section 68165 (“state account”).

Article 8. Implementing Rules and Regulations

§ 71050. Adoption and revision

71050. The Department of General Services shall, in consultation with the department, adopt, and revise when appropriate, all rules and regulations necessary to implement this chapter, including methods that provide for establishing that a claimant has exercised reasonable diligence in satisfying the conditions specified in Articles 3 (commencing with Section 70940) and 4 (commencing with Section 70970) and Sections 70920 and 70925, and regulations that specify the proof necessary to establish a loss compensable pursuant to this chapter.

**Comment.** Section 71050 continues former Section 25381(a) without substantive change.

See Section 68050 (“department”).

**Staff Note.** Section 25381(a) cross-refers to conditions “specified in Sections 25372, 25373, 25375, and 25375.5.” These provisions are proposed for recodification as several sections. The cross-reference has been updated to refer to two articles and two sections. One of the new articles, proposed Article 4, contains a section that is not referenced, Section 25374 (proposed Section 70975). Section 25374 does not place any conditions on the claimant, but relates to decisions rendered by the agency. For this reason, the addition of this section to the reference does not appear to be a substantive change. **Absent comment on this proposed cross-reference update, it will be presumed correct.**
## 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.

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### 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.

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